



**Unilateral Conduct Working Group**

**Vertical Restraints Multi Year Project  
2016-2018**

***Interim Report***

***March 2018***

### ***Overview – the vertical restraints project***

1. In 2016 the Unilateral Conduct Working Group (**UCWG**) began a multi-year project examining the effects on competition of vertical restraints. The project seeks to promote increased understanding, and where differences exist, to work towards convergence.
2. In 2016 the UCWG undertook scoping work to help guide the development of the vertical restraints project. This work program identified:
  - an interest in a focus on online vertical restraints, but caution to not overlook matters arising in offline markets
  - support for theoretical analysis of issues arising with vertical restraints, including theories of harm, market failures, and efficiencies
  - support for analysis that focuses on particular forms of restraint, and
  - support for the development of a selected case study resource.
3. The current phase of the vertical restraints project has developed a series of hypothetical vertical restraint scenarios which will be examined for their possible effect on competition and potential resulting efficiencies (scheduled for the 2017 and 2018 ICN years).
4. A project group of ICN members and NGAs<sup>1</sup> is providing individual/jurisdictional-specific responses for each of the hypothetical scenarios. The responses provided by the project group members will assist in highlighting commonalities and divergent factors in the assessment of the vertical restraints scenarios.

### ***Hypothetical One – a platform parity requirement***

5. The first vertical restraint hypothetical considers the possible effect of certain parity requirements included in contractual arrangements between fictional Online Travel Agents (OTAs) and fictional accommodation providers. A limited fact scenario has been provided to project group members. The project group is considering
  - possible theories of harm
  - arguments about pro-competitive effects that may be presented and factors relevant to these arguments, and
  - areas of further inquiry by investigators.
6. Elements of the hypothetical were also discussed during the November 2017 UCWG Workshop (breakout sessions), observations made during the Workshop are helping to inform the development of the OTA paper.
7. The consultation process and Workshop observations have drawn out a number of matters for consideration by the project group in the development of the OTA paper, including
  - the market(s) that may be affected by the parity requirements
  - possible effects of the parity requirements on consumers
  - possible effects of the parity requirements on competition among accommodation providers

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<sup>1</sup> Please see attachment A for a list of project group members.

- possible effects of the parity requirements on competition among online travel agents and
  - how pro-competitive effects may be considered and their impact on the analysis of the conduct.
8. Further consultation will be undertaken to allow the project group to continue to explore these matters. It is expected that a draft document addressing the OTA hypothetical will be circulated to the UCWG membership in the coming months.

***Hypothetical Two – an offline retail environment***

9. Hypothetical two considers the impact of a vertical restraint in a fictional grocery retail market. The vertical restraint affects pricing and marketing of branded packaged food products sold by grocery retailers. Elements of this hypothetical were also discussed during the breakout sessions of the November 2017 Workshop. It is expected that a limited fact scenario will be provided to project group members in the first part of the 2018 ICN year with papers providing a preliminary assessment of the scenario to follow thereafter.

***Hypothetical Three – an online selective distribution model***

10. It is proposed that hypothetical three consider the potential impact of online selective distribution models. Under the scenario three fictional suppliers of infant strollers apply selective distribution models to online sales of their products. Each distribution model has different features.
11. It is expected that project group members will provide their preliminary assessment in the second part of the 2018 ICN year. The preliminary assessments will be used to guide the development of subsequent papers.

***Next steps***

12. The project group expects to finalise consideration of the platform parity hypothetical in the first part of the 2018 ICN year. It is anticipated that a webinar or other briefing format will be scheduled for UCWG members to align with the finalisation of the report. Consultation on the second and third hypothetical scenarios are expected to closely follow the completion of the first hypothetical.
13. The UCWG Co-Chairs would like to thank the project group and UCWG members for their ongoing interest in and commitment to this project. The Co-chairs will continue to update the UCWG membership on the progress of the vertical restraints project.

## **Vertical Restraints Project Group**

The UCWG Co-chairs would like to thank the following members and NGAs for their contributions to this project:

### *Competition Agencies*

- Administrative Council for Economic Defense – CADE, Brazil
- Autorité de la concurrence, France
- Authority for Consumers and Markets, Netherlands
- Bundeskartellamt
- Competition and Markets Authority, United Kingdom
- Competition Bureau, Canada
- Competition Commission, Hong Kong
- European Commission
- Federal Trade Commission, United States
- New Zealand Commerce Commission
- Swedish Competition Authority

### *NGAs*

- Carolyn Oddie, Australia
- Anna Wolf-Posch, Austria
- Daniel Andreoli, Brazil
- Martim Della Valle, Brazil
- Silvia Fagá, Brazil
- Bernardo Macedo, Brazil
- Joyce Midori Honda, Brazil
- Antonio Di Domenico, Canada
- Rachel Brandenburger – European Commission
- Rafael Allendesalzar , Spain
- Grant Murray, United Kingdom
- Daniel Sokol, United States of America
- Robert Friedman, United States of America
- Kitri Gupta, United States of America
- Elisa Kearney , United States of America