

Objectives of Unilateral Conduct

Introductory Remarks

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Good morning. I am Randy Tritell, and I, along with Felix Engelsing of the Bundeskartellamt, have had the privilege to co-chair the Unilateral Conduct Working Group. I would like to join Chairman Majoras in expressing my gratitude to our hosts.

I will provide some background on the working group's activities and then, as the co-chair with the Mexican Competition Commission of the Objectives subgroup, will moderate the panel on the objectives of unilateral conduct rules.

Those of you who have attended previous ICN conferences may recall that we always look for inspiration for our work to the culture of the country in which we will hold our next conference, as reflected in its proverbs. I have done that this year with Russia, which means that I will refer to some of these proverbs during my remarks, but it also means that I must apologize, as I have to nationals of previous host countries, for mangling your native language.

You may be happy to hear the first proverb by which I, and perhaps others, will be try to be guided:

Chorosha veryovka dlinnaya, a ryesch karotkaya.

Rope is good when it's long; speech when it's short.

At our last conference in Cape Town, the ICN took on its greatest challenge, the field of unilateral conduct. Some have described taking on convergence in unilateral conduct as “the Mount Everest of antitrust.” So perhaps it would be wise to heed the proverb:

Umnyy vgoru nye piedoot, umnyy goru ubaidoot.

A smart person will not climb a mountain; a smart person will go around it.

I guess we are not so smart, because we have decided to try to climb that mountain.

To do that, we assembled the largest expedition party the ICN has ever seen: 35 competition agencies and over 80 experts from the private sector from around the world. I was glad to have so much support. But the proverbs teach us that such an abundance also has its perils:

U semi nyanek ditza bez glassu.

Seven nannies make a kid not looked after.

We also knew we could not ascend the mountain all at once, in light of the proverb that teaches:

Podgonishsya za dvumya zaytsami, ni adnago nye piemyosh.

If you start chasing two hares, you will catch none.

But our work plan provided for two initial projects -- one on objectives of unilateral conduct rules, and the second on the assessment of dominance. We solved that by creating a subgroup for each project. That way, each group has only one hare to catch. Of course, we had to leave many other hares still running wild, but will try to catch them in our future projects.

We also conducted a project on state-created monopolies, led by the Turkish Competition Authority. I know I don't have to explain the relevance of this project here, which, in the U.S., and presumably in the U.K., we would say is like bringing coals to Newcastle, or here, one might say:

V Tulu sa svaim samavarom nye yezdyat.

No one goes to Tula with one's own samovar.

The working group sent a questionnaire on objectives, assessment of dominance, and state-created monopolies to ICN members and to the working group's NGAs, so we could compile a database of how agencies around the world are dealing with the issues before us. Our work plan said we would prepare a descriptive report and perhaps also guidance for agencies in these two areas. This sounded manageable enough, but we should probably have heeded more closely the proverb:

Gladka boylo na bumagge, da zaboyli pra avragi.

It looked smooth on paper, but we've forgotten about the ravines.

Or as another proverb puts it:

Blizok lokotok, da nye ukusish.

Your elbow is close, yet you can't bite it.

But it was also the proverbs that reminded us that if we said we would do something, we should do it.

Nazvalsya gruzdyem, polezhay v kuzov.

If you called yourself a milk-mushroom, get into the basket.

So in the end, the group did complete our task. I want to especially thank our FTC team of Dina Kallay, Elizabeth Kraus, and Anna Chehtova for their tireless efforts to complete this report, and Anna for whatever Russian words anyone can understand. Our team understood that they would have to work through many drafts – as the proverbs counsel:

Pyervoy blin vseгда komom.

The first blini (or pancake) is always a blob.

Sometimes they had to deal with suggestions that didn't fit. In that case, they could fall back on the proverb:

V ogorodya buzina, a v Kiyevye dyad'ka.

Elderberry is in the kitchen garden, therefore your uncle is in Kiev.

It just doesn't make sense.

And sometimes we had to deal with agencies that were too enamored of their own systems, so we had to explain:

V chuzhdom glazu surinku zamyetna, a v svayim –a bryevna nye vidyat'.

In another person's eye one can notice even a mote, but in one's own, cannot even see a log.

But through hard work, our subgroup turned this into an excellent report that I commend to you.

Turning to our panel, as background, you will see on the screen a list of the objectives cited by the 33 agencies that responded to our questionnaire and, next to them, the number of agencies that indicated each of the goals. Almost all agencies said that ensuring a competitive process was at least one of their goals. As you see in the top group,

a majority also listed both enhancing consumer welfare and maximizing efficiency. At the bottom, you see several, mostly jurisdiction-specific goals that some agencies cited. In the middle, you see several goals relating to fair competition, including ensuring economic freedom, ensuring a level playing field for small and medium-sized enterprises, promoting fairness and equality, and promoting consumer choice. I trust that these goals do not mean going too far in the direction of protecting inefficient competitors, as we must be mindful of the proverb,

Adin s soshkie – syemera s'lozhkoy.

For every one with a plow, there are seven with a spoon.

That concludes my introduction. Now let me introduce our eminent panel:

John Fingleton, the Chief Executive Officer of the United Kingdom's Office of Fair Trading;

Eduardo Perez Motta, President of Mexico's Federal Competition Commission;

Norman Manoim, a Member of South Africa's Competition Tribunal; and

James Rill, a US NGA and partner with the law firm, Howrey LLP.