UCWG Workshop
Moderator Instructions on Hypotheticals

In two breakout sessions, workshop participants will discuss a total of three hypotheticals.

Each hypothetical is presented on a single page, plus one or two attached documents.

Each hypothetical has a moderator guide that is being provided only to the moderators.

Moderators should study the materials in advance and be prepared to help others understand them.

Moderators have discretion in conducting the sessions but should involve as many people as possible.

Moderators should first introduce themselves and then ask others to introduce themselves.

Moderators should use simple language and make sure everyone is following the discussion.

Moderators must conclude each session at the specified time.

Day One: Retailing Hypothetical

Review of the data and the basic facts should consume at least 30 minutes.

Moderators should slowly guide participants through the two attached documents.

Discussion of the questions related to dominance should not be rushed.

Day Two: Two OTA Hypotheticals

OTA hypothetical 1 should be discussed for no more than 30 minutes.

Discussion of OTA hypothetical 2 should be both allowed to proceed wherever participants take it.

The moderator guide provides substantial material if participants require prompting.

UCWG Workshop
Retailing Hypo: Moderator Guide

Preliminary Notes for Moderators:

The main purpose of this breakout session is to analyze the threshold dominance issue an agency would address under most unilateral conduct laws.

A second purpose of the session is to teach participants how to understand basic quantitative information relevant to dominance.

The hypothetical provided to participants intentionally omits important facts about the conduct at issue to get participants to recognize the need for those facts and ask about them.

Market Intelligence Report:

Moderators should invite participants to offer their insights from the two tables, but some participants likely will have difficulty understanding them. Moderators should explain that the data are *at the store level*, and to convert to the chain level, one multiplies by the numbers of stores. Note that the MicroMart and NanoMart chains have the same total sales per day, which is one-third of the sales per day of the UltraMart chain.

Revenue shares (including non-grocery items) are: UltraMart 60%, MicroMart 20%, NanoMart 20%.

UltraMart stores stock about 19,000 grocery items. MicroMart and NanoMart stores stock about 3000. Nearly all of those 3000 items likely overlap with UltraMart's stock, leaving about 13,000 grocery items available only at UltraMart, and very few available only at MicroMart or NanoMart.

Consumer Survey:

Moderators should invite participants to offer insights from the tables, but some participants likely will have difficulty understanding them. Moderators should explain that the responses are tabulated *by chain*. To compute a percentage for a chain, a number from any of the tables can be divided by the number of responses at the bottom of the column. To compute a percentage over all those surveyed, the columns first must be summed horizontally.

Table 1: Just 30% of surveyed consumers said that they shopped only at UltraMart, and just 20% said they did not shop at UltraMart, whereas 43% of customers shopped at all three chains.

Table 2: Surveyed customers shopped at UltraMart mainly for variety: 81% of UltraMart shoppers cited greater variety, whereas no MicroMart or NanoMart customer cited greater variety.

Table 3: Surveyed customers shopped at MicroMart and NanoMart for convenience: 80% travelled less than 2 km, whereas 69% UltraMart customers travelled at least 2 km, and 40% over 10 km.

Table 4: Customers purchased largely the same sort of items at UltraMart as at MicroMart and NanoMart, although a far larger proportion of shoppers purchased "non-ready to eat prepared food" (including frozen foods) at UltraMart than at MicroMart and NanoMart.

Further Notes for Moderators:

Without prompting, a participant might comment that we do not know what products the alleged vertical restraints involve. If not, moderators should mention that.

Moderators should reveal that the complaints allege restrictions on pricing and marketing of **branded packaged food products** sold by MicroMart or NanoMart in competition with UltraMart. These are the third and fourth rows of the last table of the Market Intelligence Report and the Consumer Survey.

MicroMart and NanoMart complain that contractual restrictions operate like price-parity and most favor nation clauses. The restrictions, however, do not limit which items are sold by MicroMart or NanoMart or bundle items sold only by UltraMart with items also sold by MicroMart or NanoMart.

Moderators also should reveal that UltraMart's share is at most 60% for any affected product category.

Initial discussion questions on dominance:

Of what significance is UltraMart's 60% over-all market share?

> ***Insight:*** Very little; that share is largely accounted for by unaffected products.

Of what significance is UltraMart's 100% market share for some products?

> ***Insight:*** None (to the issue of dominance in grocery retailing); UltraMart's share is at most 60% for any product affected by the alleged restriction.

Further questions on dominance:

Of what significance is the fact that many Competopians always shop at UltraMart?

> ***Insight:*** Platforms in the same industry are can be close substitutes on just one side of the platform. Here, the grocery chains are substitutes to consumers, 43.0% shop at all three. But 50.0% of consumers shop only at one type of grocery store, so suppliers need distribution at both types, and UltraMart has power over suppliers because it is the only big box chain.

In which grocery products is UltraMart dominant in retailing?

> ***Insight:*** We do not know enough to answer this question, but the case has to do with branded packaged food products, and that appears to be UltraMart's strongest area. A full investigation plausibly would conclude that UltraMart is the dominant retailer of the affected products.

Do you proceed to examine whether UltraMart is abusing a dominant position?

> ***Suggestion:*** Moderators should remind participants of what we know. Participants then should be asked what sorts of facts consistent with the complaints would warrant going forward.

UCWG Workshop
OTA Hypothetical 1: Moderator Guide

Notes for Moderators

The purpose of the next hypothetical is to explore the competitive effects of OTA vertical restraints. This hypothetical merely explores possible implications of the structure of a platform market.

Moderators should first direct participants to the insights in the survey, especially the fact that 90% of travelers using an OTA visit only one OTA site (i.e., they engage in "single homing").

In view of the fact that 70% of a hotel's potential customers find OTAs "essential" or of "significant advantages," single homing implies that each OTA controls access to a distinct pool of customers.

Because each OTA controls access to a distinct pool of potential customers, the two incumbent OTAs do not compete in dealing with hotels, although they do compete for usage by travelers.

Because hotels pay booking fees, but travelers do not, the fact that OTAs do not compete in dealing hotels implies that they do not compete on price.

Questions for discussion

What are **FaR**'s shares of online bookings and total bookings?

> ***Answer:*** 32.0% and 25.6%

Are those shares high enough to give **FaR** substantial leverage in bargaining with hotels?

> ***Insight:*** 70% of travelers find at least "significant advantages" from using an OTA, and 90% of OTA users single home. If a hotel lost its listings on **FaR**, it likely would lose more than half of the bookings it was getting through **FaR**. That would be very costly because hotels have high contribution margins: Suppose a hotel's average room rate is 100. On this average room it pays a commission of 10 to **FaR**, and it incurs a variable cost of 30 for cleaning and other guest services. That leaves a contribution margin of 60. If the hotel calculates that it would lose half of its **FaR** bookings in the event that it loses its **FaR** listings, it estimates that it gets 60 in contribution margin for each 20 in commission. This gives **FaR** bargaining leverage to secure other favorable terms.

If **FaR** has substantial bargaining leverage over hotels, does that make it dominant?

> ***Suggestion:*** The answer might vary across jurisdictions, but the discussion should focus on how bargaining power relates to dominance in the context of this particular hypothetical. As dominance conventionally is defined, an OTA would be found dominant if it proved its ability to persistently extract "high" commissions, which ultimately are paid by travellers through higher hotel rates. What constitutes a "high" commission might vary across jurisdictions, and that might not be precisely defined in any jurisdiction. Moderators should observe that single homing allows more than two OTAs to extract high commissions.

What does dominance mean in the case of a platform serving two distinct user groups?

Insight: Dominance with platforms has not been thoroughly explored by competition agencies or courts, although they have had many cases involving platforms. Platforms provide distinct services to two, or more, user groups. Here, the two groups are hotels and travelers. With some platforms, more than one user group faces a price, but here, only hotels pay booking fees. Of course, travelers ultimately pay those fees, but travelers never see anything labeled a booking fee and do not participate in negotiating the fees. Thus, competition among OTAs for the patronage of travelers (e.g., website features), does not impact booking fees. The issue of whether an OTA is dominant, therefore, can be addressed by examining only the hotel-facing side of the platform.

Assuming **FaR** is dominant, should the CCC be concerned that its PPAs exclude **OHB**?

Insight: Adding **OHB** as a third OTA in Competopia likely would have no impact on booking fees. OTAs do compete for usage by travelers, and travelers might benefit from competition from **OHB**, but travelers would not get from lower hotel rates from having more OTAs. The foregoing assumes that OTA uses continue to single home. It is possible that having more OTAs would alter traveler search behavior, but that is not predictable.

UCWG Workshop
OTA Hypothetical 2: Moderator Guide

Notes for Session Moderators

The purpose of this hypothetical is to explore the competitive effects of OTA vertical restraints.

Moderators should first direct participants to the survey, which states that just 30% of travelers using an OTA visit only one OTA site. ***The two OTAs now compete on both sides of the platform.***

Questions for discussion

Assuming the facts are as **HH** asserts, would withholding inventory constitute free riding on **BvB**?

> Visitors to **BvB**'s website could learn about **HH** properties and could then book better rates on **HH**'s website. **BvB** would call this free riding. But **BvB** is well compensated by **HH** for its services, and **BvB** was satisfied with the compensation for years while **HH** was withholding some inventory. With the number of withheld rooms strictly limited and the commission rate negotiated with knowledge of the withholding, it is difficult to see the withholding as free riding. Further, **BvB** can propose that **HH** pay for views was well as for bookings.

What is the best theory under which the PPA is anticompetitive?

> No conventional theory of anticompetitive effects seems to fit. The PPA does not eliminate or reduce competition between the two OPAs. **HH** could do best by negotiating an exclusive contract with **FaR**, and the PPA does nothing to undermine that possibility. The PPA might be said to frustrate competition between **BvB** and **HH**'s website, but **HH** has not described its intentions in a manner competition normally would be described. It is possible that the PPA leads **HH** to cut prices less on some rooms, but the PPA also could lead **HH** to raise price less on some rooms. Whatever that impact might be, it is not easily construed as resulting from either less or more competition. Participants might suggest creative theories, and they should be encouraged to do so.

With an OTA share of 60%, is **BvB** necessarily dominant?

Competition from **FaR** is likely to be quite strong. That competition, along with non-OTA competition, might be a strong enough rival to prevent **BvB** from possessing a dominant position.

Could an exclusive contract with **FaR** make sense for **HH**? If so, could **BvB** be dominant?

It is plausible that an exclusive contract with **FaR** would sense, and if it does, **BvB** is not dominant.

With an average room renting for 100 and a contribution margin of 60, **HH** would lose about 12 in contribution margin for every 10 it saves on commissions paid to **BvB**. Thus, dropping **BvB** appears to make no sense for **HH** unless it can make a deal with **FaR** for OTA exclusivity in exchange for a reduced commission rate.

In the survey, 70% of people booking on-line visited both **BvB** and **FaR**. With an exclusive, all those in the 70% who book **HH** will do it through **FaR**. But **FaR** was getting just 40% of on-line bookings in the survey, so **FaR** could greatly increase its **HH** bookings by entering into an exclusive arrangement. Plausibly, a deal could be struck that would benefit both **FaR** and **HH**.

Should the CCC take any action against BvB's PPA?

It does not appear that action by the CCC would be wise. Any participant favoring action should describe the action favored and give the reasons for taking that action.