



*Welcome Speech*

*30 November 2017, 9.00 am*

Commissioner Gabriella Muscolo  
Italian Competition Authority

Ladies and gentlemen, dear ICN members and NGAs, distinguished international and Italian guests,

I am honoured to welcome you to the 2017 ICN Unilateral Conduct Workshop. For the fourth time, the Italian Competition Authority has the pleasure to host an ICN event in Italy.

In September 2002, the inaugural conference of the ICN was held in Naples. One year earlier, in October 2001, top antitrust officials from 14 jurisdictions had convened in New York City to launch the ICN. It was not a favourable time to engage in international cooperation, and to do it in New York City, only one month after 11 September 2001.

Yet still, those 14 authorities were persuaded that increased complexity stemming from globalisation requires increased efforts in cooperation and mutual understanding. And they proved to be right.

Nowadays, the ICN encompasses 132 competition authorities throughout the world and a wide number of non-governmental experts, and is unanimously acknowledged as one of the most successful examples of international organizations. The Italian Competition Authority is proud to be one of the founding members.

More recently, this Authority hosted the 2010 ICN Merger Workshop and the 2013 Advocacy Workshop. Today, we are delighted to welcome you again.

The topics of this Workshop have been decided in cooperation with our distinguished co-Chairs of the Unilateral Conduct Working Group – the Australian Competition and Consumer Commission and the US Department of Justice – and agreed with all the members and NGAs of the Working Group. They include the novel challenges and policy considerations raised by digital innovation, as well as platform market power and vertical restraints.

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It is undisputed that the Internet and the increase in E-commerce have given rise to astounding **benefits** for consumers and businesses. The Internet has created new business opportunities, as well as new distribution and marketing channels, while increasing price transparency and choice for consumers.

At the same time, we all know that the dramatic expansion of online commerce raises **novel challenges for competition enforcement**.

The analysis of online markets requires a deep understanding of online business models, incentives and strategies, which may differ from those in offline markets, in order to correctly assess whether conducts give rise to negative effects, and whether efficiency claims (including free-riding justifications) are justified.

Moreover, due to the hastened pace of technological innovation, competition analysis become quickly outdated and decisions risk to come too late.

In the first Plenary session of this Workshop we will have the opportunity to explore **to what extent competition authorities are well equipped** to interface with and intervene in digital markets.

It is fair and healthy to ask ourselves a full range of questions about our tools and working methods. Are existing antitrust tools and techniques adequate to deal with digital platforms and innovative disruption? Should competition agencies engage in timely but risky interventions (for example by adopting interim measures or

accepting commitments) or take the necessary time for a full-fledged investigation? Moreover, are structural remedies sensible in constantly changing markets?

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The second Plenary session will be devoted to briefly illustrate a very topical project that the Working Group is currently carrying out: the Vertical Restraints Project.

As you know, the ICN Steering Committee entrusted the Unilateral Conduct Working Group with the responsibility to address issues in the treatment of vertical restraints by ICN members, with a view to promoting increased understanding where differences in standards arise, and, where possible, convergence.

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In the third Plenary session, another crucial theme, which gained new *momentum* in the digital era, will be addressed: the notion of **market power**.

Online commerce has heightened issues regarding **multi-sided markets**, which may be more prevalent in the online context. In multi-sided markets it may be necessary to balance potential damages caused on one side of the market with potential benefits on the other side. It is also important to recognise the impact that network effects can have on platforms.

Indeed, digital markets are often characterised by strong **network effects**, which can favour incumbents and enable them to entrench their positions once they reach the tipping point of a critical mass of users.

In addition, technology has dramatically expanded the sources of available **data** and the variety of information that can be collected, allowing firms to know customers' age, gender, location and countless other characteristics. Data collection and – more importantly – data processing are new and crucial factors that contribute to market power. How to appreciate this new ingredient in the antitrust analysis is still an open question.

The combination of these factors renders the assessment of market power more complex than in traditional markets. During the Workshop we will have the opportunity to discuss in detail and compare different views in this respect.

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Unprecedented price transparency and choice for consumers have intensified price competition, making it difficult for manufacturers and retailers to maintain price differentials between sales channels (bricks-and-mortar and online) as well as against rival products. This has, in turn, resulted in the use of **vertical restraints**, including some novel measures, such as platform parity clauses.

Therefore, the fourth Plenary session will focus on **parity agreements** and provide interesting insights for the comprehensive project that the Co-Chairs are carrying out, based on hypothetical vertical restraint scenarios, which will examine the effect on competition and potential resulting efficiencies. The outcome will include an examination of the common or divergent approaches used in the assessment of the vertical restraints scenarios in various jurisdictions.

There is concern that parity clauses imposed by online platforms may prevent producers from setting lower retail prices on rival platforms that offer more competitive commission rates. This removes the incentive for platforms to compete on the commission they charge to producers and hence inflates the commissions and the final prices paid by consumers. These agreements may also prevent entry from new low cost platforms, reduce innovation, and even facilitate collusion.

Conversely, platform parity clauses may also have efficiency enhancing effects that are beneficial for consumers. They can prevent free riding, by removing the risk that consumers use a platform to check customer reviews and then purchase directly from the producer or on a cheaper platform. As a result, they can ensure that platforms are not discouraged from investing in their quality.

All these factors have been thoroughly considered in our decision concerning the price parity clauses applied by **Booking** in the online hotel booking services in 2015. The Authority, in coordination with the French Competition Authority, the Swedish Competition Authority and the European Commission, accepted commitments offered by Booking.com, with a view to fostering swift and sustainable restoration of

competitive conditions, while preserving the operators' ability to offer and develop innovative services.

Many competition authorities in the world have dealt with similar cases, which often have a **cross-border and multi-jurisdictional nature**. This Workshop will enable us to share experience, compare different perspectives and find innovative solutions.

Notably, this Workshop will also offer practical, hands-on breakout sessions, based on hypothetical scenarios, and will encourage interactive discussion among all participants. In my view, the most amazing feature of ICN Workshops is their ability to involve participants and inspire new ideas through mutual exchange.

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The high attendance at this Workshop – more than 140 representatives from all five continents – testifies that the topics under discussion are timely and relevant (although I can't exclude that the beauty of Rome contributed to this success).

We are all aware of the significant differences in the approach in several jurisdictions, particularly with respect to the assessment of Unilateral Conducts. But different approaches rarely constitute an obstacle to joint work within the ICN. On the contrary, they are a precious opportunity to learn from each other and advance in our research, thus improving competition enforcement, to the benefit of efficiency and innovation and, ultimately, to the benefit of consumers.

Platforms and social networks seem to be the driving forces in today's society. It is a matter of heated debate whether they are really improving our social life and promoting the meeting of cultures and ideas, in an increasingly divided world. We are all part of a "platform", a "social network" that has proved to be an extraordinary instrument of sharing and cohesiveness: the International Competition Network.

I wish you all an interesting and productive Workshop.