MEMORANDUM

TO: Gary Zanfagna, ABA Antitrust Section Vice Chair
Long Range Planning Committee

FROM: Unilateral Conduct Committee

Chair(s): Elinor Hoffmann & Matthew Kent
Vice Chair(s): Gabrielle Z.A. Kohlmeier
              Craig Falls
              Shelley Webb
              Justin Hedge
              Lisa Kimmel
              Forrest Treat

YLR(s): Alexander Reicher
        Brad Tennis

DATE: March 15, 2019

RE: Long Range Plan, 2018-19

I. **Current State of Your Committee**

   A. **Scope of Charter**

   The current Charter of the Unilateral Conduct Committee indicates that its goal is to be a comprehensive source of information on the application of competition law to dominant firms and to offer diverse perspectives and foster informed debate over the laws and policies governing unilateral antitrust conduct worldwide. In addition, the Committee’s charter indicates that it assists the Section of Antitrust Law and the larger ABA in responding to requests for commentary on unilateral conduct competition policy in general.

   B. **Description and Reflective Evaluation of Membership Levels, Diversity, and Growth**

   **Membership Levels.** The Unilateral Conduct Committee’s membership continues to grow. We are one of the largest substantive committees within the ABA Antitrust Section with over 700 members. We are working to grow our Committee through systematic contacts with diverse practitioners (subject matter, perspectives, location, race, sex, etc.). We are also trying to increase our members’ involvement in the Committee by recruiting volunteers for upcoming programs and to draft articles in the Committee’s newsletter.

   **Diversity & Growth.** We need to recruit young lawyers and lawyers from underrepresented groups as members of the ABA Antitrust Section and our Committee. ABA membership is declining with fewer young lawyers opting to participate in the ABA. We need to drive firms to pay for young lawyer memberships by providing opportunities for interaction with other lawyers and prospective clients, credentialing and professional development. We also need to ensure that our committee is providing sufficient international content as the number of jurisdictions
where unilateral conduct issues are presented/litigated continues to grow. We also need to include content that discusses privacy and consumer protection issues that arise in the context of domestic and international enforcement. Finally, there are numerous entities and news outlets vying for the attention of readers interested in monopoly issues. We need to build on the committee’s work in prior years adding unique value for our members by providing crisp, timely content to our membership in easily digestible formats.

C. Level of Interaction with Other Committees (including co-sponsored programs)

The Committee has worked diligently over the last two years to increase its interaction with other Committees. We have co-sponsored programs with the Health Care Committee, International Committee, Consumer Protection, Federal Enforcement, Economics Membership & Diversity and the Young Lawyer Division.

The Committee is also seeking to grow its relationship with the Plaintiffs’ bar and government enforcers and intends to work in partner with the Civil Redress Committee on programming. We hope to energize our membership by inviting attorneys that may not otherwise be involved in the Antitrust Section.

In addition to the substantive antitrust committees, the Unilateral Conduct Committee has also been working with the Dominance & Divergence task force to assist with subject matter expertise on their work and report on the similarities and differences between the various enforcement regimes around the globe, and has begun a project with the International Task Force to put us all in a better position to comment on initiatives involving digital platforms.

D. Top 3 Accomplishments Since Last Long Range Plan

Strong programs with diverse panels; published newsletters; collaboration with other committees on virtually all programming.

II. Major Competition/Consumer Protection Policy or Substantive Issues Within Committee’s Jurisdiction Anticipated to Arise Over Next Three Years

A. Tech Giants and Monopolization/Dominance Issues

B. Regulatory Failures and Dominance

C. Monopsony

III. Specific Long Term Plans to Strengthen Your Committee

A. Potential Modifications to Charter

The Committee believes that the existing Charter remains largely appropriate in substance.

B. On-going Activities and Plans for Growth
a. Expansion of Membership

In addition to following the strategies outlined above in Section I(B), we are committed to producing excellent content and providing our members with credentialing opportunities, which should work to continue to expand membership.

b. Diversification of Membership

Diversity (age, gender, ethnicity, plaintiff v. defendant, public and private sector etc.) remains a key goal of the Committee with regard to its membership. The Committee has a great reputation for sponsoring diverse panels and we intend to continue that tradition. We hope to drive our membership to skew younger members and be more inclusive of plaintiff’s attorneys and government enforcers over the coming years. Given the increasing role international enforcers and practitioners play in this area, we also want to increase those areas of our membership and leadership. We aim to do this via (1) participation in publication efforts (beginning new people in newsletter roles and developing a steady bench of reliable active members, giving people greater responsibility as they achieve milestones), (2) continued programming and recruiting efforts with the Young Lawyers Division and plaintiffs’ attorneys, (3) targeted personal appeals from the Committee Leadership to undertake specific projects, e.g., work on the International Task Force project referenced above; and (4) consistent presentation of opportunities on Connect.

c. CLE/Committee Programs

Over the last two years, our Committee’s programs have been the crown jewel of the Committee’s content. We have had multiple programs with over 50 attendees and have worked to ensure that our Committee is providing timely content on critical issues and cases. This year, despite section wide technology challenges, we have had five programs (including a Committee Town Hall) on a host of topics, including: the FTC and EU Competition Hearings, the Supreme Court’s Apple v. Pepper case, and the FTC v. Qualcomm case. Our Committee is also active at the Spring Meeting and is a primary sponsor of multiple programs.

Technology issues with getting program approval and publicity has been difficult. It is disheartening for our leaders to work to develop quality content and have subpar attendance due to technology issues. We need to work to ensure the Section has the support staff needed so that these technology issues do not continue to plague Committee programming.

d. Publications and Newsletter (consult Long Range Publications Plan)

Our committee is currently responsible for two publications:

- **Handbook on Antitrust Aspects of Standard Setting** (Proposed Publication Date: November 2019).

- **Monopolization & Dominance Handbook** (Proposed Publication Date: June 2019)
We are also involved in the Antitrust Sections regular publications, including: Antitrust Law Developments and the accompanying yearly update (Chapter 2, Monopolization & Related Offenses).

e. Technology, CONNECT, and Innovative Content/Value Delivery

Our Committee utilizes “Connect” to distribute weekly “round-up” posts where our Committee provides relevant content on decisions and enforcement in the U.S. and abroad. We also post with “breaking news” to the extent new decisions or enforcement actions merit immediate distribution to our members. We do not, however, have a robust number of individuals posting or contributing to Connect content.

The Unilateral Conduct Committee supports the efforts of the section to create, utilize and distribute content through an app or “podcast” software. We would like to see the Section move away from content that requires dialing in at a particular time (or being at a particular location). On demand content is the way that most information is obtained and used; our Sections’ content should be no different.

f. Joint Activities and Other Committees/Entities

The Unilateral Conduct Committee is frequently asked to assist with Section Comments on a variety of issues (e.g., new laws, policy changes, etc.). This year, we have provided comments to the International Task force on Australia Digital Platform and proposed changes to the India Competition Act.

We have also been working with the International Task Force (“ITF”) on a special project regarding the effect of digitization on key antitrust and privacy enforcement issues. The goal of the leadership of the ITF is to prepare a template of positions that could be drawn upon in the future for purposes of drafting comments.

Finally, our Committee has been coordinating with the Dominance & Divergence Task Force on their efforts to supply the Section with meaningful work product, explaining key areas of similarities and differences between unilateral conduct laws around the world.

g. Development of Future Leaders

We have encouraged our YLRs, as well as all of our vice-chairs, to actively participate as panelists and/or moderators of at least one Committee program annually.

h. Other Recommended Resources, Support, or Initiatives?

The ABA Antitrust Section needs a Technology Officer to deal with the content delivery issues the Section will be facing over the next 5-10 years. By failing to have an app (with on demand content), we are already behind. We need to ensure that we remedy this quickly. The Technology Officer should also be responsible for ensuring that our books are published in formats that make sense for our members and consumption. The Technology Officer should
also interface regularly and forcefully with the larger ABA to insure that the kinds of technology issues that we have faced this year (and to some degree continue to face) are not repeated. These issues need to be address immediately and are imperative to the financial viability and survival of the Section and the morale of its members who work so hard to develop quality programs and publications.

C. Principal Challenges, Weaknesses, or Impediments to Operation of Your Committee – and Plans to Address

The ABA has declining membership and we face increased competition from alternative content sources (GCR, CompLaw360, Concurrence, Open Market, Practising Law Institute, AIPLA, American Association for Justice, California Lawyers Association, American Antitrust Institute). Although the Section currently remains the thought-leader for unilateral conduct issues, we need to ensure that we are providing the content our members demand in the way that they demand it be delivered.

We also encourage the Section to be open to keeping members informed of the many hearings, programs and publications relating to the issues our various committees address, even if they are sponsored by organizations other than the SAL. That will expand interest in, and hopefully participation, in the SAL’s work.

cc: Committee Operations Representative: Sam Knox
Long Range Planning Committee Representative: Sean Gates

MDK:rs