

**CHARTING THE FUTURE COURSE OF
INTERNATIONAL TECHNICAL ASSISTANCE
AT THE FEDERAL TRADE COMMISSION
AND U.S. DEPARTMENT OF JUSTICE**

A REPORT



**ISSUED BY THE
FEDERAL TRADE COMMISSION STAFF AND
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I. Introduction

On February 6, 2008, the Federal Trade Commission (FTC) and the Antitrust Division of the Department of Justice (DOJ) held a public workshop on technical assistance programs that help foreign jurisdictions to develop their laws and policies on competition and consumer protection. The workshop enabled the agencies to exchange ideas about the effectiveness of their programs and chart a course for the future.¹ The workshop, which was attended by approximately 100 people, brought together an impressive array of panelists, including officials from the competition authorities of Hungary, Italy, and Peru, leading academics in the antitrust field, private practitioners, and international organizations such as the OECD and the World Bank.²

Technical assistance typically encompasses projects ranging from providing comments on draft competition laws, regulations, and guidelines to conducting workshops to assigning experienced agency officials to new competition authorities as “resident advisors” for a significant period of time. In the past two decades, the DOJ and FTC have conducted more than 400 missions providing technical assistance to our antitrust enforcement counterparts in more than 50 countries around the world. FTC and DOJ have provided training for antitrust personnel in substantive legal principles, economic theory, procedures, and the investigative techniques needed for a successful competition law enforcement regime.

The FTC also has engaged in dozens of technical assistance missions in the area of consumer protection, with requests for this type of assistance at an all-time high.

The DOJ and FTC technical assistance program began in the early 1990s through funding from the U.S. Agency for International Development (USAID) for assistance to Central and Eastern Europe as part of USAID’s commercial law reform program for countries in the region as they transitioned to market economies.³ Since the program began, the number of countries with competition laws and agencies has increased from about two dozen to well over 100. This growth is a remarkable testament to the world’s faith in competition and markets, and has presented an opportunity for the United States to share its more than 100-year history of enforcing competition law with newer agencies around the globe.⁴

¹ For more information about the workshop, see <http://www.ftc.gov/oia/wkshp/index.shtm>. For further detail including about the goals of the workshop, see Transcript, *A Conference on Charting the Future Course of International Technical Assistance* (2008), Barnett at 25-26, available at <http://www.usdoj.gov/atr/public/workshops/techassist2008/236894.pdf>. Hereinafter, citations to the transcript of the workshop will be in shortened form, referencing the speaker and transcript page.

² See agenda and participant list in Annex A, also available at: <http://www.ftc.gov/oia/wkshp/agenda.pdf>.

³ For more information about the technical assistance programs of the FTC and DOJ, see U.S. Federal Trade Commission’s and Department of Justice’s Experience with Technical Assistance For The Effective Application of Competition Laws, February 6, 2008, available at: <http://www.ftc.gov/oia/wkshp/docs/exp.pdf>.

⁴ Majoras at 9.

The 2008 workshop was the agencies' first comprehensive, public self-assessment of their technical assistance programs. It yielded many valuable insights, including the importance of planning, the vital role cooperative relationships play in the delivery of effective technical assistance, the need for long-term engagement (including the importance of providing assistance to competition agencies even as they mature), and the value of comprehensive programs that include training for supporting institutions (*e.g.*, judiciary, regulators, and private sector) that play a critical role in ensuring the success of a competition regime. This report summarizes these and other key findings of the workshop.

II. Key Findings

A. Planning and Program Design

The workshop suggested five factors that should influence program design. First, the recipient's *absorptive capacity* should be considered, with the recipient agency's age often a good proxy.⁵ For example, in designing a program, long-term advisors are more likely to be effective with more established agencies because such advisors are most effective when consulted on an active agenda of organizing casework.⁶ Second, for larger projects, providers and recipients should *assess the needs* of the recipient, considering: the structure, capacity, and resources of the recipient agency; potential local partners for delivering assistance; the economic structure of the country; the role of competition policy in the broader set of market liberalization reforms; and other supporting institutions that might benefit from training or awareness programs.⁷ Third, a *work plan* should be considered, setting forth, in concrete terms, specific activities planned to address specific needs as part of an overall assistance strategy.⁸ Fourth, the design process needs to be a *tripartite* effort, including the donor, provider, and recipient.⁹ Finally, early consideration should be given to how to evaluate the *effectiveness* of the program.¹⁰

A number of panelists also highlighted the importance of flexibility in program design.¹¹ Programs must adapt to changing needs, and, over time, as the provider and recipient become more familiar with one another, they can identify more precisely the type of assistance that will be most useful. In addition, panelists praised programs designed to operate over a longer time frame, while acknowledging that this is not always possible.¹²

⁵ Purcell-White at 160, Lopez at 173, Fox at 209, Korsun at 247.

⁶ Kovacs at 70, Lopez at 173, Purcell-White at 160.

⁷ Whitehorn at 153, Korsun at 246-48, Gal at 277-78, Kovacic at 284.

⁸ Whitehorn at 155, Anderson at 190, Korsun at 246-248.

⁹ Kovacic at 281-84, Sokol at 262.

¹⁰ Korsun at 313-14. Although several participants identified the need for evaluating the effectiveness of programs more systematically, they also acknowledged the difficulties associated with measuring the success of programs and suggested this as an area of potential future work. *See* Reindl at 305-06, Korsun at 313-14.

¹¹ Kovacs at 72, Lopez at 214.

¹² *See* discussion in Section III. *See also* Heimler at 137-38, Balogh at 116-19.

B. Types of Technical Assistance Activity

Discussions about the relative merits of the different types of assistance focused primarily on long-term advisors, short-term advisors, and seminars. *Long-term advisors* were considered particularly useful,¹³ presenting a unique opportunity to transfer competition law enforcement principles and practices.¹⁴ Long-term advisors become more familiar with local conditions and are thus better able to focus their advice. They are also present during what one panelist termed “the teachable moment” – the point when recipient agency’s staff is grappling with a real issue and the advisor is there to help them work through it.¹⁵ Long-term advisors tend to be most appropriate for more mature agencies with some experience enforcing their law.¹⁶

Short-term projects, including seminars and other short-term missions including short-term advisors, were also viewed as important components of technical assistance.¹⁷ They are most effective when well organized and targeted to a specific audience or particular subject matter (*e.g.*, economist training, investigative techniques for case officers, and management training for agency heads).¹⁸ For example, FTC and DOJ have received positive feedback from their workshops, which are developed in close coordination with the recipient and include hypothetical case exercises based on situations the recipient is likely to encounter. In addition, instructors must be willing to invest time in preparing for the activity, and not rely on “off the rack presentations.”¹⁹ Good written materials, including items such as a bibliography and copies of (or weblinks to) relevant articles, were also considered essential for successful short-term activity.²⁰

C. Characteristics of a Good Program

Whether a technical assistance program is effective depends heavily on the *quality of advisors*. Panelists shared the view that advisors need significant substantive experience with competition law and policy. Long-term advisors should not only be well grounded in competition law, economics, and policy, but ideally should have investigative experience so that they are able to teach from first-hand experience.²¹ Advisors also need

¹³ Callison at 47-48, Balogh at 116-19, Rill at 177, Sokol at 228. For consumer protection, this discussion included “medium term advisors,” who are in the country for less than a month.

¹⁴ Conrath at 39-44, Callison at 47, Damtoft at 121. For consumer protection, knowledge of local conditions may be particularly important, given the diversity of ways consumer protection issues are addressed. *See, e.g.*, Balogh at 119-120.

¹⁵ Conrath at 40-41.

¹⁶ Kovacs at 70, Lopez at 173-74, Purcell-White at 160, citing *ICN Findings Related to Technical Assistance for Newer Competition Agencies* (May 2007), available at: http://www.internationalcompetitionnetwork.org/media/library/conference_6th_moscow_2007/9FindingsrelatedtoTechnicalAssistanceforNewerCompetitionAgencies.pdf. (Hereinafter referred to as “ICN Findings”).

¹⁷ Reindl at 230, Sokol at 263.

¹⁸ Reindl at 231, Sokol at 261. Short-term interventions are also more appropriate than long-term projects for supporting institutions, such as the judiciary. Reindl at 231.

¹⁹ Reindl at 232.

²⁰ Reindl at 232-33, Kovacic at 259.

²¹ Callison at 46, Purcell-White at 160, citing *ICN Findings*.

to be adaptable to meet changing needs,²² possess professional empathy,²³ and do a significant amount of preparation.²⁴ Advisors should also focus on *developing skills and transferring knowledge*. If an advisor actually does the investigatory and analytical work, rather than simply providing coaching, it may lead to the successful resolution of a particular matter but long-term capacity building may suffer.²⁵

Separate from the quality of advisors, there was consensus that a good technical assistance program goes “*beyond the checklist*.”²⁶ A successful program will take a *long-term view*, including, for example, workshops that are geared toward training those who are in a position to train others in the future and creating a base of materials that remain long after the technical assistance program is finished (*e.g.*, hypothetical cases, guidelines, and textbooks).²⁷ Finally, a good program will be tailored to the recipient’s needs, and not merely reflect the priorities of the provider or donor.²⁸ Increasingly, an effective technical assistance program will make use of new technologies, such as videoconferences and webinars to complement face-to-face activity.²⁹

D. Non-agency Recipients

Although the majority of the workshop focused on technical assistance to competition agency leaders and staff, a number of participants highlighted the importance of programs that include training for supporting institutions, such as the judiciary, academic institutions, other regulators, business groups, and consumer groups.³⁰ One panelist explained, “[A]dvocacy within the jurisdiction becomes more and more key as you have the basic plumbing sorted out. That means a relationship with regulators . . . [the] judiciary . . . ;[y]ou have to reach out to even consumers and public opinion.”³¹ Programs involving supporting institutions should be tailored to the specific needs of the entity involved and are often quite different from those designed for competition agencies.³² Participants suggested that foreign competition agencies, academics, and the private sector also can be effective participants of this form of assistance.³³

²² Kovacs at 72, Lopez at 214.

²³ Kovacs at 72.

²⁴ Reindl at 230-31 and 266, Kovacic at 266.

²⁵ Sokol at 261-62, Gal at 276.

²⁶ Lopez at 214, Fox at 216.

²⁷ Lopez at 219-20, Reindl at 232-33. The workshop also yielded a very specific suggestion for a future technical assistance activity: the preparation of universal course materials with a series of modules on aspects of competition policy. Kovacic at 259-60. These could serve as basic materials, and then be adapted to meet the needs of the recipient.

²⁸ Gal at 245, Reindl at 232-33.

²⁹ Zylberglait at 87, O’Brien at 110.

³⁰ Ortiz at 55-56, Hughes at 77-78, Callison at 78-80, Lopez at 173-74, Korsun at 279, Reindl at 306.

³¹ Lopez at 174.

³² Reindl at 306.

³³ Ortiz at 57-58, Reindl at 232.

E. Building Cooperative Relationships

The success of a technical assistance program depends largely on building cooperative relationships. Four relationships in particular were discussed: (i) the relationship among the donor, provider, and recipient; (ii) relationships among multiple donors or providers; (iii) relationships with multilateral networks and organizations; and (iv) the personal relationship between the individual advisor(s) and the individual recipient(s). There was considerable agreement that *effective communication among donors, providers, and recipients* is necessary for a successful program. The goals of each group may differ somewhat, and panelists urged that the project be planned with that in mind.³⁴ In some cases, panelists suggested that competition among providers for scarce funds has been a factor in failed programs,³⁵ leading one panelist to the controversial suggestion that some [providers] should “get out of the business.”³⁶ There was clear support for the idea that providers should coordinate their efforts, and that recipients should facilitate such coordination.³⁷ Panelists acknowledged existing efforts to coordinate activity, such as the OECD’s calendar of technical assistance activities.³⁸ As discussed below in Section III, long-term engagement between a provider and a recipient was considered optimal. Above all, however, panelists agreed that good personal relationships between the individual providing technical assistance and the recipient were critical to the program’s success.³⁹

F. Environment

Developing and implementing a sound competition law and policy is only one small component to building a robust market-based economy, and technical assistance priorities should reflect this fact.⁴⁰ A competition regime is more likely to be successful when complemented by appropriate deregulation, rule of law, and a more open trade policy.⁴¹ Furthermore, technical assistance is most effective when the political institutions and culture are supportive of competition law and policy,⁴² and where there is a business-enabling environment.⁴³ One participant said that previous studies showed that, in general, technical assistance is most effective when an agency is just moving from a centralized to a market economy, or in countries with more developed market economies. It works best, he explained, with C students and A students, but not as well with B

³⁴ Sokol at 262, Korsun at 280.

³⁵ Korsun at 277-78, Kovacic at 281. For a positive experience in provider coordination, *see* Lafleur at 97-100.

³⁶ Sokol at 299.

³⁷ Whitehorn at 155-56, Korsun at 278, Kovacic at 281-83. Coordination was proposed to improve complementarities of programs and to maximize the effectiveness of technical assistance activities. It would not involve formal “market” allocation or imposing a particular type of assistance or aid from a particular provider on a recipient.

³⁸ Lafleur at 99-100, Whitehorn at 155-56, Sokol at 257-58, Kovacic at 281-83.

³⁹ Ortiz at 55-56, Kovacs at 64, Lopez at 207, Gal at 244.

⁴⁰ Ortiz at 55-56, Fox at 182-83, Korsun at 248 and 316.

⁴¹ Lopez at 185-86, Anderson at 186-87.

⁴² Anderson at 191-92, Gal at 277, Sokol at 287.

⁴³ Klissas at 180 and 189-90.

students.⁴⁴ Another participant suggested that technical assistance programs should aim to take advantage of “windows of opportunity” in the stages of a jurisdiction’s development.⁴⁵ Unfortunately, this is not always possible. At times, countries that would have benefited the most from competition technical assistance – including countries with more mature competition agencies⁴⁶ – did not receive it because funding decisions were made by donors on the basis of broader geopolitical considerations.

G. Evaluation

Monitoring and evaluation are essential for effective provision of technical assistance.⁴⁷ Evaluation can be as simple as a debriefing exercise during which participants informally discuss the extent to which a particular mission helped the recipient and how future activities might be improved,⁴⁸ and as complex as measuring the effects of a program against quantitative performance measures.⁴⁹ Panelists agreed that evaluation should be done more systematically, but they also acknowledged substantial difficulty in devising appropriate measures for determining whether technical assistance programs have made a difference.⁵⁰ Nevertheless, *creating methodologies* for evaluation is a potential area for future work.⁵¹

H. Consumer Protection

The FTC’s consumer protection technical assistance program takes many of the same forms as technical assistance on the competition side: brief consultations over e-mail or phone, topical teleconferences and videoconferences, foreign visits hosted by the FTC, short-term seminars, and resident advisers.

Panelists identified two challenges in particular that are specific to technical assistance in the consumer protection field. First, in some cases, bilateral donors do not provide as much funding for consumer protection as for competition technical assistance.⁵² Second, the field of consumer protection encompasses a broad range of topics, including deceptive advertising, consumer fraud, consumer credit, financial regulation, spam, privacy, as well as food and product safety. These functions are divided among different agencies in the U.S. government,⁵³ creating two related difficulties for the FTC’s provision of technical assistance: 1) foreign consumer agencies face challenges in

⁴⁴ Sokol at 229.

⁴⁵ Fox at 183.

⁴⁶ More mature agencies are those that have acquired significant experience but still are not at a point where they are on par with the most developed agencies. These agencies can still benefit substantially from targeted technical assistance. *See* Rill at 197-98 (noting that the supply of competition technical assistance is focused on underdeveloped countries but the need may be greater in more mature jurisdictions).

⁴⁷ Whitehorn at 153, Khemani at 164-65, Whitener at 266-67, Reindl at 304-306, Korsun at 313-14.

⁴⁸ Fox at 222, Kovacic at 283.

⁴⁹ Whitener at 266-67, Reindl at 305.

⁵⁰ *See, e.g.,* Whitehorn at 162, Heimler at 163-64. In addition, some outcomes have no relation to the technical assistance provided. *See* Ortiz at 51-52.

⁵¹ Whitener at 267 and 307, Reindl at 305, Korsun at 313-16.

⁵² Zylberglait at 85 and 88.

⁵³ Stevenson at 82-83.

establishing links with counterpart agencies in a diversified U.S. system; and 2) the FTC faces some limitations in providing assistance to agencies with broad jurisdiction that seek help in areas outside the FTC's purview (*e.g.*, food and product safety, airlines, etc.).⁵⁴ The FTC has tried to address the second challenge by coordinating arrangements with other U.S. regulatory agencies.⁵⁵

Panelists noted that technical assistance in consumer protection matters helps countries to avoid market pitfalls and to identify the most important complaints to investigate.⁵⁶ Panelists focused on the need to emphasize economic analysis in consumer protection enforcement and policy,⁵⁷ and the importance of designing a tailored assistance program.⁵⁸ Participants acknowledged that policy assistance requires shorter missions than enforcement missions,⁵⁹ and that assistance in consumer protection matters can be more useful when the agency investigation is underway.⁶⁰

III. Charting the Course for the Future

The workshop discussion provided five general themes to guide the agencies' future technical assistance activities. First, technical assistance should be recognized more clearly for what it usually is: *technical cooperation*.⁶¹ Interactions in technical assistance are increasingly a two-way street, and a good technical assistance program is one that focuses both on what is being provided to recipients as well as what can be learned from them. Importantly, technical assistance from agency providers can serve as a critical first step to building an effective, long-term relationship in which the provider and recipient agencies cooperate on matters and issues of common concern after the formal technical assistance program has ended.

Second, technical assistance is most effective when there is *long-term engagement* between the provider and recipient.⁶² FTC Commissioner Kovacic suggested the appropriate time frame may be at least ten years. It is only over such a lengthy time frame that providers can adequately acquire knowledge of local conditions, establish credibility, and support the formation of strong personal relationships. These

⁵⁴ Zylberglait at 85-86.

⁵⁵ *Id.* at 95-96. For example, the FTC has conducted technical assistance programs to develop a credit-reporting system in Egypt in conjunction with the Federal Deposit Insurance Corporation. In another instance, the FTC cooperated with a state utilities regulator to discuss consumer protection in regulated industries at a regional conference in Peru. More recently, the FTC conducted a regional seminar in Colombia in conjunction with the U.S. Department of Transportation (to discuss consumer protection in airlines), and another seminar in Egypt in conjunction with the Patent and Trademark Office (to discuss the sale of counterfeit goods).

⁵⁶ Zylberglait at 123-24.

⁵⁷ Damtoft at 112-13, Balogh at 117.

⁵⁸ Damtoft at 113 and 121-22, Balogh at 119-20 and 122-23, Zylberglait at 120-21 and 123-24.

⁵⁹ Damtoft at 121.

⁶⁰ Balogh at 117-18.

⁶¹ Barnett at 25-26, Zylberglait at 89-91, Rill at 198, Pittman at 221.

⁶² Kovacs at 68-69, Whitehorn at 154, Anderson at 190-91, Sokol at 228, Gal at 242, Korsun at 246, Kovacic at 249-52, Cooper at 274.

relationships permit follow-up and an ongoing exchange of expertise on specific matters well after an advisor has completed a particular technical assistance mission.

Third, the provision of technical assistance to *more mature agencies and supporting institutions* should not be ignored.⁶³ Agencies that have been in existence for at least several years, but are still not at a level comparable to provider agencies, can benefit substantially from targeted technical assistance. Promoting awareness of competition principles among other government agencies, the judiciary, academic institutions, and the private sector are necessary if a new agency is to succeed in fostering a “culture of competition” within its own jurisdiction. Technical assistance programs should be designed with this in mind.

Fourth, *cooperation* between donors, providers, and recipients is beneficial, and more can be done in this regard. Agency providers, and recipients also were encouraged to work more frequently with non-governmental advisors.⁶⁴

Finally, upfront *planning and ongoing evaluation* of the effectiveness of technical assistance programs are essential. Donors, providers and recipients should be actively engaged in this process. Expectations must be managed.⁶⁵ The donor and provider should acknowledge the limits and costs of competition, and create realistic expectations.⁶⁶

Going forward, DOJ and FTC will endeavor to incorporate into their programs many of the useful ideas discussed during the workshop. As a first step, DOJ and FTC will explore entering into written arrangements with some other competition agencies. Such arrangements would establish a framework for the provision of technical assistance, aim to facilitate informal consultations on cases and policy matters, and include a commitment to hold periodic meetings among policy-level officials. Putting the agencies’ expectations into writing should encourage upfront planning and is intended to signify the beginning of a long-term relationship, as opposed to an ad hoc approach to assistance and cooperation. The arrangements should also facilitate ongoing communication between the agencies outside the context of a particular training event and encourage relationship-building at the staff level. This endeavor will not preclude the provision of technical assistance to competition agencies that are not parties to such arrangements. And finally, in keeping with the workshop’s recommendations, the agencies will evaluate the effectiveness of their technical assistance efforts more systematically to ensure that expectations are being met and also will stress the importance of developing the capacity of supporting institutions (e.g., universities, bar associations, and the judiciary).

⁶³ See discussion in Section II.F above.

⁶⁴ Whitener at 270, Cooper at 274-75, Sokol at 301-03.

⁶⁵ Gal at 244, Sokol at 257, Kovacic at 291-93.

⁶⁶ Gal at 244.

In summary, the technical assistance workshop was a success. Although the participants agreed that the FTC and DOJ's technical assistance programs generally have worked well, they offered many valuable suggestions for improvement. The agencies are tremendously grateful to the participants for their thoughtful contributions and look forward to many more years of providing technical assistance but doing so even better than before.