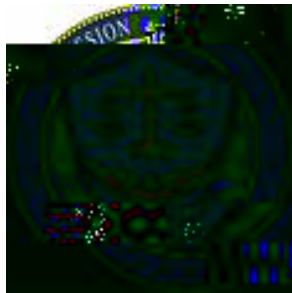


**CHARTING THE FUTURE COURSE OF
INTERNATIONAL TECHNICAL ASSISTANCE
AT THE FEDERAL TRADE COMMISSION
AND U.S. DEPARTMENT OF JUSTICE**

A REPORT



**ISSUED BY THE
FEDERAL TRADE COMMISSION STAFF AND
U.S. DEPARTMENT OF JUSTICE
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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 workshop on technical assistance programs that help foreign jurisdictions to develop their laws and policies on competition and consumer protection. The workshop enabled agencies to exchange ideas about the effectiveness of their programs and chart a course for the future. 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.

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 150 countries around the world. FTC and DOJ have provided training for antitrust personnel on 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. 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.shtml>. 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/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 cooperative relationships that 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 cases.⁶ Second, for larger projects, providers and recipients should assess the capacity 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

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 they not 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

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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 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 assistance 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 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) different 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

relationships peritfollow-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. Agencies that have been in existence for at least several years, but are still not at a level comparable to provider agencies, can benefit

Charting the Future Course of Technical Assistance
Workshop Report