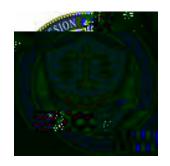
CHARTING THE FUTURE COURSE OF INTERNATIONAL TECHNICAL ASSISTANCE AT THE FEDERAL TRADE COMMISSION AND U.S. DEPARTMENT OF JUSTICE

A REPORT





ISSUED BY THE FEDERAL TRADE COMMISSION STAFF AND U.S. DEPARTMENT OF JUSTICE OCTOBER 2009

I. Introduction

On February 6, 2008, the Federad Te Commission (FTC) and the Aithrust Division of the Department of Justice (DOJ) held aljour/workshop on technical assistance programs that help foreign jurisdictions to develop their laws and policies on competition and consumer protection. The workshop enabled algour for the future of their programs dechart a course for the future of the workshop, which was attended by approximately 100 people, brought together an impressive array of panelists, including officials from the continue authorities of Hungary, Italy, and Peru, leading academics in the antitrust field ivate practitioners, and international organizations such as the OECD and the World Bank.

Technical assistance typically encompassegects ranging form providing comments on draft competition laws, regulations, deguidelines to conducting workshops to assigning experienced agency officials to new competition authorities as "resident advisors" for a significant period of timen the past two decades, the DOJ and FTC have conducted more than 400 missions providing technical assisterour antitrust enforcement counterparts in more than countries around the world. FTC and DOJ have provided training for antitrust personines ubstantive legal principles, economic theory, procedures, and the investigative techniques needed for a successful competition law enforcement regime.

The FTC also has engaged in dozens difitienal assistance missions in the area of consumer protection, with requests for thy is 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 Dedopment (USAID) for assistance to Central and Eastern Europe as part of USAID's commercial law metor for countries in the region as they transitioned to market econor is the program began, the number of countries with competition laws agencies has increased from about two dozen to well over 100. This growth is anaerkable testament to the world's faith in competition and markets, and has present copportunity for the United States to share its more than 100-year history of enforcing competition law with newer agencies around the globe⁴.

¹ For more information about the workshope<u>http://www.ftc.gov/oia/wkshp/index.sht</u>rFor further detail including about the goals of the workshopeTranscript, A Conference on Charting the Future Course of International Technical Assistan(2008), Barnett at 25-26, available at http://www.usdoj.gov/atr/public/workshops/techassist2008/2368941#defeinafter, citations to the

transcript of the workshop will be in shortened form, referencing the speaker and transcript page. ² Seeagenda and participant list in Annex A, also available at: http://www.ftc.iadw/kshp/agenda.pdf

³ For more information about the techniasistance programs of the FTC and DeedU.S. Federal

Trade Commission's and Department of Justice's **Expe**e with Technical As**st**ance For The Effective Application of Competition Laws, February 6, 2008, available at: http://www.ftc.gov/oid/wkshp/docs/exp.pdf

⁴ Majoras at 9.

The 2008 workshop was the agencies' first **poeth**ensive, public self-assessment of their technical assistance programsyielded many valuable insights, including the importance of planning, the vitrole cooperative relationships ay in the delivery of effective technical assistance, the new dong-term engagement (including the importance of providing assistance to competition agencies even as they mature), and the value of comprehensive programs that unde training for supporting institutions.g., judiciary, regulators, and private ctor) that play a critical lep 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'sabsorptive capacity hould be considered, with recipient agency's age often a good proxy. For example, in designing a program, long-term advisors are more likely to be effective with more establish agencies because such advisors are most effective when consulted on an active agenda of organizing casewore defection, for larger projects, providers and recipients should assess the of the structure, capity, and resources of the inplient agency; potential local partners for delivering assiste; the economic structure be country; the role of

E. Building Cooperative Relationships

The success of a technic **a**sistance prograndepends lagely on building cooperative relationships. Four relationships in partiau/were discussed:) (the relationship among the donor, provider, and recipite(ii) relationships among nitiple donors or providers; (iii) relationships with multilateral networks and organization and (iv) the personal relationship between the indivial/advisor(s) and the individ/urecipient(s). There was considerable agreement the file ctive communication among donors, providers, and recipients necessary for a successful programe goals of each group may differ somewhat, and panelists urged that the panelist be planned with that in min⁴d. In some cases, panelists suggested that competition providers for scarce funds has been a factor in failed program³f, leading one panelist to the order oversial suggestion that some Init6(ofkaparticul)Tj (ed that com)520 0 7.98 212.46 562.6801 Tm (35)Tj EM302TJ 0548(rs >>BD

students⁴⁴ Another participantuggested that teolical assistance programs should aim to take advantage of "widows of opportunity" in the tages of a jurisdiction's development⁵⁵ Unfortunately, this is not alwayzessible. At times, countries that would have benefited the most from competition technical assistance – including countries with more mature competition agent⁶⁶ iesdid not receive it because funding decisions were made by donors on the basisozef deer geopolitical condetations.

G. Evaluation

Monitoring and evaluation are seential for effective provision of technical assistance. Evaluation can be as simple as a debriefine grain a during which participants informally discuss the extent to which a particulaission helped the recipient and how future activities might be improved, and as complex as measuring the effects of a program against quantitative performance measures are allowed and the valuation should be done more systematically, but they also an explexed substantial difficulty in devising appropriate measures for determining whether assistance programs have made a difference.⁵⁰ Nevertheless preating methodologies revaluation is potential area for future work.⁵¹

H. Consumer Protection

The FTC's consumer protection technicasiatance program takes many of the same forms as technical assistance on the competitide: brief consultations over e-mail or phone, topical teleconferences and videocomfees, 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, biteral donors do not provide as much funding for consumer protection fas competition technical assistance Second, the field of consumer protection encourses a broad range of topics, including deceptive advertising, consumer fraud, conser credit, financial regulation, spam, privacy, as well as food and product safeTynese functions are divided among different agencies in the U.S. government two related difficulties for the FTC's provision of technical assistance: 1) figre consumer agencies face challenges in

⁴⁴ Sokol at 229.

⁴⁵ Fox at 183.

⁴⁶ More mature agencies are those that have acosigedicant experience but still are not at a point where

relationships perithfollow-up and an ongoing exchange of expertise on specific matters well after an advisor has **up**leted a particular technical assistance mission.

Third, the provision of technical assistancentore mature agencies and supporting institutions should not be ignore⁶⁷. Agencies that have been in existence for at least several years, but are still not at a lexent parable to provider agencies, can benefit