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National Experience in Competition Law Technical Assistance: A US Perspective

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COMMUNICATION FROM THE UNITED STATES

National Experience in Competition Law Technical Assistance: a U.S. Perspective

I. OVERVIEW

The U.S. Federal Trade Commission (FTC) and the U.S. Department of Justice's Antitrust Division (DOJ) have provided international technical assistance on competition law-policy matters to developing and transition economies since 1991. The funding for this assistance is provided principally by the U.S. Agency for International Development (USAID). Over the past fifteen years, the program has reached more than 50 economies in Central and Eastern Europe, the former Soviet Union, South America and the Caribbean, South Africa and, more recently, Asia. It is important to note that our technical assistance work begins only after an economy expresses an interest in developing competition laws and enforcement institutions.

Our experience suggests, and much of the literature on the topic agrees, that technical assistance programs must take into account the economy's culture, local concerns and conditions, and the body of domestic law.¹ The U.S. agencies in providing technical assistance share their experience and the know-how that they have accumulated over a century of enforcement. Our technical assistance programs draw on our institutional strengths to provide assistance that is comprehensive in scope, and fosters relationships that continue after the particular project has ended. They emphasize the pragmatic over the theoretical, and focus on transferring institutional skills and experience in investigating, analyzing and remedying anticompetitive behaviour. Our program focuses on the development of sound competition policy principles and institutions, recognizing that no single model of substantive commands and institutions is suitable for all circumstances.

We have concluded based on our experience that the most effective method for delivering technical assistance to competition authorities after they have begun operation is the use of resident advisors. The next most useful method of training is through interactive investigative skills workshops. Other short-term assistance can be targeted to a specific purpose or as an adjunct or follow up.

II. FOUR FEATURES OF THE U.S. TECHNICAL ASSISTANCE PROGRAM

There have been four main features of the U.S. program: resident advisors, short-term missions (one-two weeks), regional conferences, and internships in the United States for foreign personnel. Tailored to the specific requirements of the host economies, programs may assist in developing framework laws, creating enforcement agencies, educating supporting institutions (other government agencies, academia, business groups, consumer associations and the press), and training personnel in the substantive legal principles, analytical framework, and investigative techniques needed for the success of a competition law enforcement regime.

The U.S. program supports foreign policy goals, particularly expanding world trade and lowering barriers to investment. Because USAID is an agency of the U.S. government, its priorities

¹ E.g., William E. Kovacic, Institutional Foundations for Economic Legal Reform in Transition Economies: The Case of Competition Policy and Antitrust Enforcement, 77 CHICAGO-KENT L. REV. 101 (2001); Assessing Aid: What Works, What Doesn't and Why, World Bank Policy Research Report; Cohn, Stuart R., Teaching in a Developing Country: Mistakes Made and Lesson Learned in Uganda, 48 J. LEGAL EDUC. 101, 107-108 (1998).

and funding have tracked the most significant developments in our foreign policy in recent years. Also, competition law is but one branch of a larger body of commercial law with which economies characterized by central planning lack familiarity. In securing USAID funding for our activities, we have emphasized the need for operating an effective competition law system within a larger structure of reformed commercial law. In developing this theme, however, we have had to recognize that in many developing or transitional economies there exists no "culture of competition." Our general approach has been first to point out that competition is an engine of economic growth and development, spawning entrepreneurship. Competition law and policy need to facilitate sound business practices and not impede them.

The focus of the U.S. technical assistance program is on the development of sound competition policy principles and institutions. Our program takes into account that no single model is suitable for all circumstances. Many economies use civil law systems, which may require greater specificity than is characteristic of most U.S. antitrust laws. For example, the FTC Act makes it unlawful to engage in "unfair methods of competition in or affecting commerce," leaving to the agency and the courts the delineation of such "methods." An economy using a civil law system requires more specificity, and we adjust our advice accordingly. Likewise, we encourage economies to solicit the views of other economies.

Despite differences in legal environments in different economies, three types of conduct characterize most competition laws worldwide: anticompetitive agreements, especially cartels; single-firm conduct, referred to as "monopolization" in the United States and "abuse of dominance" in many other economies; and anticompetitive mergers and acquisitions. Our technical assistance focuses on these common concerns. We do not purport to be policy planners in terms of suggesting which industries or factual situations should be investigated and we do not profess specific knowledge of other economies' conditions. Nonetheless, our experience informs us in ways that may have value to the recipients of our technical assistance.

- For example, we frequently suggest that economies consider cartels the most important component of the law. Cartels result in unambiguous harm, and do not require detailed economic analysis. A cartel case by a new authority in a developing economy that results in lower prices to everyday consumers can demonstrate the value of competition and competition law enforcement to the public and to the other institutions, inside and outside the government, that are interested parties in the reform process.
- Mergers and acquisitions frequently require investigations that are quite resource-intensive. Merger investigations run the risk of overwhelming the scarce resources of a new competition law enforcement authority, diverting them from being used to actively seek to uncover and stop very harmful cartel behaviour. Nonetheless, most new competition agencies do review mergers and require training in how to go about such reviews. Sometimes, a proposed acquisition is seen as a threat to incumbent firms or employment, rather than as something that might enhance efficiency, increase consumer welfare, and expand output in the long run. Concerns about employment or the closing of antiquated facilities may be a political reality, but sound competitive analysis is essential in all merger reviews.
- Careful analysis is needed in the monopolization/abuse of dominance area. It is with respect to this type of conduct that it may be most difficult to differentiate between healthy competition on the merits and harmful exclusionary conduct and where the potential for causing harm through intervention is greater than in other areas. We

have counselled against selection of enforcement targets based on dominance or pricing criteria alone.²

Finally, we are mindful of the fact that governments themselves through laws and regulations sometimes erect barriers to competition. Here we would look to the host authority to examine such realities, either as an enforcement matter or, more likely, as an advocate of procompetitive policies. The idea of promoting competition advocacy also readily lends itself to larger issues, such as privatization policy and whether, and how, to reform policies towards regulated industry sectors of the economy.

For over a century, we have accumulated many effective and creative investigative techniques. It is this experience that we seek to impart to the recipients of our technical assistance. We have seen there is a strong desire to identify practical, operational criteria by which general substantive directives (e.g., "don't fix prices") are translated into enforcement initiatives. We provide that know-how in great detail.

III. TECHNICAL ASSISTANCE PROGRAMS ADDRESS RECIPIENTS' DIFFERENT NEEDS AS THEY ARISE.

We offer technical assistance to economies with many different economic histories. Our competition law and policy technical assistance program commenced when the state-controlled economic systems of Central and Eastern Europe began the transition to market-based systems. Since then, we have also provided assistance to many economies that are trying to create better commercial environments for investment and entrepreneurship. These are usually developing economies, but some economies are already fairly well developed before they see the need for competition law enforcement. Regardless of its history, it is when an economy has determined that it has the political will to adopt and enforce competition laws that our technical assistance becomes most useful. If an economy asks us to work with them, then a dialogue begins for assessing and outlining a strategy to work on some or all of the following aspects of building capacity.

A. DRAFTING FRAMEWORK LAWS

In the past 15 years, our agencies have provided advice on the drafting or redrafting of around 50 laws. Domestic law enforcement experience, coupled with experience in observing what works and what does not work in transition and developing economies, gives us a unique perspective in helping to draft competition laws. We are able to offer to the drafters the insights and suggestions that we have learned from experience in several discrete areas of legal drafting: forging definitions of the conduct being addressed, helping formulate the legal requirements for competitive injury, fashioning remedies, and helping design the enforcement infrastructure.

We have found that legislation drafted without input from competition law enforcement authorities often overlooks some important practical issues. Examples include:

- Failure to provide effective remedies for refusing to cooperate with legal requests for information. Competition laws typically provide that the competition authority may compel businesses to produce necessary documents. They do not always provide clear guidance as to what the authority may do when its request for documents is rebuffed. In addition, many laws provide only for fines of a minimal amount as a

² Particularly troublesome have been cases based on legislation that declares "excessive" prices to be an abuse of dominance. Some agencies have been tempted to use this as a vehicle to impose "back-door" price regulation in response to rising consumer prices.

sanction in such cases. In the absence of more effective remedies, companies may choose simply to pay the fine as a cost of doing business.

- Failure to design the enforcement institution to be most effective. In some jurisdictions, for example, the term of each member of the multi-member body responsible for the application or enforcement of the competition laws expires at the same time. This can lead to a loss of institutional continuity if all members are replaced simultaneously.
- Failure to take into consideration the relative strengths and weaknesses of competition authorities and the judiciary. In some systems, the judiciary is given a role in all cases but lacks adequate training and experience. Judges may have difficulty with the unusual role of deciding cases based on likely future market effects as opposed to the more familiar task of judging past conduct. In other systems, competition authorities are empowered to decide cases, but lack power to impose effective remedies and sanctions. It can be difficult to strike appropriate balances between the authority's role as expert in competition and the judiciary's role of imposing effective remedies and ensuring fairness through independent review.
- Failure to provide for prosecutorial discretion. Some laws can be interpreted to mean that the authority is required to address in writing every complaint, no matter how minor or ill-founded. This can lead agencies to waste time on cases that should never have been opened or, worse, to be used by weak competitors who wish to use the competition law to harass more efficient competitors.
- Failure to provide appropriate and realistic deadlines for official action. If a competition authority is forced to reach a decision before it can conduct an adequate investigation, the result may be ill-informed; conversely, overgenerous deadlines may result in unneeded delay to business.
- Failure to appreciate institutional demands created by legislative mandate. A merger notification program with unreasonably low reporting thresholds imposes unnecessary transaction costs and a commitment of competition agency resources without any corresponding enforcement benefit. A new competition agency can become overwhelmed with notifications and have no time to analyze them, let alone address more serious matters, such as cartels.

Problems such as these can be avoided if pragmatic assistance is provided during the drafting process. We do not recommend particular legislative outcomes. Instead, we advise the drafters on past experience and the implications of choosing one course of action over another. We provide options and identify the possible benefits and consequences of the choices under consideration.

B. CREATING IMPLEMENTING INSTITUTIONS

In a similar vein, we can assist officials responsible for setting up a competition authority. Typically this is done through short-term missions before the authority is created but after the economy has decided to establish an authority. This work can also be done on an ongoing basis by long-term advisors, especially those who are present during the early days of an authority's life.

Internal operating procedures, authority structure, and internal guidelines can have a significant impact on the quality of a competition enforcement authority's work. Institutional issues are quite numerous: Who holds the power to initiate investigations and to make decisions? Who within the authority will have the power to compel testimony and require documents? What form will

staff recommendations take, and will they be subject to any sort of critical internal review before being presented to the decision-maker? What means will be used to assure that agency actions are based on the facts and the law, and not on political considerations? What will be the authority's advocacy and public education functions, and what measures will be in place to ensure that its voice is heard? What will be the organizational and procedural rules, and how transparent will they be? What are the appropriate staff skills mix, authority size, budget, and technical support systems? What should be staff educational requirements and how can appropriate training be implemented?

C. EDUCATING SUPPORTING INSTITUTIONS

A competition authority cannot function in a vacuum. For it to do its job, it must work with other institutions – the legislature, regulators, courts, and other government bodies – to build what is often referred to as a “culture of competition.”

Our working experience in building and maintaining these kinds of relationships with related institutions in the United States, as well as with our counterpart institutions at the state and local level, helps us to counsel the need for such relationships elsewhere and to convey the techniques for building them.

Support for competition policy also needs to come from non-governmental institutions. This can be done, for example, by encouraging appropriate economics and law course development. In the United States, the antitrust agencies have found it useful to maintain healthy dialogues with lawyers' bar associations and consumer organizations and business groups such as chambers of commerce. Finally, public education through the media also plays a critical role. We work to encourage competition authorities to develop these relationships and educate these institutions, and on occasion directly assist those efforts.

Linkages exist between competition and consumer protection, and if the competition authority does not itself handle this function (as the FTC has authority over both competition and consumer protection in the United States), a competition authority should have a healthy relationship with the consumer protection authority and both should understand that consumer protection should complement, not replace, competition in a market economy.

D. TRAINING THE STAFF TO ANALYZE, INVESTIGATE & REMEDY CONDUCT

These groundwork steps lead to the final and most significant stage of competition law development: creating an effective functioning competition authority. Once a law is drafted and an enforcement entity created, the most difficult work is to help train the new authority in how to apply the law. New enforcement authorities and new staff must learn how to conduct investigations, select appropriate enforcement cases, shape prosecutions, and craft remedies. Success in accomplishing this work is the basis for judging the success of a competition law regime, and is one of the most difficult undertakings by our domestic agency staffs. Our inherent strength as antitrust agencies is in assisting staff to develop the skills necessary to identify cases where competition authority intervention might benefit the development of a market economy and to develop the skills necessary to investigate those cases, analyze the results, and develop appropriate remedies. This is a long process. At the FTC and DOJ, experienced lawyers and economists rarely begin with skills fully developed. They acquire skills, techniques, and judgment from working with more experienced attorneys and economists over many years. It should not be surprising that the staff at new competition agencies can benefit from the same time and opportunity to work with experienced senior staff, but those new agencies lack experienced senior staff. Experienced enforcement staff from the FTC and DOJ can help fill that gap.

Many skills need to be imparted. How do staff members identify promising potential cases, and perhaps as important, how do they identify those that should be quickly closed? What elements must be proven to establish a case? What information is needed to satisfy those elements, and what

might suggest that the case should be closed? Where can that information be found, and how can it be obtained? What are the evidentiary standards required by the decision maker, and how may it be ensured that the information gathered will satisfy those standards? What remedies are appropriate, and what will be their impact on the marketplace? How should the results of the investigation and recommendations be presented to the decision maker? How can investigations be effectively supervised and reviewed to ensure that the right issues are identified, investigated, and discussed and time not wasted on superfluous issues? The list goes on. Given the high turnover in personnel, our biggest challenge is as much the teaching of skills to individual staff members as the creation of a knowledge base that will survive turnover.

IV. LONG-TERM ADVISORS

In our experience, placing advisors in competition agencies on a long-term basis is the most effective way to effectuate the goals of technical assistance.³ No amount of lecturing, simulation exercises or retrospective case analysis can better train staff and promote development of a competition culture than having advisors present to work with the staff on their own investigations. Being resident at a competition authority over a sustained period, utilizing the actual mechanisms and procedures of an agencies' own laws, is the best way to learn what the authority's true needs are and to address those needs. Competition authority officials may be unwilling, or indeed unable, to identify their needs and shortcomings to those they do not know well and trust. There is also no substitute for engaging staff at that point in an investigation when their energies and attention are intensely focused on a given issue, and they are most motivated to learn — what some have called "the teachable moment." Having an advisor on the scene at those times is ideal, from the point of view of pedagogy and learning. Advisors who have become familiar with an economy's competition law and institutions and market developments can also give much more focused counselling. Moreover, over the course of time, resident advisors earn the respect, trust, and confidence of foreign agency staff, who are then more likely to solicit, listen to, and implement their advice.⁴ When a relationship of mutual trust develops advice is more readily absorbed and applied. These relationships often continue long after the advisor leaves an economy, are especially strong among fellow law enforcers, and lead to informal consulting among peers.

A. GENERAL DESCRIPTION OF LONG-TERM PROGRAMS

The United States began sending its personnel on long-term missions to Eastern Europe in 1991, and continued through 2001. In the late 1990s resident advisors were also serving in Argentina and South Africa. Beginning in 2001, the United States has had several resident advisors to the KPPU in Indonesia, and to the ASEAN Secretariat and its members. Typically, an individual advisor's residency overseas lasts between six months and a year. By having several resident advisors in succession, the United States has provided resident advisors to some agencies for two or more years.

The United States usually staffs these missions with one experienced staff member. When the U.S. agencies can fund a team of two, we strive to have a lawyer and an economist, one from the FTC and one from the DOJ. They work on a daily basis within the offices of the institution responsible for implementing competition policy, supported by an interpreter.⁵ Some advisors have a mandate to

³ See also, William E. Kovacic, *Antitrust and Competition Policy in Transition Economies: A Preliminary Assessment*, in ANNUAL PROCEEDINGS OF THE FORDHAM CORPORATE LAW INSTITUTE 537 (Barry Hawk ed., 2000, Ch. 23) ("The best assistance programs are anchored by the presence of long-term advisors who reside in-country and work directly with the host country's policy officials").

⁴ See also DevTech Systems, Inc., Final Evaluation of the Federal Trade Commission and Department of Justice Component of the Project on Competition Policy, Laws and Regulations 7-9 (Jan. 24, 1996).

⁵ The importance of the interpreter's role cannot be overstated. In most economies we hire an interpreter who usually remains with the program throughout, and who becomes a full-fledged member of the

provide assistance to more than one economy in a region or to or through a regional entity such as ASEAN or the Andean Community. These regional resident advisors have a base of operations in the region, for example, Jakarta, and travel to nearby economies.

Advisors review and comment on both the substance of matters under investigation and the investigative tools that are being used. While U.S. agency personnel perform an active advisory role, they do not actually conduct investigations or argue the merits of cases. Instead, they help identify options and the strength, weaknesses, and likely consequences of the various choices under consideration.

B. ASSISTANCE TO INVESTIGATING STAFF

Some of long-term advisors' most important work is imparting experience to the investigating staff. These staff can be very short on experience both in practical skills such as investigational skills and, in many cases, the relevant substantive areas of law and economics. When the long-term advisor programs began in the early 1990's, few of the staff at the authorities we worked with had any training in competition law or industrial economics.

Long-term advice by seasoned lawyers and economists on the practical application of these new concepts helps build on and coalesce some of the fragmented knowledge that the staff picks up from other sources. For example, it is one thing to know that there is such an idea as a small but significant non-transitory price increase, but it is quite another to learn how this concept is applied during the market definition analysis of an actual merger.

Often a long-term advisor extends his or her own reach by calling on the U.S.-based resources of the FTC or DOJ when confronted with a specialized problem outside of his or her own experience. Specialists at FTC and DOJ are easily consulted by telephone or e-mail, and can send written materials as needed. In addition, as discussed below, long-term advisors can identify and coordinate short-term missions by industry experts from Washington.

C. ASSISTANCE TO DECISION MAKERS

When cases reach the decision-making level, long-term advisors consult with staff and help them in sorting through possible recommendations. They sometimes review staff's memoranda and recommendations. They meet with the authority head or council members to discuss the matter and make suggestions. In some economies, advisors have attended council meetings and given advice when asked. Participation in an authority's proceedings at this decision-making stage helps to ensure that decisions have a solid basis in the findings of fact, that orders and remedies, if any, are effective, and that written decisions are well-reasoned, useful, and enlightening.

V. SHORT-TERM MISSIONS

While we have found that the use of long-term resident advisors is the best way to provide technical assistance to new competition agencies, short-term advisors can also be effective. We have found that short-term advisors are effective in the legislative drafting and institutional design stages, discussed above, in targeted support of long-term missions, and for conducting interactive investigational skills workshops.

team, not just translating, but helping us understand the basis and context of a concern or question. The interpreter, as a fellow national, often becomes a conduit for news and identifies issues needing our help about which we might not have been approached directly.

A. TARGETED MISSIONS IN SUPPORT OF LONG-TERM MISSIONS

Short-term missions have a role in support of long-term missions. They can supplement and extend the skills of the long-term advisors once they are in place, and can provide follow-up assistance after a long-term mission ends.

Although the long-term advisor will doubtless have his or her own areas of specialized expertise, the long-term advisor is necessarily a competition generalist and cannot be expert in all of the disciplines of competition law. When an important issue requiring specialized expertise arises, we have found that sending staff from FTC or DOJ with the appropriate expertise can make a big difference. After our long-term advisor leaves, there are often significant unfinished projects. Follow-up short-term missions by the long-term advisor can help complete the work.

B. INTERACTIVE REGIONAL TRAINING PROGRAMS

We have also used short-term missions successfully to conduct interactive investigational skills training workshops based on hypothetical cases. We have developed hypothetical merger, abuse of dominance, and cartel cases. These cases raise many issues one might expect to encounter while investigating a real case. For agencies that also have consumer protection jurisdiction we have a hypothetical deceptive advertising case.⁶ In these exercises, participants are initially presented with some background information and the kind of documents that might trigger an investigation in the real world: a competitor or consumer complaint or a pre-merger notification. Participants are then guided through the identification of appropriate issues for investigation and the formulation of an investigational plan.⁷ They formulate a document request. This, in turn, results in purportedly responsive documents (prepared in advance) being produced. Simulated interviews are conducted. Interspersed with the practical exercise are lectures on investigational skills based on our staffs' own experience. Participants from numerous agencies have told us that these seminars are of great value because they convey real-world investigational experience in the context of an actual case. These interactive exercises were designed by experienced former long-term advisors with extensive domestic experience and expertise with the type of investigation at issue. They are designed to approximate, as closely as possible, actual investigations that competition law enforcement staff anywhere might encounter. We have modified each "case" to fit the facts of the economies in which they are employed.

We have found that training exercises conducted on a regional basis are also desirable and have a special place in technical assistance. Regional training workshops have permitted the sharing of experiences and a broader approach to conveying the most important message, which is how to conduct an actual competition investigation. In particular, regional programs create other synergies that ultimately lead to more effective law enforcement. They promote regional networking. Staffs often receive little opportunity to meet with their counterparts in other economies, and in some cases, contacts formed at regional conferences have led to cooperation on investigations. We have also structured conferences so that more advanced agencies in the region can develop mentoring relationships with less experienced agencies, such as by co-hosting events with the United States, and offer approaches that are indigenous to conditions within a region. At the end of the conference, participants leave with a full set of materials so that they can present the hypothetical case in their own offices.

⁶ The FTC has broad jurisdiction over the U.S. consumer protection laws, including those directed at marketing fraud and deceptive or false advertising and can offer technical assistance in those areas as well.

⁷ See also, William E. Kovacic, *Antitrust and Competition Policy in Transition Economies: A Preliminary Assessment*, *supra* n. 11 (advantage of short-term missions focused on hypothetical cases and role playing).

C. OTHER SHORT-TERM MISSIONS

High-Level Regional Conferences

In addition to single-economy and region-wide staff training workshops, the United States has sponsored or assisted in sponsoring several regional meetings and conferences of high-level competition authority officials, regulatory officials that deal with competition issues, academics and judges. These conferences serve a different function from the training workshops. They focus on the continued dialogue needed to promote convergence or competition law enforcement and policy and enforcement cooperation. In Southeast Asia, competition authorities in ASEAN member economies have created the ASEAN Consultative Forum for Competition to meet annually as a means of insuring that this type of dialogue continues and to insure that competition policy and law enforcement issues are not neglected in discussions of economic integration.

Lectures and Consultations On Selected Topics

Because of budgetary limitations or the desires of the host economies, we have sometimes offered programs consisting primarily of lectures. These programs may focus, for example, on competition issues such as the interface between competition authorities and sector regulators or on basic consumer welfare economics. Another example of such a targeted program is when a relatively advanced competition authority correctly identifies an area in which its expertise is deficient and asks for focused help to remedy the deficiency. In those cases, we can dispatch a lawyer or economist with experience in the area that has been identified and can provide useful help. For example, the assistance of a DOJ banking expert has proved very helpful to moderately advanced authorities in analyzing bank mergers. During these short-term missions, consultations with the competition agency's staff regarding ongoing investigations may also take place on the side.

Other Types of Conferences

There are two types of short-term missions that we believe are especially worthwhile: case analysis seminars (such as those sponsored by OECD) and conferences at the individual economy level during the pre-legislative stage. We have participated in case-analysis seminars, and have found that by bringing together competition agency working staffs from various economies to present and analyze cases of their own, with participation by more officials from more experienced economies, real educational synergies occur. Competition authority staffs from developing economies can be each others' toughest critics.

Pre-legislation Conferences To Build Understanding and Support

Competition conferences that are held at the economy level during the pre-legislative stage are also quite useful. During these conferences, local and foreign experts are able to discuss the pros and cons of proposed competition legislation in a constructive format. Examples include the United Nations Development Program-hosted conferences leading up to the adoption of the Vietnamese competition law.

VI. INTERNSHIPS AND STUDY VISITS BY FOREIGN PERSONNEL IN WASHINGTON, D.C.

The theory of such internships is that by working beside U.S. counterparts, foreign representatives can learn first hand how the U.S. agencies do their work in actually conducting investigations. In practice, this has proven not to be feasible because of the U.S. confidentiality laws

that protect many documents, testimony, and interviews obtained in investigations from disclosure to persons not on the U.S. agency's staff. However, FTC and DOJ have hosted foreign representatives, such as those from Thailand and Mexico, and arranged a series of lectures and discussions possible in Washington because of the large human resource base working there.

Our current approach is to host visiting delegations which have been funded outside the USAID programs administered by the U.S. agencies, and to divide the visitors' time between FTC and DOJ for usually no more than a week each. Each authority offers a series of presentations by a diverse group of experienced people, who describe their work and their role in the larger enforcement picture. We leave plenty of time for questions, which is one way to direct our advice to real world problems of concern to the visitors. Internships are very expensive because of travel and per diem costs, and require a good understanding of English to work best.

VII. CONCLUSION

Enactment of a competition law is only the beginning of a long and complex process of resolving the policy and practical issues in legal drafting, institution building, and making the new law meaningful through the authority's action. New competition agencies are likely to encounter difficulties as they face these challenges, and can benefit from technical assistance provided by more experienced competition authorities. The United States hopes that this paper's presentation of our program, as well as our experience with various methods of technical assistance, will assist the Group in its future discussions of technical assistance and capacity-building.

APPENDIX

United States of America
International Technical Assistance Program on Competition Law and Policy
To the APEC Community
July 2002- February 2006

The U.S. State Department and Agency for International Development (“USAID”) jointly fund the Federal Trade Commission (“FTC”) and Department of Justice (“DOJ”) to provide technical assistance in Southeast Asia. Details with regard to such assistance follows.

From July 2002 through December 2004, the FTC conducted technical assistance in Indonesia. The FTC/DOJ provided a series of resident advisors to Indonesia’s competition authority, the Komisi Pengawas Persaingan Usaha (“KPPU”), in Indonesia, and organized six week-long training programs for the KPPU.

Beginning in 2004, U.S. technical assistance expanded beyond Indonesia, and became a region-wide program and part of the U.S./ASEAN Cooperation Program. As a result, following on two years of resident advisors at the KPPU in Jakarta, the FTC sent resident advisors for nine months to the ASEAN Secretariat in Jakarta. These advisors were able to continue on a part-time basis to assist the KPPU, participate in APEC and United Nations Development Program training programs in the region, and plan and participate in training programs in the Philippines and Vietnam. The FTC/DOJ has also helped to sponsor and organize four regional programs for ASEAN: a conference on “Building Effective Institutions” in June 2004; a “High Level Workshop on the ASEAN Consultative Forum on Competition” (“ACFC”) in Jakarta in October 2004 in which representatives of the Korean and Japanese FTC also participated; a training workshop on “How to Investigate Cartels” in May 2005 in Vietnam; and the “First Annual ACFC Meeting” in Bangkok in August 2005.

The First Annual Meeting of the ACFC was held in cooperation with the Thai Ministry of Commerce in Bangkok in August 2005. Planning for the Second Annual Meeting of the ACFC to be hosted by the Indonesian KPPU in mid-2006 is underway. All members of ASEAN are invited to participate in the regional programs.

Training programs were conducted in Vietnam in January 2005 on how to investigate and analyze abuse of dominance cases; in May 2005 on how to investigate cartels; and in November 2005 on how to investigate consumer protection (“unfair competition”) cases. All members of ASEAN were invited to participate in the program on cartels, held in May 2005 in Vietnam. After each of these training programs, the United States sponsored a one day seminar where drafted regulations and guidelines were presented by the Vietnamese Competition Administration Department, and discussed and debated by experts, academics, judges and the general public. Members of the VCAD travelled to Washington, D.C. in January of 2006 to visit the FTC and DOJ and learn more about the different responsibilities of each of the agencies.

Seminars on competition capacity building issues were conducted in two different cities in the Philippines for government officials, academics, and other interested members of the public.

In August 2004, FTC/DOJ provided a training workshop in Bangkok for Thai officials on how to investigate an abuse of dominance. In November 2005, two officials from the Thai Trade Competition Bureau visited the two agencies in Washington, D.C. They spent one week at each agency, meeting with various staff members to discuss issues including cartel enforcement, analysis of mergers and non-merger anticompetitive conduct in the retail sector, below-cost pricing, management of a competition agency's database and general recordkeeping, and advocacy. In February of 2006, the DOJ and FTC will each send staff to the Trade Competition Bureau for a short-term mission for training on merger document review and filing. The DOJ attorney is expected to remain at the Trade Competition Bureau for one month.

In April or May 2006, the FTC will send a resident advisor to Jakarta for six months to provide assistance to the ASEAN Secretariat and its members. This advisor will have offices at the Indonesian KPPU and commute for one week per month to Vietnam to assist the VCAD. He will also be available to respond to requests for assistance from other ASEAN members and to participate in APEC training programs in the region.

The United States also has an ongoing training partnership with Mexico. To date, the program has consisted of a series of 13 seminars in three series: investigative skills and analysis; special sectoral regulation; and one targeted at members of the judiciary likely to hear challenges to CFC administrative decisions. The investigative skills programs covered abuse of dominance, mergers, distributional arrangements, cartels, unilateral refusals to deal, and oligopolistic markets. The regulatory program included programs on natural gas, railroads, electricity, and pricing. A CFC delegation was also in Washington, D.C. in December 2004 to meet with various FTC and DOJ staff members regarding the conduct of investigations.

Peru has also participated in a number of seminars sponsored by DOJ and FTC as part of a larger program involving the Andean Community. The Andean Community also includes Colombia, Bolivia, Ecuador, and Venezuela.