
¹ See Organisation for Economic Co-operation and Development [OECD] Global Forum on Competiti

Thank you for being here to participate in this examination. I am especially grateful to our panelists, and particularly those who traveled to be here with us.

The American experience with technical assistance probably began not in the 1990s but in the 1890s, not long after the ink dried on President Harrison's signature on the Sherman Act. With no world experience to light the way, we embarked on what might charitably be called an active experiment in trial-and-error to get a handle on how we should use our antitrust laws to protect competitive markets and our consumer protection laws to ensure that consumers may freely choose among the fruits of a competitive market. Looking back, we amassed a fairly rich trove of mistakes to learn from, as well as more than a few successes.² Because of our nation's commitment to a competitive, free market economy, we persevered, learned from our mistakes, and ultimately built a system that serves our consumers well.

Let's jump ahead to 1989, when the Berlin Wall came down. At that time, only about two dozen countries had any sort of antitrust law. In the following few years, most of the new market economies of Central and Eastern Europe passed competition laws. With economies reeling in the aftershocks of decades of communism, they needed to learn how to effectively employ this new instrument to help develop and support markets that work for consumers.

Our program of technical assistance had its roots in those days. The FTC and DOJ, recognizing the potential for competition law and policy reform from the beginning, proposed jointly that the U.S. Agency for International Development (USAID) fund an ambitious program of assistance for the new antitrust agencies of Poland, what was then called Czechoslovakia, Hungary, and other nations in that region. Under the leadership of Assistant Attorney General

² See, e.g., William E. Kovacic, *The Modern Evolution of U.S. Competition Policy Enforcement Norms*, 71 ANTITRUST L.J. 377 (2003).

Jim Rill, who I am pleased is with us today, and my late predecessor, Janet Steiger, our program was inaugurated in 1990 at a meeting in Prague with President Vaclav Havel. Soon thereafter, teams of long-term and short-term advisors were dispatched to the region, with our first two advisors going to Poland. Both are still with our agencies: Jay Creswell of the FTC Bureau of Economics, who is here today, and DOJ's Craig Conrath, who is also here and from whom you will hear later this morning. We remained active in that region until 2004, by which time the European Commission had picked up the torch. Alberto Heimler, Director of the Research and International Relations Directorate of the Italian Competition Authority, is an old friend who's here today, and he will tell us more about that later today.

Since then, our program has expanded to Latin America and then to Southeast Asia, South Africa, and India, in recognition of the fact that the command-and-control economies that prevailed in those regions had adverse effects on markets similar to communism's impact in the Soviet bloc. For the most part, our efforts have been funded by USAID, although we have had some funding from the Commerce Department's Commercial Law Development Program, and the U.S. Trade and Development Agency, and also have funded occasional activities on our own.

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antitrust, however, partly because consumer protection did not always loom large on USAID's development agenda, and partly because it did not figure on the economic reform agendas of the recipient countries themselves. Yet, the countries across the globe are discovering the importance of consumer protection as well. They are understanding the importance of consumer information, which consumers need if they are going to have faith in the market. In particular, as use of the Internet spreads, and with it the danger of ever more efficient delivery of fraud and deception worldwide, the developing world has progressively greater understanding of the damage fraud can do to markets.

With the recent passage of the SAFE WEB Act,⁴ we have opened a new chapter in our technical assistance story, having introduced FTC International Fellowships. Subject to carefully applied confidentiality rules, this program permits us to bring highly qualified foreign enforcement agency counterparts to the U.S. for periods up to six months to learn directly how the FTC investigates cases and analyzes legal and economic evidence. We are now conducting a pilot program involving four fellowships, from agencies in Brazil, Canada, and Hungary. One of our initial group of fellows, Virag Balogh from Hungary, will be a presenter later this morning.

When there were only a handful of new agencies on the block, or from "the bloc" if you will, and USAID funding for technical assistance was plentiful, we felt we were able to do a pretty good job keeping up with the demand. But, as new laws are adopted in such places as India, Egypt, and China, the simple fact is that the demand for assistance is outpacing supply. Today, our international technical assistance program stands at the crossroads, and raises a number of issues.

⁴ U.S. SAFE WEB Act of 2006, Pub. L. No. 109-455, § 9 (codified at 15 U.S.C. § 57c-1 (2008)).

⁵ 154 CONG. REC. H16054 (daily ed. Dec. 17, 2007), *available at* <http://frwebgate.access.gpo.gov/cg>

Another important point to explore is how our technical assistance program fits in with other programs executed by other organizations and even private entities. While I believe that there is a separate “market” for independent U.S. assistance efforts, there may be room to work more closely with others to use precious resources in a way that does not duplicate or even compete. The International Competition Network has examined antitrust technical assistance through a project – co-chaired by the FTC, I should add – of the Competition Policy Implementation Working Group.⁶ Undoubtedly, ICN can continue to be a valuable resource as we think through the possibilities for collaboration.

We also need to explore the new issues that developing economies present in applying new laws. For example, while we hope that China’s new Anti-Monopoly law will be applied in a sound and nondiscriminatory manner, concern remains that the law will be used to protect Chinese companies at the expense of foreign rivals. National champion promotion – indeed, taking into account at all the nationality of the firm in question – is simply inconsistent with the central objective of antitrust law: to promote competition to the benefit of consumers. If it became clear that nationalism were the objective for a country, we would have to think through whether we could assist in turning that objective around, or if we could

⁶ ICN, FINDINGS RELATED TO TECHNICAL ASSISTANCE FOR NEWER COMPETITION AGENCIES (2007), *available at* http://www.internationalcompetitionnetwork.org/media/library/conference_6th_moscow_2007/9FindingsrelatedtoTechnicalAssistanceforNewerCompetitionAgencies.pdf.

no borders, and now more than ever, we depend on each other to safeguard the marketplace and adequately protect consumers. The Internet has dramatically reshaped how we work and learn – but it has also introduced new threats, such as malware and spam, that threaten consumer confidence just as markets begin to grow. If consumers in developing nations lack confidence in new technologies, and lose faith in the market system, they are less likely to participate in the global economy. Another area of potential need in technical assistance is that of consumer credit – an important ingredient of consumer welfare. The regulation of consumer lending practices can be exceedingly complex, and the potential for abuse can be quite serious. Without adequate assistance, developing economies may leave consumers unprotected, or may overly regulate the area to the detriment of economic growth.

For over seventeen years providing technical assistance, we have engaged in the struggle for commercial law reform. Our passionately held position is that where markets are open, economic strength and prosperity are most likely, and where economic strength and prosperity exists, citizen consumers are likely to have the broadest choices in the way they live their lives. But we cannot just put it out there and hope that others see the light; alternative collective experiences are too strong. Competition laws can be applied to protect domestic markets, favor entrenched interests, discourage foreign investment, and create barriers to entry that are then inequitably enforced. Governments – often the enemy of competition – can manipulate competition agencies because they lack genuine independence. So we have to work harder at it. In today's workshop, we have an opportunity to consider how to improve our strategy and sharpen our tactics for the struggle ahead. Thank you for being here today.