## FEDERAL TRADE COMMISSION

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FEDERAL TRADE COMMISSION

A CONFERENCE ON

CHARTING THE FUTURE COURSE OF

INTERNATIONAL TECHNICAL ASSISTANCE

Sponsored by the Federal Trade Commission
And The Department of Justice

FTC CONFERENCE CENTER
601 NEW JERSEY AVENUE, N.W.
WASHINGTON, D.C.
FEBRUARY 6, 2008
MR. TRITELL: Good morning, everyone. Thanks for joining us. I'm Randy Tritell, director of the FTC's Office of International Affairs, and it's my pleasure to welcome you to the Federal Trade Commission for today's workshop co-sponsored by the FTC and the Department of Justice's Antitrust Division on the future of our international technical assistance program.

This is a very important topic for us at the agencies and presumably for you, and we think this workshop comes at a particularly timely moment to address this topic.

Before we start, it's my job to cover a few housekeeping matters, so bear with me as I ask you to please turn off your cell phones, BlackBerries and other devices. You can take your calls outside in the lobby.

You'll find the rest rooms outside across the conference center double doors, you'll see the signs. Third, in the unlikely event of the building alarm, just proceed calmly and quickly as instructed. You'll be asked to leave through the main entrance and gather off to the right near the curb.

I would like to take a moment to thank a few of
the people who made this all possible today:

Principally, from the Department of Justice, Anne Purcell White, and from the Federal Trade Commission, Jim Hamill, and I would also like to recognize from the FTC the work of Carrie McLaughlin, Ruth Sacks and Mary Anne Radebach, and from the Department of Justice, Katie Cho, Keith Butler and Nancy Olsen.

We're going to have a lunch break of one hour. There's a list of nearby dining options in your workshop folders. You're welcome to bring lunch back with you. I realize it's a short time, but recognize that it as well as you will have to go through our electronic screening and magnetometer.

In addition to the materials in your folder, there are some papers back on the table outside, and your folders include some biographical information about our speakers so we'll dispense with lengthy introductions so we can use our time for our substantive discussions.

So with that in mind, let's get started, and it is my pleasure and honor to introduce our opening speakers. We'll hear first from Federal Trade Commission Chairman Deborah Platt Majoras, and following Chairman Majoras' remarks, we're going to hear from Assistant Attorney General Tom Barnett.
CHAIRMAN MAJORAS: Good morning, and welcome to the Federal Trade Commission. We are here today to explore a topic that we have never publicly explored in depth before: the role of the United States, and its two antitrust agencies in particular, in helping ensure that the spread of antitrust and consumer law and policy is implemented in a way that maximizes consumer welfare. When properly fulfilled, these laws and policies benefit not only the consumers in the countries where antitrust and consumer laws are being newly applied, but also global commerce and, ultimately all of the world's consumers. Since the early 1990s, the FTC and the Antitrust Division of the United States Department of Justice (DOJ) have operated a joint program to actively share our experience with newer agencies. With the antitrust and consumer protection worlds having changed significantly since then, and with public interest in our program having increased, I thought it was time to take a look at where we have been and where we ought to be going. Thank you for being here to participate in this examination. I am especially grateful to our panelists, 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. 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 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. Our program has taken our career staff to 55 countries, ranging from Albania to Zambia.

Since our program began, we have gone from about two dozen countries with competition laws to well over 100. (We say that so often that we almost become jaded to what a powerful development that really represents.) Depending on your definition, even more have consumer protection laws of one sort or another. The People's Republic of China passed an Antimonopoly Law last summer, and the most recent additions to the list of countries with competition laws are Trinidad and Tobago, Guyana, and Mauritius. This is a remarkable testament to the world's faith in competition and free markets. But if this trend is going to bear fruit for the consumers of these countries and world markets, the laws must be applied with the wisdom that is dictated by our ever-evolving understanding of law and economics. Can we afford, in this global economy, for the application
of these laws to evolve through the slower process of
trial and error that we experienced? No, and indeed, it
is simply not necessary. It is incumbent on those of us
who have been lucky enough to survive and learn from our
mistakes to find ways to be able to share our
experiences with those who have recently chosen to begin
the journey down the path we first cut in the 1890s.

Technical assistance is a fluid concept, and it
can encompass anything from broad advice in developing
national strategies to foster competition and
privatization, to help with drafting competition and
consumer protection legislation, to designing effective
institutions, to training in analytic investigative
skills in law and economics for enforcement personnel.
All of these are important, and at one time or another
we have been involved with each of these. But in the
context of the FTC/DOJ program, we generally mean the
process of transferring investigative and analytical
skills from career agency attorneys and economists to
their counterparts in newer agencies. For the most
part, our own staffs learn the ropes through on-the-job
training by experienced senior enforcement attorneys and
economists, and we try to replicate that in other
countries where that kind of experience does not yet
exist. You don't get that by reading Antitrust Law
As we will discuss today, technical assistance takes many forms. One of our most effective assistance tools is the deployment of resident advisors who are "embedded" with foreign competition and consumer protection agencies for periods ranging from a few months to up to a year. It puts our advisors where they need to be when the teachable moment arises, and allows them to explain and share concepts such as market definition or ad interpretation not as abstract concepts, but as the issues present themselves in real cases. As those of us who have spent their careers practicing antitrust or consumer protection law know, you do not really learn it until you have a real case with real facts and real businesses -- and maybe real lawyers -- in front of you. A less costly variant is to use short-term advisors to simulate investigations of hypothetical cases that as closely as possible resemble the kind of cases a newer agency might encounter.

Another effective approach we have used is to deploy participants who were trained in our earlier programs as co-presenters in our more recent ones. We held our final programs in Southeastern Europe in Budapest, with the Hungarian Competition Office participating as a co-presenter. They know what these...
problems look like in a transitional economy better than we do, and their insights added richness and texture to the program. Csaba Kovacs from Hungary is here with us, and he has been a great help there. We have done the same thing in Central Asia with the help of the Baltic states, and in Central America with the help of Mexico -- Angel Lopez from Mexico will be with us later this morning.

Of course, ensuring that consumers have good information about the marketplace and its options is critical to a well-functioning competitive marketplace. Accordingly, the FTC introduced consumer protection into its technical assistance work in 1992, and even dispatched two consumer protection long-term advisors, Susan Cohn to Bulgaria, and Russ Damtoft, who is here, to the Baltic states in the mid-1990s. Most resources then and now remain earmarked for 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, 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 from 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.

First, meeting future challenges requires us to look at funding. Our funding has fluctuated over the years, but have been decreasing lately. In the current fiscal year, we will have received $606,000 from USAID for assistance by the FTC and DOJ combined. By contrast, we had $861,000 in FY 2006 and over $1.4 million as recently as FY 2005. While we get a lot done on that budget, the fact remains that USAID's budget for competition and consumer protection work has gone down as demands on its own budget have swelled, even in the face of swelling need.

Until recently, we have not appropriated funds to use for technical assistance programs. In passing the FTC's FY 2008 budget, though, Congress provided the FTC with money beyond what the President had requested and stated, among other priorities: "[t]he Appropriations Committees recognize and support the FTC's international programs. The FTC should continue competition policy and consumer protection efforts, including training and technical assistance, in developing countries." Apparently, Congress recognizes, as do we, that in today's global economy, a foreign assistance component of our work is integrally related
to our traditional domestic focus on maintaining
competition and consumer protection. I am pleased to
say that in the operating budget that the Commission
approved on Monday, we authorized a substantial sum for
international technical assistance. Of course, we hope
and intend to continue the very productive partnership
we have had with USAID. Nick Klissas of USAID will be
with us later, and he and his colleagues have been very
supportive. But now we have some ability, at least this
year, to supplement that funding.

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.
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 justify using our taxpayers' dollars to assist in an effort that would likely fail (i.e., not benefit the consumers of the relevant nation) and also potentially harm our consumers.

Finally, with consumer protection issues having rapidly taken on global significance, we need to think through the most effective way to implement an assistance program. Fraud knows 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 of 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.

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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.

(Applause.)

MR. BARNETT: Thank you all. I'll make sure Debbie reads the transcript later.

Good morning. I do join Debbie in welcoming all of you here to this workshop on international technical assistance efforts being hosted by the Antitrust Division and the Federal Trade Commission. I'm pleased but not surprised to see such a good turnout, even at this early hour, because this is a very important issue. It's one that many of us have been focused on for many years, and we think it's becoming increasingly important.

Like Debbie, I want to specifically thank the people who came in from out of town and/or out of the country: Graciela and Csaba and Alberto and Angel and Edward in particular, from Peru, Hungary, Italy, Mexico and the OECD.

In a lot of contexts, I like to talk about something called the marketplace of ideas and the
teachings of John Stuart Mill on the clash of
potentially conflicting ideas. The gist of his teaching
is that we should all affirmatively seek out and engage
those with other ideas because we inherently benefit
from that process.

We may learn that we agree with one another,
which is useful. We may educate each other, which is
also useful, or at the very worst, we will walk away
with a better understanding of our own ideas. I think
that is a particularly important topic for international
technical assistance, and indeed that's the spirit in
which we approach technical assistance.

We both enjoy and benefit from reaching out to
competition agencies around the globe to exchange ideas
and share experiences. Indeed, to some extent I think
the term technical assistance is not the best term
because some can construe it as a one-way flow of
information and ideas. That's not the attitude we have,
and we certainly approach this issue enthusiastically.

Over the past two decades, the Antitrust
Division and the FTC have completed over 400 missions to
scores of countries on both short-term trips
and long-term advisory missions and have reached more
than 50 economies in Central and Eastern Europe, the
Commonwealth of Independent States, Central and South
America, Southern Africa and Asia.

We have provided advice on the drafting of dozens of antitrust laws, as well as numerous enforcement guidelines. We've worked with many new agencies in introducing sound economics and consumer welfare goals into their systems and in developing practical techniques to enhance their ability to achieve these goals. At a broader level, these efforts and these exchanges of ideas advance two important interests, and Debbie alluded to them both.

The first is we believe that a sound competition enforcement regime is an important part of a market economy, and, if applied based on consumer welfare principles and rigorous economic analysis, is the best way to enhance consumer welfare of the citizens of that country.

Second, with 120 jurisdictions around the world with competition regimes, convergence is important, and the dialogue and exchange that we go through in technical assistance is one of the most important ways of achieving convergence around the world, and that will benefit all of our consumers.

I would like to take a few minutes and talk about a couple of specific topics; first China. Technical assistance to China has been and remains a
priority for the Antitrust Division. The Division and the FTC have worked for years with the government in China in its process of enacting the antimonopoly law, which I'm sure all of you know was finally passed last August and will go into effect this August.

In addition to frequent meetings over the years with the Chinese government agencies and the National People's Congress Committees, we participated in several seminars and conferences organized by the Chinese government to learn about and to teach them about the enforcement experience of ours and other antitrust agencies and to elicit views and recommendations concerning the various drafts.

Now that the antimonopoly law is scheduled to come into force in August of this year, we plan to continue offering assistance to China in implementing the law in a manner that is based on sound economic analysis and focused on maximizing consumer welfare and economic efficiency.

In fact, we've already started that process. This last July, we conducted an investigative four-day merger enforcement in China for officials from agencies already involved in merger review. We hope to conduct other training workshops once enforcement responsibilities and the agencies that will be
responsible for the law have been identified.

Another important topic that I would hold up as a great success in our international outreach efforts is cartel enforcement. We have repeatedly explained in our efforts that the detection and prosecution of cartels should be considered a top priority of any antitrust agency.

Cartels are unambiguously harmful, inflating price, restricting supply, inhibiting efficiency and discouraging innovation. The antitrust world is a much different place today than it was two decades ago. At that time most jurisdictions did little or no cartel enforcement, and some business people viewed price fixing and other agreements not to compete as simply a beneficial way of doing business.

Today, looking across the international landscape, we can see that our message has been heard. Antitrust enforcement authorities around the world are now united in a commitment to pursue hard core anti-competitive conduct by cartels.

The shared priority on the detection and disruption of cartels has led to improved cooperation among antitrust enforcement authorities in the investigation of international cartel activity. With more antitrust enforcement agencies on the beat,
international cartels now run a greater risk of
detection in each of the jurisdictions in which they
operate.

Equally as important, businesses on six
continents are more aware that cartel activity is and
should be illegal. Such awareness is one of the most
effective means that we have available to deter cartels
from forming in the first instance.

One of the most important tools that we have
developed is our leniency program, which has been
adopted by many competition agencies around the world.
In this context, I note it has not been adopted in
exactly the form that we have adopted a leniency
program, and in general I view that as a very positive
thing. We now have a series of laboratories, if you
will, in which we can learn from each other about
different variations and hopefully improve all of our
leniency programs as we move forward.

Turning now to another aspect of technical
assistance, which is the importance of sound economic
analysis. That has been, from the United States'
perspective, one of the most fundamental changes in
developments domestically in terms of how we interpret
and apply our antitrust laws, and we believe that that's
a very important factor worldwide as well, but in this
regard, we're constantly searching for new approaches
that may more effectively meet the needs for training
and education in this area.

Just last May, the Antitrust Division added a
new feature to our efforts. As many of you know, the
Division has a long and robust training program for our
own employees. Last year, for the first time, we
invited ten agencies from eight different countries
around the globe to participate as part of our own
internal program -- an intensive training program on
antitrust economics. All agencies that were invited
accepted our invitation, and some agencies sent multiple
representatives.

Over the course of three days, the training
session addressed a variety of topics including
unilateral effects, bundling, predatory pricing and
remedies. It concluded with two practical programs that
were particularly well received by all participants.

The first of these focused on the common
mistakes made in antitrust investigations. The second
practical program required the participants to analyze a
hypothetical case and then break up into small groups,
each of which was led by an experienced division
economist or lawyer to discuss how to investigate and
resolve the case.
Not surprisingly to me at least, our own DOJ staff benefitted from the new participants and the new perspectives that they brought to bear. Antitrust agencies, young and old, frequently face similar issues and benefit a great deal from sharing experiences with one another.

The training event was a success both for the Division as well as the foreign participants, and we plan to make it a permanent annual feature of our official training program, with the next workshop to take place in May of 2008.

More generally, we believe that the marketplace of antitrust enforcement ideas is very much alive and well in the world today and in particular through our technical assistance efforts. Through this process of mutual exchange, technical assistance often provides a foundation for long-standing mutually beneficial relationships.

Following a technical assistance mission, we often find that our new colleagues contact us on an ongoing, informal basis long after the particular mission has ended with follow-up questions and with new questions that arise in cases they investigate.

We have found that the relationships that develop over time are particularly strong between fellow
law enforcers, and we welcome the opportunity for such
ongoing engagement with our counterparts in other
agencies.

We also find that as new agencies develop, they
become more and more centers of technical assistance
themselves. Indeed on a personal level, the first
formal technical assistance mission that I undertook
after I came to the Division was a trip to Budapest,
Hungary, which was a forum where I first met Csaba. It
was for Eastern Europe competition agencies in which the
United States Department of Justice, Federal Trade
Commission and the Hungarian Competition Authority were
all co-teachers.

I remember sitting and listening to a lecture by
one of the staff of the Hungarian agency on how to do a
raid, take a computer hard drive, analyze it through
various software components and deal with chain of
custody issues -- all the things that you would do in
criminal cartel enforcement -- and I may as well have
been listening to the FBI. It was a very impressive
presentation.

Our goal for this technical assistance workshop
is to enhance the overall marketplace of ideas through
an interactive discussion of the agency's programs, the
evolving needs of our programs, how we should meet those
needs and how the programs can be improved so as to
maximize their effectiveness in the future.

    Among a few of the questions I hope the workshop
will address are: How can we improve our efforts? What
concrete steps can we take to make them more effective?
Are there particular topics or geographic areas that we
should be focusing on? Are there types of assistance
that U.S. agencies are particularly well suited to
provide? How best can we work together?

    We have today, as you know, an impressive array
of panelists from varied backgrounds. The business
community is in a unique position to identify areas of
divergence and speak to the direct effects of such
differences.

    Academics often come to these issues with great
intelligence, energy and enthusiasm and should become
more involved in the technical assistance process.
Representatives from other competition agencies
providing assistance, such as those that we have here
today, have important lessons and experiences to share.
Likewise, other international organizations can provide
us with the benefits of their experience in this area
and what works particularly well for them.

    Perhaps most importantly, I want to conclude by
also thanking the staffs of both the Antitrust Division

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and the Federal Trade Commission for the work in putting this workshop together today. I anticipate that it will go smoothly, flawlessly, without a hitch as they almost invariably do.

I assure you that is not easy to accomplish, and the efforts of our staff are the reason for it, so thanks to all of you. Thanks to all of the participants. We look very much forward to the exchange of ideas.

(Applause.)

MR. TRITELL: Thank you very much, Tom, and just please bear with us for a moment as our first panel, chaired by Assistant Chief of the Antitrust's Foreign Commerce Section, Anne Purcell White, and her panelists assemble here. We'll get started and resume in just a couple minutes.

(Pause in the proceedings.)
PANEL 1:

ANNE PURCELL WHITE, Moderator, Assistant Chief, Foreign Commerce Section, Antitrust Division, DOJ

PANELISTS:

ELIZABETH CALLISON, Senior Economic Advisor, Bureau of Economics, FTC
CRAIG CONRATH, Trial Attorney, Antitrust Division, DOJ
TIMOTHY T. HUGHES, Counsel for International Technical Assistance, Office of International Affairs, FTC
CSABA KOVACS, Head of the Competition Policy Section, Hungarian Competition Authority
GRACIELA ORTIZ, President of the Competition Tribunal of Indecopi, Peru

MS. PURCELL WHITE: Good morning, everyone. I'm Anne Purcell White, the moderator of the first panel. I am the Assistant Chief of the Foreign Commerce Section at the Antitrust Division where I manage the Antitrust Division's technical assistance program.

The purpose of this panel is really twofold. First, we will introduce to some of you but review for others the details of the DOJ and FTC technical assistance programs so that we're all operating off of a common base of understanding for the rest of the day.

Our second purpose is to begin what I hope will
be a tradition that will carry forward for the rest of
the day, and that is a candid discussion on what has
worked, what hasn't worked and how we can maximize the
future effectiveness of our technical assistance
programs.

We have a great panel here today. Three of our
most experienced FTC-DOJ advisors are with us, but I am
particularly delighted to have Graciela Ortiz and Csaba
Kovacs, who have traveled many miles to be with us.
Thank you to you both.

Tim Hughes will be our first speaker this
morning. He is legal counsel for International
Technical Assistance at the FTC. He is in charge of
coordinating much of the FTC's technical assistance
activities including in Asia.

Tim has served as long-term advisor to
competition authorities in Romanian and Indonesia and
has participated in many short-term missions as well. I
think I can speak to personal experience, he's a very
enthusiastic provider and has been willing to jump on a
plane at a moment's notice when the need has arisen.

Our second speaker is Craig Conrath. He's a
trial attorney at the Antitrust Division. As Chairman
Majoras noted in her introductory remarks, he was the
first American legal advisor to serve in a foreign

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antitrust authority. He served from 1991 to the 1993 to Poland. He has taught or advised on competition law enforcement in 16 different jurisdictions including Bulgaria, Brazil, Costa Rica, Mexico, Peru, Russia, just to name a few.

Liz Callison will follow Craig. She is our economist on the panel. She currently serves as Senior Economic Advisor to the Director of the Bureau of Economics at the FTC. She has been a long-term advisor to the Indonesia Competition Authority and the ASEAN Secretariat as well as to the Czech and Slovak Authorities. She's also participated in many short-term advisor missions, including in Lithuania, Bulgaria, Albania, Vietnam and Croatia.

Graciela Ortiz is our fourth speaker. She has been President of the Competition Tribunal of Indecopi in Peru, which is in charge of competition law, policy and enforcement in Peru. For many years before that, she was the Head of Competition Policy for the Andean Secretariat.

Graciela has served as a very effective mentor to competition authorities in her region as well as throughout the world, and I have to admit she served as a very effective teacher to the many advisors that we've sent to her agency over the years.
Our final speaker is Csaba Kovacs. Csaba is Head of the Competition Policy Section of the Hungarian Competition Authority, which he joined in 1992, just a year after it was formed. In the last five years, Csaba has been involved in the provider side of technical assistance, participating in programs sponsored by his own agency, the U.S. FTC and DOJ as well as the OECD.

Our panel will be structured as follows: Each panelist will make introductory remarks of about five to ten minutes. They will then answer questions posed by the moderator, and time permitting, we will also take questions from the audience.

Tim, you're the first speaker, so the floor is yours.

MR. HUGHES: Good morning. Chairman Majoras and Assistant Attorney General Tom Barnett have stolen a little of my thunder to by giving you a bit of an overview, and I'm going to take the opportunity now to just fill in a little bit of detail and go into just a little bit more depth on many of the topics that they addressed.

So if you didn't spend enough time last night looking at maps of the U.S., I have a map up here of the world, and the fact that it's in blue should not be interpreted as any kind of a political statement.
You see, as Chairman Majoras mentioned this morning, we have conducted a great deal of technical assistance in Central Europe, and going through it chronologically, the way it really developed was Central Europe was where we began, obviously right after the fall of the Soviet Union, and then we entered South America and continued there for a little while in Central Europe and in Venezuela.

The program then expanded. It took in the former Soviet Union and then took in the rest of Latin America, and that's pretty much where we were in the 1990s, and in the late 1990s, as the European Union also became interested in Southeast Europe in the Baltic -- I mean, in the Balkans, the program expanded into that area.

Currently the program is most active, if you draw a line there practically where the equator is in Egypt, India, Southeast Asia and somewhat in Central America currently, at the current moment, and you'll see a big white spot there for China, and Tom Barnett spoke about what we have done in China in the past year, and I didn't include that as a place where we have had a program because really our relationship to technical assistance in China is quite unique so far.

Everywhere else that we have done work we have...
received substantial funding from USAID or from USTDA. Mexico was a program funded by USTDA, and even the program in Egypt, which is funded directly to us through the U.S. Department of Commerce's Commercial Law Development Program, is using USAID funds. They have USAID funds, which then come through them to us, but China is unique, and China is unique in that there are no USAID funds available for commercial law reform in China and for our specifically competition and consumer protection technical assistance.

So we have been working intensively with China as they wrote their statute. We've conducted one training program that was funded directly by the FTC and DOJ, but to develop a full fledged program there is still one of our goals, and it has not yet been realized, and I think later on today there will be further discussion about that.

So what is it that we do when we do technical assistance? We include in that a series of different activities. We help countries with their drafting of competition laws. They draft it. We usually comment on it. We help them to design their agencies, the pros and cons of an agency that is completely independent, an agency that is within a ministry. We work with the Department of Justice on this, and obviously in the U.S.
we have two different models.

We spend a great deal of time educating and supporting the institutions that are both inside and outside of government. We spend time at the universities. We spend time with lawyers, with private attorneys, with the Chambers of Commerce for example, and then finally where we have spent the bulk of our efforts is in training the personnel of the staff of the competition authorities in the substantive principles and in the analytical framework for an effective competition -- for the effective application of competition law.

The training of staff involves several different categories. We teach them how to conduct investigations, and that's very much kind of a question of techniques: What do we do to get the information that we need? Then you get into other broader questions: How do you prioritize what kinds of cases you're going to bring, and what cases are appropriate to bring in the context of a competition law enforcement agency, and what should be left to other agencies within the government?

As I think you all know, there is the question of to what extent the competition authorities in developing countries should be involved in some social
issues, and South Africa is the classic example that we always talk about. Their law itself specifically mandates that their agency take into consideration the long period of apartheid and the need to compensate for that kind of discrimination that took place there.

So the relationship of some of these other issues that might be on the agenda are areas where we give our two cents. We help them to analyze the issues. Ultimately these are questions that are unique to each country and each culture, and they have to decide for themselves.

We help them to put together actual prosecutions, both civil and criminal: How they would bring the case if they have to bring it before a court. Of course, this is very touchy and difficult as well because there are procedural issues that are very unique to each country. We can offer them our experience, some of which they can take and make use of, and others is totally irrelevant in their context. They can't use our procedures because of their history.

For example, in Eastern Europe, at least five or six years ago to suggest that investigators looking into cartel actions should be wired as they are sometimes in the U.S. is rather unthinkable given their previous history, and then of course there's a question of
remedies.

We spend a great deal of time talking about remedies that are effective, and many of the jurisdictions that we operate in have a great deal of focus on civil penalties. They may call them criminal penalties in their legal system. It may amount to a criminal penalty, but are these kinds of penalties effective and are other kinds of remedies, structural remedies, more effective is an area that we often get into as well.

Our strength is that what we bring to the table is years and years of our own experience in actually doing these kinds of cases as government enforcement agencies. That's different from the strengths that academics bring to the table and different from the strengths that members of the private bar who do this bring to the table.

Chairman Majoras quickly ran through these, and I'll just list them here for you to refresh your memory. The way we do this is we have long-term resident advisors. We send people on short-term missions where they conduct hypothetical training programs and other types of conferences, and then we have foreigners who come to the U.S. for visits.

With that, I'll hand it over to the other
panelists who will go into a great deal more detail in
what we do as long-term resident advisors and what we do
on short-term missions.

MS. PURCELL WHITE: Thank you, Tim. Craig,
you're next.

MR. CONRATH: Thank you, Anne. Thank you,
everybody. I'm Craig Conrath. I guess I'm here to talk
about the experience I had being a long-term advisor in
Poland where I was sent by Jim Rill, who is sitting over
in the corner remembering that first occasion, and it
was an interesting experience, and I would like to
reflect on it a moment to ask: What is it that we as
institutions do in a long-term advisor program, and why
is it meaningful and what can we learn from that
experience?

So if I were to summarize what I have to say it
is this: That a long-term advisor embedded in a
competition agency presents a unique opportunity to
transfer competition law enforcement principles and
practices.

So why is that and what do I mean by that? So
thinking back on this experience, I tried to answer:
Well, what was it that I and Jay Creswell and others
brought to the various agencies? Because certainly my
colleagues in the antimonopoly office were as smart and
as well prepared in their legal system as we were in ours. What was it that made it worth the time and effort to send us to live there for a long time? To answer that I said: Well, why is it that I'm a better competition law enforcer today than I was when I came to the Antitrust Division?

I think the answer to that is, when you reflect on it for a moment, a couple of things. Over that time, I've learned what I would say is a way of thinking about the world. I think antitrust enforcement is in part a way of thinking about the world, a substantive and economic way of thinking of the world. If we can pass on some of that, that's something of value.

Second, there's a kind of intrinsic knowledge or second nature or gut understanding of how markets work and especially how restrictions on markets work. Any number of us who have worked on a number of cartel cases gets a second nature of how cartels work. You know that in any cartel there are going to be some people who are kind of on the fringe. They weren't really the main leaders, and they had to be brought into the cartel.

We know that in every cartel there's going to be one or two mavericks who think they want to cheat and go around the cartel, and you know that those are the places you want to look to find evidence that the cartel
happened because in order to bring somebody into the
cartel, you have to explain what the cartel is about,
and in order to make the cartel work, you've got to
enforce it.

Well, you learn where to look by having looked
at a lot of cartels, so that kind of second nature
knowledge is something that, if we could transfer it,
would be useful.

The third thing that I think you learn by doing
this is some sort of rules of thumb lore. The most
common example that everybody knows is that if the
competitors are complaining about a merger, that means
it's a good merger. If they're not complaining, that
means it's a bad merger or potentially, and that's a
rule of thumb.

There are many, many more that we almost don't
recognize, but we apply them, and they're very useful in
getting to the answer efficiently with limited
resources.

So if that's what we have to offer as
competition agencies, as competition law enforcers, what
is it that enables us to transfer that in a long-term
program particularly well? In other words, why don't
you just write it down and give it to them or why don't
you just have a seminar and pass it on?
That led me back to the question of: How was it that I learned this? The answer was primarily by doing it, by looking at a lot of cartels, by looking at a lot of mergers, and second, by doing it with some people that had more experience and learning, both the staff lawyers that I work with and then the leadership of the agency ranging from Sandy Litvack, who taught us an enormous amount about how to litigate, and Bill Baxter, who taught us an enormous amount about how to think about competition issues.

So how do we transfer that? Well, that's where the long-term advisor program comes in. I think there are four features of that program that make it distinctive and give it a chance to be effective.

The first one of those is the teachable moment. It's a concept from education jargon, but it really fits. The teachable moment is when you are ready to learn something, and by that I mean, it's one thing to go to a lecture about coordinated effects versus unilateral effects in analyzing mergers.

It's quite another thing when a problem has arrived on your desk. You are responsible for it. You have to write a decision saying yes or no and justifying your reasons. That is the teachable moment, and if there is someone there at that moment that you can turn
to, who can explain to you why this is a coordinated effects problem or it's not a coordinated effects problem, you will internalize that knowledge in a way you could never do during a seminar. So teachable moment is the first thing that is an advantage that we get from the long-term advisor program.

The second one is repeat business. If I explain to someone the basics of coordinated effects on a first pass-through on a merger case, and that advice seems to be somewhat helpful, there's a good chance that person will come back to ask for help the next time they have a problem, and maybe we'll have a chance to explain at a more sophisticated or more detailed level, because that kind of knowledge comes in stages.

First you learn the basics. Then you learn a little bit more of how to apply it. So repeat business is the second thing you get out of a long-term advisor program.

The third thing that is unique to a long-term advisor program is local knowledge. You can give advice that's more likely to be helpful if you understand the local knowledge, which can range from simply the facts about the legal system, so maybe the first time I'm talking with someone I say: Well, just send a subpoena to the third-party, and after you learn that some places
can't send demands for documents to third-parties, you start to think of more useful ways to give the advice. You also learn that you have to reflect reality. Certainly I recall once, I think with Jay, we were presented with an issue that presented a distribution problem, and distribution, don't even think about it, entry is easy, and someone said: Why is that? Why is that? Well, all you need to be in the distribution business is a telephone and maybe a truck, and then after a moment we realized just a couple nights before we had been talking to someone who had been waiting for a telephone for 17 years, and so you learn if you have local knowledge, you can give advice that's more likely to be useful to the recipients.

The fourth feature of long-term assistance that's particularly useful is that you can give advice about organizational issues. This was a surprise to me. I expected to be asked questions about per se rules and things like that, but it turned out that one of the things that was most interesting in which we were able to be helpful to the Poles was how to organize their internal structure in order to make decisions to use resources wisely and to organize the flow of work. These were people who were actually remarkably interested in how the Office of Operations works in the
Antitrust Division, and they were the first people in the world that ever had that interest, but it was actually helpful to them to decide how to avoid wasting time, which was their scarcest resource, on matters that weren't going to go anywhere. Because with an application of a little judgment at an early stage you could say: This is really unlikely to be meaningful, let's get rid of it.

So organizational issues is a fourth feature of a long-term program, that is something that is -- really almost uniquely can be done in a long-term program.

I think the final point that I would like to make is that to all these long-term programs have a side benefit -- and I believe that my colleague, Jay Creswell, would prefer that I say "positive externality" -- and that is that I learned as much as I taught. Spending two years in a developing antitrust agency -- in the Polish antimonopoly office from 1991 to 1993 was like working in the Department of Justice from about 1890 to 1950.

Why is it exactly that price fixing is always bad and how do we prove that these people agreed? Is the fact that they all charge the same price enough, and do we care as long as they're separate companies? Do we care if they have the same owners? All these issues
arose in that institution, and for us, the opportunity
to explain and defend such policies deepened and
improved our ability to defend them and to employ them
at home.

So that's a two cents worth of why the long-term
advisor program has been used by our agencies and what
it accomplished.

Anne?

MS. PURCELL WHITE: Thank you, Craig. Liz,
you're next.

MS. CALLISON: I'm going to remain seated if
that's okay.

MS. PURCELL WHITE: Yes.

MS. CALLISON: My goal is to talk a little bit
about the role of the economist in technical assistance,
and I've done both long-term and short-term, and as
Assistant Attorney General Barnett emphasized and all of
you know, antitrust competition law kind of got stuck
between two, the U.S. version antitrust and the world
version of competition, but anyway they are economic in
nature. That's all there is about it.

They're part of a set of commercial laws about
the operating of the economy, and with the exception of
cartel cases, application of competition law always
involves economic analyses of some form and
competition -- cartel laws, it doesn't involve necessarily economic analysis at the time but it's actually based on economic analysis, and we go straight to the law.

So economics is the basis of competition law, and economic analysis does not depend on national borders or legal systems, whether you're a common law or civil law organization. It doesn't really depend on procedural issues. All those come into play in enforcement, but in terms of understanding the basics of what the competition authority is about, those are sort of irrelevant.

So economics provides the common denominator worldwide, and therefore it seems to me obviously that training in economics or having an economic advisor is critical. Many of the countries that I worked in had extremely well trained people, very smart, very capable. Early on in the Eastern Europe countries, their knowledge of market economics was not necessarily terrific.

The economists were better trained obviously than the attorneys, but still there was a lot of work of just basic economics to be done as well as what we do here which is: Okay, got economics, now how do you apply it? What information is important? What theories
are important? How do you look at this material that's coming at you and sort through it to come out with economic rationale?

Now, more recently when I was in Southeast Asia, I have to say that the basic economist training was much more advanced. They could say learner index, and they knew the concepts, but again application of them in real world cases was again an issue, and having an advisor who has worked through this stuff is very helpful to help the economists and the attorneys frame up the relevant questions, frame up what is the theory, what is the story of how this behavior is likely to harm competition or why it's beneficial, if it's not likely to harm competition, and then what pieces of facts do we need in order to test those and in order to tell whether the behavior is anti-competitive or the behavior is pro-competitive?

A very important piece is emphasizing caution and intervening in matters where, in fact, there isn't a competitive problem. Many cases come to the new agencies, particularly the new agencies where the business community is not that familiar with competition laws, and so they're getting hurt by a competitor or a supplier, and they come and they complain that XYZ company is abusing their dominance.
It's very important for the competition authority to focus immediately on: Well, what is the story? Listen to the person and what is the story? Is there a market power that is plausible here? If there's no market power by these firms, then case closed, don't intervene.

Then if the case goes forward, if the investigation goes forward, what fact, what facts are needed? How do you tell the story based on reality that there is likely to be a problem?

I found that the competition agencies early on were more likely to jump into intervention more than was necessary because they didn't necessarily understand market power. Definitions of relevant markets were often extremely narrow, but as time goes on and as the staff begins to ask bigger questions, that changes.

I think that the benefit of the advisor is being there in that process while people are learning, while real facts are coming at them, and they have to make decisions like Craig was talking about. They have to make decisions. They have to figure out: Is this likely to be harmful or not? I think that having an economist is critical in there in helping frame the analysis and helping determine what questions are relevant, what questions aren't. Once you get the
information, what do you do with it? How do you tell a
story that this action is likely to harm competition?

Another area is at the management level and at
discussing, portraying competition more broadly. In
Indonesia recently, there's a lot of criticism inside
the country about decisions being formalistic, being
legalistic and lacking an economic basis, and although
that may be true for some of them, others of them do
have an economic basis. But being able to convey the
thinking, the economic basis and economic rationale for
an action is extremely important in the progression of
competition. It's something that our agencies spend a
lot of time at, in our aids to public comment and other
forums, our speeches, explaining our actions in economic
terms, and there's a role there also for the advisor.

With that, that's basically all I want to say.

Our role in providing assistance is really not all that
different than the role of the economists at the U.S.
agencies. It's in helping frame up theories, helping to
figure out what facts are relevant, how they play in,
how they test or don't test theories, and so the
economist is generally -- it's the same role, but at a
different pace sometimes.

I would like to echo what Craig said about
learning at least as much as you teach because being
forced to go back to first principles: Why is it that this is important? It's something that we gloss over a lot in the United States because we've been through it so much. Understanding the role of the banking system in competition, understand the ability to get financing. It's not something we pay a lot of attention to in the United States. It's critical in a number of these countries.

Understanding the nature -- that competition laws may not be the best vehicles for dealing with corruption issues or dealing with other types of issues, it's not something we think about in the United States. It's something that's very important in some countries at certain stages of their development.

So we come back, I came back with a much richer appreciation of the role of competition laws and the role of economists in the system, and with that I would like to leave time for my colleagues.

MS. PURCELL WHITE: Thanks, Liz. Now I would like to turn the floor over to the recipients of our technical assistance. I've asked them to be as candid as they possibly can be so that we can truly evaluate how to improve or programs, so in that spirit, Graciela, if you would start.

MS. ORTIZ: Thanks, Anne. Before starting my
presentation, I would like to complete a list of things that has been said before, and one important thing I would say that the long-term advisor has to tell us is in the moment. He has to consider that you cannot give an advice or a counsel two weeks after things got finished. It has to be given in the moment, and to know the moment, you need somebody who lives there.

Another thing is adaptability. You must adapt to customs, to the new culture, and that is not easy, so we're very grateful for long-term advisors to do this, be grateful to adapt to our cultures.

With this I would like to begin my presentation just saying that I got a great opportunity of my life, my whole life to be able to work in the international organization like the Andean community where I got the opportunity to meet countries with different levels of development, and after working there about 20 years, I had an opportunity to go to national authority, and this allows me to have the division of the community and of the individual country.

I must say that when we work with the Andean community, there were five countries there. Now there are only four, but we had three countries with competition laws that had already an authority well settled and well organized nationally, that was
Colombia, Peru and Venezuela. We had two countries that
had competition laws or authorities. That was Belize
and Ecuador.

I also want to put on here that with the Federal
Trade Commission and the Department of Justice, we made
a very, very big effort to get Ecuador competition law,
and we got it. It was a very big effort then with
Caldwell Harrop who was here. We got people there to
help draft a law, to lobby with a congressman, lobby
with people in the governments, and we got the law and
the day that it was approved by the government in
Ecuador, we had this big champagne bottle in the Andean
community to celebrate that we had a competition law.
Three days later the President vetoed the law.

So we were very sad about all the work we had
done with the cooperation of the Federal Trade
Commission and the Department of Justice especially, and
it was like so sad. It was so much effort to get a
country without a law to approve a law, and this
happens.

This is to tell you that even though our best
efforts can be made through the cooperation, it doesn't
guarantee a result necessarily, not because the people
who participate in these efforts haven't made the best
efforts to get it, but just because things just happened
that way.

Anything we could have done would not make Ecuador have a new law, have this competition law, and now due to the trade agreements that are being negotiated between countries in a bilateral way, Ecuador wants a new law, wants a competition law, so now they're working for a competition law and so is Bolivia, not because they feel a need internally for these laws, but because there are these external situations that convey that they have to have this new law.

So this is another point that we consider that it's not always the national interest, but the external interest that can get a country to have a competition law, but the big problem is not to cover competition law. The big problem is how you get an authority because that is the greatest antagonism inside the government.

We want to get the power. We want to be the competition authority. The problem are the resources. You are going to be the competition authority, where do you get the resources okay? You get the faculty you're going to have over powers of competition authority, but you are not going to have more human resources. You are not going to have more financial resources. Then this fight just like doesn't -- it restricts the possibility
of getting a good authority, the best authority you can
get, and it sometimes goes: Who wants the authority to
get the national authority?

    With this comes also the problem of how to
implement the law. You have this authority that not
necessarily is the best authority but who wants to be
the authority, so how can they be prepared to be the
authority and they're stuck with this international
cooperation where they fit and they fit perfectly. They
have to prepare the people, give the experience, put
their experience on to them, adapt it to the culture and
to the moment and to the resources. This is a really,
really a very great effort we ask from the cooperating
agencies to be able to place this, to give this to us.

    Less developed countries has more problems and
more little problems, and the big countries, the more
developed countries have very big problems for
competition. For example, in Peru now we are drafting a
new law that we hope to be approved in two months more
or less. This new law does not include mergers, but we
are trying to draft a new law that we hope to be
approved by June that would include mergers as a
complementary. There are going to be two new laws.

    There is only one week where it's going to go
public to get the new opinions and observations and
comments, and I surely would send it to the friends here in the Federal Trade Commission and the Department of Justice for their comments.

It's a very short period, but it's so important, that short periods, so if I don't put a name -- if the recipients don't put a name to the agencies that give the cooperation, it's very difficult to think on them on very short times.

For example, to think of the Federal Trade Commission, for me it's to think of Craig, to think of Russell, or in the Department of Justice to think of Caldwell Harrop. Those are names, real names, so when I think I need help, I will go to them, so you have to put a name to a corporation. It's not just the institution. It's the person.

The other thing is to say not it's not only the implementation of the law that's important. It's not the training of the people. It's also that the authorities rotate people. In small countries we don't have people, like we don't have a hundred officials working in competition. We only have 30 or 40 people working in competition. What does this mean?

That if you don't have universities that prefer lawyers and economists, where are they going to come from when the public sector is going to look for -- in
the public sector? So the people that is preferred and
is formed in the national authority, they are going to
go out to the private sectors, and the competition
authorities are going to stay without these big
professionals that have been preferred by the
cooperating agencies, and it's very important to think.

So due to that small implementing resources the
country has, people leave the public entities, and new
people have to be formed so just to think that we gave
these supports four or five years ago so that people
that receive those workshops are working in the
authority that's not necessarily true. We have to
rotate, and we rotate very frequently. It's about each
four years that we lose professional people, and for the
executive, it's almost five to seven years, so it's not
a very long-term to think for people to be working in
the agencies.

So we depend much on the universities. Our
university -- has our university programs for
competition? If we do then we can assure that people
have this formation is going to go into the competition
authorities. If not we depend more upon the
international cooperation.

Also the judges. Maybe we have a very big --
the best competition authority in the world. What is
our ability that our decisions go when they go to the
Judge, to the courts -- are they going to stand up?
Will our judges prefer to see these kind of cases? So
perhaps we must think not only about the competition
authority but all that is around the competition
authority: The academic world, the courts, the judges,
the public, the private sector too, the laws, the
studio, the firms - so we must have a complete vision of
what competition means in these small countries.

On the other hand, we have -- things change from
one year to another, and they change very rapidly. We
have these free trade agreements that are being
negotiated. Those are bilateral agreements. I remember
when we started the free trade agreement for America,
the FTAA or ALCA as we call it in Spanish, it was a new
wave of countries that began entering or drafting laws
for competition.

Now, that was in the late '90s, 2000, in the
first years of this new decade, but now we have a new
wave of competition laws being drafted and that's
because of the free trade agreements that are being
negotiated, and they do at least -- I think Colombia too
are asking, for example, that all these agreements have
a competition chapter. Never before the FTAA would have
free trade agreement considering competition chapters,
and that's because we're worried that benefits of the organizations are going to be undermined by anti-competitive practices, and that basically refers to cartels.

Besides being worried about this, including this chapter in the free trade agreements, we are also trying to negotiate with our members, all the Latin America companies in their institutional cooperation agreements, so even though we don't have this cooperation, free trade agreements, we do have cooperation agreements.

Our goal for Peru, for example, this year is to have the Latin America -- these agreements with all Latin American countries, included Canada and Spain and why is that? Because we are conscious of the need of experience, of having and knowing what is happening with our neighbors, knowing that their regional experience is very useful for us.

Their experience is very important for us. It makes a big draft, maybe the small drafts, the small things that cultural -- that cultural takes, that ethnic takes are our regional neighbors too, so we would have to combine our efforts with a regional, with the technical cooperation we receive from you, and this is very important to try to see how cooperation fits in.

We can have Federal Trade Commission, Department
of Justice, United States cooperation, but we also can be looking to the European Commission aid, and we can always be looking to the ICN and to the OECD cooperation. We have to try to combine this cooperation. It's not just to receive the same thing from all. It's just to receive that part of the cooperation we really need from somebody.

We need, for example, for the ICN and OECD to help us assist to their events because we think events are very important in the ICN and the OECD. We look to Europe for some experience, but also we look to them for some sector studies, but we look to the FTC and DOJ basically for training and basically for short-term and long-term advisors, and because we know they are there and we can call them and they're much nearer than Europe and they're easier for us to get their cooperation because there have been a very long history of cooperation. There are names written in the history of competition for the Andeans and the Latin Americans countries that refer to the United States agencies.

So the recipients do need help. We tried to knock on different doors. We really don't know necessarily to what doors are going to be open, but we know that the ones that are open are those that have been most friendly to us because we have friends over
there.

So just we are very grateful for your cooperation, and we really appreciate it very very much, and we are very happy to have U.S. friends. And we would like to be partners on this ordeal of competition, cooperation, working as partners and feeling that you are part of us and that we can go as a big brother, help us, please, and you are there. Thank you. Thank you to all of you.

MS. PURCELL WHITE: Thank you, Graciela. You've raised a lot of interesting points, some of which I think we will circle back to later about perhaps involving more entities than just the competition authority in our training.

Csaba, last but not least certainly, the floor is yours.

MR. KOVACS: Thank you, Anne. Let me start with that, it's a great honor to be here, to be invited for this event, and after the Super Bowl and Super Tuesday, to be here in the Super Wednesday of competition policy, at least in the context of technical assistance.

What I can speak about is basically just the Hungarian perspective, and I understand that it can be unique to some extent. So maybe there are some experiences of Hungary which are appropriate to be
generalized but others are not.

We have a quite special language, and to some extent, we are still -- but certainly we were -- a transition economy, and I can imagine that in many other countries, participating in technical assistance programs as a recipient, it's not the same. Also we have a unique -- of course, as every authority -- we have a unique institutional setting and a unique history within the authority.

But it is certain that the U.S. is or used to be a major contributor to the professional development of the Hungarian Competition Authority together with the EC and OECD, and it was almost certain that in terms of time, the U.S. authorities were the very first, so they arrived actually earlier than me to the authority. I joined one year after the authority was established, but I found Americans in the office already.

What I tried to do in this introductory part -- in this five, ten minutes part -- is just to overview the basic stages of technical assistance programs in which Hungary was involved, and what I would like to -- the basic message that I would like to tell you today is that this is or this was a journey from being a pure recipient from a sort of teacher and student relationship to where it's a cooperation with others,
including the U.S. authorities.

The first stage was in the first half of the '90s when, as many other authorities, we received long-term advisors several times from both the FTC and the DOJ -- you know, they are always coming hand in hand together -- and Hungary was clearly a pure recipient.

Part of the program was -- in my understanding, at least an exchange of visitors. Some Hungarians had a chance to visit U.S. authorities -- and I also had the privilege to participate in '95 in such a program, to spend a few weeks here in Washington and in the Chicago field offices both of the FTC and the Department of Justice -- and also there were some seminars in Vienna organized by these authorities where Hungarian officials could participate.

We prepared a little list. My colleagues prepared a little list of the programs. It is not a full list, but I could mention 10, 15 names from the U.S. authorities who had contacts with the Hungarians in various forms, and I could also name some Hungarians who were part of the projects, and of course all of the Hungarians who were part of the long-term advisor projects because the long-term advisors stayed in Budapest.

It is clear that Hungary was a pure recipient at
this stage and also was a pure recipient in the context of other technical assistance programs -- I mean provided by others -- like the Vienna seminars of the OECD. Also, the Joint Vienna Institute seminars and some EC trainings. In this period, we really had very serious money constraint in Hungary, so technical assistance was not something just about knowledge but was really also about -- I mean, we were not able to finance all of this so we could not do that without the financial part of the program: all of these journeys and travels and buying the books, et cetera.

The second stage again is mainly connected to the U.S. authorities when they started their Balkan countries project in the first half of this decade, and it was a tricky arrangement, but I think it was a smart one. The official recipient countries were the Balkan countries, but for many reasons, in my understanding there were some difficulties to find a place for the programs.

There were diplomatic reasons also not to choose one of the recipients because maybe the others would take it as a message, so another place would have been needed, and we offered Budapest, and it was accepted so actually Budapest was the place for that, so our Hungarian colleagues could participate in the events,
even if we were not the main target of that program. So we became formally a sort of provider, but not in terms of substance.

We were still a recipient, if you like, a sort of recipient, and again on this occasions, some U.S. officials came to Hungary, and the first part of this arrangement -- these events -- lasted usually two to four days, and we could convince our U.S. colleagues to stay one or two extra days in Budapest just to be engaged exclusively by our colleagues in the authority to have presentations as the second part of the arrangement, they were very useful, and really a sort, or type, which brings efficiency.

The third stage started a few years ago with the regional center of the OECD and the Hungarian Competition Authority in Budapest. I think later in this day, this issue will be elaborated more in detail, so I would not go into the details of that, but it is clear that regarding this center, Hungary is not just a recipient or actually it's not really a recipient. It partly can be a recipient, but it's also a provider and a co-organizer of the programs for Eastern European countries.

And the same is true -- I mean, the same in the sense that it belongs to the third stage -- to the
fellowship program in which we are really happy to participate -- the FTC fellowship program in which Virag Balogh is an Hungarian participant -- and we think this is something really between technical assistance and sort of cooperation, and we have very high hopes regarding this, to learn a lot in a real working environment which is different from just a seminar.

Of course, there were other events, but I think most of them can be connected to one of these stages. We also contributed to some extent to the OECD Balkan program in the early years of this decade, and we participated as I mentioned already at the OECD Vienna seminars in the first years as a recipient, and then we were able to send our employees to the same seminar as panel members.

All of this really resulted in a great network of contacts with individuals, so I completely agree with Graciela that names are more important than authorities, and these contacts help further programs and further contacts. It was really nice to hear this morning Mr. Barnett's words about the presentation in the last event of the USAID seminar for Balkan countries about computer discovery or forensic matters by one of my Hungarian colleagues. He said that it sounded like a presentation from the FBI.
It was like that only because our computer tech
guy before had visited the U.S. DOJ and the FBI and
others over here, and it was made possible. It was made
possible because -- it was not impossible at all. I
don't want to say that, but it was much easier to do
that because -- but let me step back and start with
that. We set up a cartel unit, we hired the appropriate
personnel -- maybe I could return to this a later
stage -- and so we had this unit. We had a guy there,
and they just discovered that there is some sort of
training in Florida for exactly the same purposes on IT
forensics. And then I told them, "Wait a minute, maybe
you should spend a few extra days in the U.S. to visit
the DOJ and maybe others, and I could call Ann Olek, at
the DOJ, who I knew from Vienna." So that's it, because
if I don't know her, probably it doesn't happen like
this. Maybe the Florida seminar was a nice one, but I'm
sure that the extra program was really useful.

I think this is so far, and maybe I can
elaborate or add something in the discussion part.

MS. PURCELL WHITE: Okay. Thank you, Csaba.

Very interesting.

I think, Graciela, you touched on the fact that
in your area, there were countries that were receiving
assistance from us but that were at very different
levels of development, and, Csaba, you touched on a similar theme that in your own agency that you went through sort of three different stages.

I'm wondering: What strategies or factors do you think we should consider to better identify the needs of the agencies that we're helping so that we can tailor our programs better to match the capacity of the agencies?

MS. ORTIZ: Well, we divided -- when I was working for the Andean community -- we divided the country in two parts. It was -- one it was Bolivia and Ecuador with no authority, and the other three countries that were Peru, Colombia and Venezuela, who had law and authority.

We tried to have regional programs, and I think regional programs do have their benefits too because when the authorities from the Department of Justice and the FTC have the seminars and the workshops, we got official from the three authorities that could also share their experience, so for us it was very good to have these regional events to receive the experience you were bringing, and we were too could share our experience about those issues.

Formation of personnel was very important for the agencies with law and authority. They were looking
for what to investigate, investigative skills, whether their investigative skills -- to have better decisions. While the other two countries, even though they participate in these events, we were trying to get the people acquainted with competition language and the competition term and the competition logics, but they were more worried about how they could put this that they were learning into the laws they were trying to draft.

Certainly they were more worried about how could they draft a law, how could they lobby the law because it's very important to lobby. It's important to lobby to the Congress, to the Congressmen, lobby to the private sectors, to lobby to the media so they can get acquainted with language. They do this -- in Ecuador, for example, they use the word competition and competitiveness together, and they really get very mixed up, and especially when it was an election year. It had political consequences.

So it's important to lobby, and it's important to help them understand how the authority has to be structured. The autonomy of the authorities are a very very important issue for countries that are just drafting laws and having a new competition authority.

So really the needs are very different.
works more on the authority, working on the authority to
better the capacities of the authority. On the other
side, you have the less developed for us, who are these
countries with no law to work more or how to structure a
authority, how to draft the law, how to have the law go
through Congress to get it approved, and after that try
not to be vetoed by the president afterwards.

So everything just goes in the same line, and
the needs are totally different.

MS. PURCELL WHITE: Csaba?

MR. KOVACS: Yeah, I think it can be different
from country to country. Some speakers already
mentioned the long-term advisor methods, and we also had
long-term advisors in Hungary, and it was great. It was
extremely useful. Nevertheless, we believed at that
time that we could not utilize the whole potential,
which in theory could be provided by long-term advisors.

Maybe some reasons are unique to Hungary, like
the language. Hungarian is really -- it's not like
Spanish or if you go to India to be a long-term advisor,
probably you can be happy with your English. But in
Hungary it was really an issue, and right now, many
Hungarian officials in the competition authority speak
English, but it was not true in the early '90s.

Of course they had an interpreter, but to be a
real long-term advisor, it is useful to read the files
or some documents, and it was impossible at that time,
and also the management of the authority was very
conservative in terms of giving access to information,
which was not necessarily sensitive, but you never know.

So there were -- I think there were serious
restraints, and therefore we felt that the potential in
this wonderful instrument was not used fully, but even
so it was very useful, and I would emphasize many side
effects which are very good. One of them is the
networking aspect, I mentioned already. I could mention
beyond this computer tech guy story more stories, but I
resist for the sake of time.

It's really crucial, I believe, to have people
who you know that they are available, they are
responsive, they understand you. They know you because
they spent some time in your authority or you spent time
in their authority like myself in Chicago with Russ and
Tim -- and many, many fruits can bear in that tree, if
that makes any sense in English.

Also I think what is important, this
continuation of programs. Finally, in the early '90s we
decided a little bit to transform this long-term
arrangement into a series of presentations, so we used
the long-term advisors to have one or two seminars or
presentations in a week they prepared, and this way there was a continuous dialogue between them and the authority, so finally we could use them, but I think not in the original way that was intended.

So I believe that long-term advisors can be more useful in a little later stage when an authority is more prepared to deal with them. Of course this is true for other means, too. This is also true for seminars. Seminars are more useful if you know more, but probably seminars are less sensitive to this maturity problem. At least in Hungary this was the case. Maybe it is quite different in a Spanish speaking world or in other countries.

MS. PURCELL WHITE: Graciela?

MS. ORTIZ: Can I comment? Language is very important, especially for less developed countries. While long-term advisors, I will be thrilled to have a long-term advisor in Peru in their authority for example. I think I wouldn't advise it for a less developed country without the law. You have to wait for a law. You have to wait for authority and then think in the long-term advisor.

Well, for medium sized authorities, less developed authorities I would think a long-term advisor would be great. I will be looking forward if Peru could
ever get a long-term advisor.

MS. PURCELL WHITE: Thank you. That was actually a finding that was confirmed by ICN, which took a survey of recipients of technical assistance, and found that long-term advisors may be more effective later on in the development of an agency.

One thing that you've both touched on, and is probably one of the more important decisions I make is who I send to be an advisor, and I think, Graciela, you touched on the importance of adaptability, and, Csaba, you touched on foreign language skills as being important at least with respect to long-term advisors.

What other qualities did you find to be important in the advisors that assisted your agency?

MR. KOVACS: May I?

MS. ORTIZ: Yes.

MR. KOVACS: I wouldn't emphasize language. You cannot learn Hungarian.

MS. PURCELL WHITE: I was going to say, I was getting a little bit worried.

MR. KOVACS: Language can be a factor in other cases, I don't know. But in my experience, you know, if you have this question, several items could come to your mind like experience or knowledge or language skills or teaching skills or teaching knowledge.
My experience such as -- I had contacts with several people providing technical assistance, and my experience is that these all can be important, except for the language in the case of Hungary, but I think the most critical -- it's difficult to measure -- but I think are intelligences and a sort of professional empathy. It is I believe, is the same as "adaptability" in Graciela's words, because you have to be flexible, you have to understand the local environment and the problem, which may on the surface sound very familiar, but if you just give advice on that basis, maybe that advice would not be good enough, so you need to understand the whole context on the one hand.

On the other hand, you have to -- to a certain extent you need to -- be rigid to the basic principles of antitrust, not to be too empathetic. And my conversations and my stories about discussions with people who provided technical assistance always confirmed that it is the most productive, if those people were intelligent enough to deal with this and they had a sort of professional empathy. And of course experience can help in all of this, but I think it's not absolutely necessarily.

MS. ORTIZ: Okay. On long-term advisors even, though I would say you're welcome, sometimes there are
situations that when something is said by a foreigner,
it is different than when it's said by a national, so I
know in some circumstances you need to be a foreigner,
and if a foreigner says something, it's very well looked
on and it's positive, but sometimes when a foreigner
says things in another situation, they're not so well
taken as when a national says the thing.

So it's like that intelligence that Csaba refers
to works that way, so it's not to be so naive to think
that everything you said is better because you have said
it. Maybe your ideas will be best transferred if you
say it to somebody, to a national to have the ideas put
forward, so it depends. You must know the moment. It's
just that moment that you are going to know if things --
who has to be the spokesman of an idea or of a
situation.

On the other hand, language is important,
especially in less developed countries as I said,
because you need to be the spokesman. When you lobby,
you do not need an interpreter that can say the same
things you are intending to say but in a different way,
and that special accent you put on the words sometimes
change the way the receiver is taking things, so
languages do play a very important role here.

In a long-time advisor, in a long-term advisor,
it depends upon what's the job he's going to do. Is he
going only to work in the region, in the national
competition authority? Then maybe language isn't so
important if the people over there speak English, for
example.

    Usually in Peru, that's a requirement, that you
know English when you go into the competition authority,
but not necessarily if this long-term advisor is going
to have contact with other people outside of the
authority, and that will oblige him to speak in Spanish
or have a very good interpreter that really transmits
what he really wants to say in the form he wants to say
it and with the accent he wants to use.

    So I will say that's very important. Every time
I had an opportunity to work with experts, authorities
from the FTC/DOJ, I guarantee they have the expertise
needed so I think even though it's a requirement, it's
always been there. We have had no problems with that.

    I would say that more or less compliments what
Csaba says.

    MR. KOVACS: May I comment for a moment?

    MS. PURCELL WHITE: Yes, please.

    MR. KOVACS: If I could supplement myself and
Graciela, because I'm always abstract, and so... What I
meant by professional empathy is that I have a question,
I describe a story and the other party -- I mean, the provider -- says that in my understanding is this story is about this or this, and then I have to correct, no, I didn't mean exactly this or this, this was something different, and then we are going around in circles like this, and the matter is how many times we have to run those rounds, whether it takes just one or two turns that we understand each other and we speak the same language, or we cannot reach that stage or we can reach that stage only after the sixth or seventh time.

Also in some cases or in certain cases, and I forget to mention this, I experienced that some historical knowledge, not necessarily experience but some historical knowledge on the provider side especially in the case of a transitional economy or in a transitional economy was useful.

I don't mean history of the country, of the host country. I mean the history of the U.S. antitrust because in some cases, when I described of the problem and this running -- this rounds -- started after the second or third turn of clarification the other side said, Okay, this is something we had in the '40s or "We had this sort of cases in the '60s", and "we did this," or "that happened," or "this was not good" or "this was just needed by the circumstances" and "I can look it up"
actually in history books not in current best practices" or something like this. So it can be also a factor, certainly not in all cases but sometimes.

MS. PURCELL WHITE: Historically our programs have been directed to competition agency staff, and Graciela raised in her presentation the importance of training judges and people who will teach in universities.

I'm wondering, Liz and Tim, some of the programs that you've been involved in have reached out to other entities besides the competition authority. I was wondering if you could just talk briefly about those experiences, and then perhaps we could get, Csaba, some short comments from you on your views of whether we should be doing with more of this sort of training.

MR. HUGHES: Well, I think that the two biggest things that I've been involved in where we reached out were in Romania. My predecessor as resident advisor, Russ Damtoft, had really started to work deeply with the Consumer Protection Agency as well, and to try to correct with basically the multinationals who were interested in some kind of a Better Business Bureau or something comparable to the a Better Business Bureau, so in that situation -- and then I picked up on that and continued to work on that.
So in that situation we did a lot of work with the Consumer Protection Agency, which was an entirely separate agency, but we were there. We knew consumer protection work. We had both done that work here as well at the FTC, and then the private industry was interested in kind getting in the bandwagon and seeing how we can improve the situation here for everybody, consumers and the corporations that had to do big advertising.

The other place where we've done quite a bit of outreach is in Indonesia and Vietnam. In Indonesia, as resident advisors, we regularly engaged in training programs for judges, groups of judges, and especially the Indonesian Supreme Court, which has about 80 justices on it, so it's not like training our Supreme Court.

Half a dozen of them were starting to get really deeply into competition and learn something about it, and both in Indonesia and in Vietnam, every time we had an opportunity with a short-term mission, a one-week long mission, we would tack on an extra day where we had a program where we called it the stakeholders were invited to, and the stakeholders were judges, private attorneys, university professors, industry members and consumer advocates. All those kind of people would
We would get a large turn out and conduct kind of what the Indonesians called socializing the law, basically getting people used to the concepts and getting feedback from them as to what it was all about.

MS. CALLISON: I would like to add in Vietnam we did some things that were very interesting when I was there. One is they were reaching out to other governmental bodies that had rules, regulations, authorities that sometimes overlapped with the competition authority, and their law gives them jurisdiction over competition even with respect to other governmental agencies.

So I participated in a day-long session where mostly I was giving U.S. experience, but mostly I was there listening and supporting and hearing so that I could talk with the Vietnamese staff later about what they got out of this where they met with, of course, the airline authority and they talked about competition issues. Here's what we do, and the airline authority didn't really know much about competition, and at the end of the day, they were planning to work out Memorandum of Understanding so that they would facilitate discussion and ongoing dialogue.

Same thing with telecommunications intellectual
Each day -- I guess there were other days like this, but each day had five or six agencies in the government where competition authority explained what they were trying to do, and they discussed the overlap and developed stuff. That was really helpful to the agency and to the other governmental agencies.

Again my role was more provide U.S. experience, to be a face, but more importantly after the day we could talk about what they had heard, and we could have just a conversation about that.

Likewise, in Vietnam they had a lot of outreach when I was there with foreign direct investment people explaining, Hey, we have a law, this is what we do, this is our law, this is how we operate, come to us with questions, really an outreach effort, and again I would present little things, but mostly I was there to be a face and also to, after the day was over, again go back and discuss the issues with the competition authority that had been raised during the day and how they might reach out.

I think that those activities are particularly important in places, in countries with new competition laws, and nobody really knows what those laws are, so it's important for the competition agency to reach out, and I was privileged to be there and get to participate.
in that.

MS. PURCELL WHITE: Csaba, anything to add?

MR. KOVACS: Yes. I think they are important
and in the very early stage, they can be done easily, I
mean, something like a road show sort of exercise by the
competition authority. Of course technical assistance
providers can be included into that road show, or in
Hungary, when we had a program related to technical
assistance connected to regulated industries, then we
invited the regulators to participate, and they
appreciated it and it was useful.

What can be said additionally, I believe, is
that -- at least in my experience in Hungary is that --
after the very early stage or after or beyond a very
sporadic sort of programs, it works -- especially
regarding regulatory authorities, it works -- really
well if also the provider side is coupled.

I mean, if we take someone from a U.S. antitrust
authority to teach our electricity people from the
energy regulator in Hungary, that they should care about
this and that, they would find it interesting and they
would say that, Okay, we knew some of these already, and
we are concerned about competition but we have a well
established relationship with the regulators
internationally, including FERC or the California
regulator or something.

And inevitably they trust more, on them, so they have -- for them they are the big brothers, and I think that it can be more effective if the provider's side includes those regulation counterpart in such events. So if they are specifically targeted, if they are targeted in a serious way, if there is a program for that topic, I think it's better to coordinate within the U.S. too. If it's not, then the usual method is just fine.

MS. PURCELL WHITE: Well, I just wrote a note to Craig on this paper that I really hate to close this session, I feel like we have so many more things that we could address, but thank you all to the panelists. We have now run over ten minutes of our time, and I don't want to intrude too much on the consumer protection panel that ought to be very interesting coming up next.

We're scheduled for a 15 minute break, but so that we don't run too far behind for the rest of the day, could I ask you to be back in about ten minutes and our consumer protection panel will begin. Thank you.

(Applause.)

(Whereupon, a brief recess was taken.)
PANEL 2:

HUGH STEVENSON, Moderator, Deputy Director for Consumer Protection, Office of International Affairs, FTC

PANELISTS:

VIRAG BALOGH, Investigator, Hungarian Competition Authority, SAFE WEB Fellow, Bureau of Economics, FTC

RUSSELL DAMTOFT, Associate Director, Office of International Affairs, FTC

DAVID LAFLEUR, CRCM, Senior Examination Specialist, FDIC

RICH O'BRIEN, Head of Internatal Programs, CPSC

PABLO ZYLBERGLAIT, Counsel for International Consumer Protection, FTC

MR. STEVENSON: Why don't we take our seats again and let's get started.

My name is Hugh Stevenson from the FTC, and now I'm tempted to say, as with Monty Python, "and now for something completely different," but maybe not so much actually. There are a number of parallels here, and that's one of the things I think we'll talk about here.

This is a panel that we're looking to move to the world of consumer protection, and there's a sort of nautical or charting the course theme in the logo of this conference, and we now move to places where the landscape or the seascape may appear different in some
ways.

It's a setting characterized by great variety. There's a variety of subject matters that is included in the term consumer protection. Competition law is in a sense a fairly focused subject, but consumer protection encompasses a great range of things, from deceptive advertising and fraud to credit laws, financial regulation fraud, spam, privacy potentially, as well as food or product safety in some settings.

There's a variety here also of agencies. You have combined here some functions that are not combined in other countries. For example, we do both consumer protection and privacy issues. Others may have different agencies.

Other countries combine functions together that we do not. For example, here in the United States we have the Consumer Product Safety Commission that separates out and does product safety whereas that may not be the model in other places.

In some countries we have the combination with the competition function; in other countries not. In some countries the policy functions are more closely combined as they are at the FTC and other places not.

This panel is looking at the charting the course in this setting, what there is to offer in terms of
technical assistance in this area, what kind of mechanisms are effective to deliver that and where we should go from here.

The format of this panel is fairly simple. We thought we would start off with a little show and tell about where we've been in terms of technical assistance in this area up to now and then have a conversation with two of my colleagues from the FTC, who have been involved in this work, with two distinguished visitors from two other U.S. agencies that deal with some aspect of consumer protection: The Consumer Product Safety Commission and the FDIC.

And then we also have the perspective of our Hungarian visitor, since right now we're trying to have a Hungarian on every panel, but also I think it's very valuable to have the perspective of someone who comes from both an authority like ours that combines competition, and also from someone who is here from one of the SAFE WEB fellows that our chairman and others have referred to.

So with that, I would turn it over to my colleague, Pablo Zylberglaite, to talk a little bit about where we have been in this hearing.

MR. ZYLBERGLAIT: Thanks, Hugh, and good morning everyone, and especially a warm buenos dias, gracious,
IO NAPOT, Csaba and Virag, just to show you that some Hungarian can in fact be learned, very limited but some of it can be learned.

So as Hugh mentioned, we have similarities but we face a different paradigm when it comes to doing cooperation in consumer protection, and I like what Tom Barnett said about this idea of being a two way street. Another colleague from DOJ mentioned that we really learn as much as they do on applying these principles. When a consumer agency in another country needs help, they can call several people in the U.S. We may be the general jurisdiction issue, but there are several issues.

There's also the fact that we have the luxury in the U.S. of having a segmented consumer protection system with specialists. We have the CPSC focusing on product safety or the FDIC focusing on banking issues. In some countries they just don't have the resources or know how yet to have this segmentation so there is a consumer agency that deals with any consumer problem from clean water to privacy, you name it, and anything in between, so the players are definitely a little more difficult to identify than in a competition setting.

We tend to pick up where competition leaves off, and as Hugh mentioned, we cover the gamut from truth in
lending claims, substantiation analysis, electronic commerce, credit issues, privacy, security, and also the important area of consumer education and business outreach. So, what do we mean by this technical assistance? Well, generally the sharing of knowledge and experiences on consumer protection matters, however you define consumer protection, mainly, but not always, covering topics germane to the FTC authority and areas of expertise.

We may deploy a program in Indonesia to do substantiation analysis in advertising, but invariably the questions are going to spill over either to industries that we do not have jurisdiction over like this airline is advertising a misleading ad, principles that apply are same but different jurisdictions, or areas that we just do not cover as much at all, things like standard setting in certain areas or product safety when it comes to industry standards.

It's a program that doesn't work exclusively for developing nations. The developing nation label tends to fall more on USAID eligible countries, but we do all sorts of assistance to countries that wouldn't qualify necessarily as developing. How do we do it? What do we call technical assistance? What mechanisms?

We get phone calls, emails all the time about
something that starts as a small question, and sometimes
you know you get that question, and the way the question
is phrased you know there's just not a lot of knowledge
on the other side, and it's like you rephrase the
question for them to give them the right information.

We do telephone conferences all the time, video
conference more and more, and we do find there's a
significant difference on that face-to-face contact that
allows you to flush out the subject matter and also
allows you really to put a face to the name that
improves cooperation in the future.

We constantly have foreign visitors come through
our door either on a one-hour meeting on a specific
topic. I met with Csaba a few months ago. He had some
specific questions, follow-up on a seminar we did, to
two or three day study tours where somebody calls us up
and says, we would like to send somebody to your agency
to learn everything about what the FTC does in consumer
protection. We try to give them some reality check, in
two or three days, you can only absorb so much.

We do these short-term seminar missions. That's
sort of been our bread and butter for the past decade or
so, and now we have the SAFE WEB fellows as was
described earlier and Virag is one of those.

MR. STEVENSON: Pablo, one thing that's not on
your list there generally is the long-term missions that
we just heard a fair amount about in the discussion of
competition issues. Maybe you just want to comment on
that, and for instance, why isn't it on the list?

MR. ZYLBERGLAIT: Well, I think what Hugh is
mentioning are the long-term resident advisors, and I
should qualify that some of our long-term resident
advisors, like Russ for example, have done both
competition and consumer protection in their residency.

We have had -- probably the main challenge has
been funding issues. This is an expensive proposition
to send someone away for six months, and I think usually
with limited funding, we tended to fall toward the
seminars. Especially in the regional context with
limited funds we could bring 10, 20 countries to one
seminar and make all those contacts at once, but that's
something we should explore. I think this is something
for discussion during the panel that we should look in
more.

What do they get? Hopefully a solid foundation
on a particular subject matter or several subject
matters. They get stronger contact with U.S.
authorities. Improved networking with their own
regional partners. I'll never forget the first seminar
I did with Tim Hughes in Budapest and how we had brought
together countries from the former Eastern Block, and I
was amazed and shocked that these people that were
within driving distance of each other, a lot of them had
never even talked to each other, never even knew each
other, so I think we sparked some cooperation in that.

We also provide some expertise with some --
there are rather technical issues that it's a difficult
thing to do on a telephone conference I would guess.

What do we get? Well, hopefully we're promoting
sound consumer protection principles. We get better
stronger regional contacts, and perhaps on the long-term
more important, we have improved cooperation. It's a
lot easier for us to pick up the phone on an enforcement
matter and say, look, there's a web site out of Prague
that's creating havoc in the U.S., can you take a walk,
can you take a look at this and see what's happening,
can you give us some corporate information.

On policy issues, we are constantly undertaking
policy initiatives in international fora, and it's
always good to be able to build those coalitions too so
things go the right way, and on discrete international
projects, we have had a couple of spam related projects
just to educate business on how to close certain
technical loops to prevent spam, like secure your server
or spam zombies where we have cooperation from 27, 26
countries, and a lot of that was driven by the fact that we had met these people at these seminars. We could send them a letter and say, would you participate in this international initiative, and overwhelmingly the response was yes.

We also had a sweeping of web sites in Spanish language. This is part of our Hispanic enforcement initiative, and it was very easy to get five or six countries from Latin America to jump on that bandwagon and do their own surfing on Spanish web sites located in their own country.

What kind of inquiries do we get? This is just to give you a sampling. We got an Email from Belgium: Do you have any laws against scalping tickets? We have a lot of events that get sold out in five minutes. I can't tell you how many economists I had to talk to about that issue. It's a contentious issue, and that's not an area that the FTC necessarily regulates, but they do come to us. We are a clearinghouse for those things.

A lot of problems -- I was going to say heartburn or stomach burn in Latin America about this famous electronic abdominal exercise device that claims you just put it on, and it does all the exercising for you.

Consumer credit, Romania and Germany, had some
questions. We do a lot of work on lottery scams for the
UK, and questions about specific targets from all over
the world all the time. Everyday I get a question:
Does the FTC know anything about this company, can you
help us out? We consider that a form of technical
cooperation.

I mentioned visitors. This is just a sampling
of people we've had come through the door recently on
visits or study tours. And we do now have Hungary and
Canada as participants in the SAFE WEB program.

We have some done interesting video
conferencing. These are some recent examples with
countries with which we've had one to two hour video
conferences, and it's a very productive way to get to
know the real players, and to really jump start a
relationship with which Email and phone is not something
that is necessarily as conducive, and we even actually
helped host one the CPSC did with China recently.
They're sort of getting going in that mode as well, so
we were glad to help out.

As was mentioned in the prior panel, we did have
in the '90s some resident advisors in some seminars.
This is just a sampling of ours: Lithuania, Romania,
Hungary again, USAID supported and based programs,
mostly Eastern Europe.
As we entered the new decade, we tried to kind of streamline what we were doing in the short-term missions, consolidated a lot of the programs for quality, consistency. This is just a smattering of programs that we did sort of earlier in the 2000s. This gives you more of a geographic idea. I'm not going to read you the very small print, but this gives you an idea where we were between 2001 and 2004, and then 2005 through 2007.

This ranges from a full out one-week seminar on consumer issues to sometimes going to the international consumer protection and enforcement network that we do, sort of like the ICN for consumer protection, where we did trainings every year on issues like Internet investigations, advertising review, et cetera.

So what is the typical mission like when we do these one-week missions? Funded by USAID usually for a region or countries, sometimes they just have funds to do a program in Vietnam and sometimes it will be Eastern Europe. In some cases we are training the trainers, and this is a concept that was alluded to earlier, how Hungary acts sort of as a mentor to the region when we leave, so hopefully some of our gift keeps on giving as far as the people that we've trained do become mentors to other countries in the region.
Just because USAID doesn't fund a country doesn't mean that we forego the opportunity to invite others that want to pay their own way. I'll give you an example in a minute, but we try to be as inclusive as we can when we're in the neighborhood and a three-day seminar usually turns into a five-day mission because we do things on the side. We try to be efficient with our time.

Like Csaba was mentioning, we were in Budapest to give this regional seminar, we were asked to and we did a full one-day seminar just for the competition and consumer protection authorities in Hungary on areas that go beyond the scope of the seminar.

When you visit these countries, a lot of them want you to do media outreach for several reasons. One is to help educate their own audience about issues in which we have expertise. They also like to show off. They like to say, look, we're looking forward, we're learning from other countries as well, and it's good for us to do that work and to show that we're working together. And we also do a lot of work with the State Department. We briefed the State Department in what we're doing, and they give us a lot of background on where we are going.

What are the typical participants? We mentioned
earlier how we can deal with a host of consumer related agencies. Well, we start with competition agencies. A lot of them do consumer protection work. There is some overlap, and it changes in every country. Again going back to Hungary, which seems to be the case study today, the Hungarian Competition Authority does a lot of our advertising review work so we work with them and we invite them: Misleading advertising, financial services, food and product safety agencies like to come to these seminars as well.

Weights and measures, and this may sound sort of like a state issue, but in other countries you don't have such a thing as federal and state. I always like to say Hungary doesn't have any domestic flights. Every flight into Budapest is an international flight. There is not that division so as a result, we provide that information, and in many cases we made linkages with state attorneys general to deepen that understanding.

Ministry of economies and trade usually oversee the consumer protection work. Telecomm of course and utilities, which in many countries tends to be the number 1 source of heartburn for consumers: They cut my electricity. We sometimes have the luxury of saying, What kind of security network have you done wirelessly, and some countries say we don't have electricity, okay.
We deal with consumer associations quite a bit as well. In some countries there is no such thing as a consumer protection law or agency. Graciela was mentioning how you have the law vetoed in Ecuador. Ecuador doesn't have a consumer protection law as far as I'm aware of yet. And industry groups, which is something we do domestically -- we invite them when appropriate, if we're not talking about investigative analysis, for example.

So we mention all these areas that we deal with, and as you probably imagine the FTC or you know the FTC doesn't have jurisdiction over all of these. What we did recently a couple years ago is we decided to create an informal network of agencies at the federal and state level in the U.S. that deal with these issues conjunctively.

So we created the Council For International Technical Assistance. When these inquiries come along, we can route them. We can be the clearinghouse so they go to the right agency. We can provide the information as fast and as accurately as possible. We have done technical assistance with these agencies.

I'll give you a couple examples. When we did a program in Peru for the Andean community focusing on consumer protection and public utilities, we brought in
an expert from the National Association of Regulatory Utility Commissions, and they explained how we do things in the U.S.

We did a program in Egypt on credit reporting systems. It's something that's part FTC, part FDIC, and basically on the way Egypt does things, so Dave Lafleur was a participant in the program we did in Egypt in conjunction with the FTC experts, so this is something we've done to improve things as far as coordination.

This is just a sample of kind of how -- we are in consumer protection so we think more in marketing, so this is like the marketing concept for the Lima program we did in 2003, which is an Andean community program. These were participants, and as you can see on the map, Chile and Costa Rica are not members of the Andean community. Venezuela I don't believe any longer is, but at the time it was, but those countries paid their own way to come to the seminar. This is just a way of trying to be as inclusive as we can.

We provide everyone with all the materials of the seminar in CD form, so they can copy and pass them along as much as possible, and we give them an interactive menu, and we give them additional materials that go beyond what the subject matter of the conference is.
This is just another example. We did one in the former Soviet Republics in Ukraine, and we did the same thing except whenever we can, if we have the budget, we try to be as language-based as possible so we did that in Russian which was the closest thing to a common language. They all did speak, and some of them didn't want to admit they spoke it, but we provided materials electronically to them as well.

This is at the convention center in Kiev so that's basically the background of what we've been up to for the past 15 years or so.

MR. STEVENSON: Thank you, Pablo. Well, that gives us some context for some of the challenges, and I thought we should turn next to Dave Lafleur from FDIC, who had been involved in some of the short-term mission work. As Pablo mentioned, the FDIC was involved with that. Maybe you could just describe for us basically the experience that you had in doing that, and what kinds of things seemed to be the most useful in terms of doing that kind of short-term mission.

MR. LAFLEUR: I had the privilege of traveling to Cairo twice, both with attorneys from the Federal Trade Commission and an economist to work on a really very specific project dealing with the development and implementation of Egypt's first credit bureau, which we
tend to take very much for granted in this country.

You can pop on the Internet at three o'clock in the morning and get a new credit card through the beauty of credit scores and credit reports. Their banking system is very, very different from ours, and this is part of a project. It's, the way I describe it, a cog in a much bigger wheel to develop a more efficient real estate lending market. The credit bureau is just one tiny piece of it, but they're all running simultaneously.

Now, our role for going there was to provide assistance both to banks that will be using these reports and also the Central Bank of Egypt which will be the primary regulator of the single credit bureau that will be operating there. We did this project jointly because of our jurisdictional issues here, whereas the FTC has jurisdiction over credit bureaus and certain other users, and my own expertise as the consumer protection aspects of banks that use credit bureaus and also provide information, so that's by way of background sort of while we were there.

What we learned when we were there I think ties back to the concepts that were raised earlier this morning is that go with an open mind because there may be a lot of folks there that really don't even have a
concept of the system, much less be at the level of
building a regulatory program.

So during the first trip, it was designed as a
day seminar to sort of talk about different ways
they could regulate their system by hearing our
experiences. We weren't there necessarily to compete
between the FDIC and the FTC. The FTC's an enforcement
agency. The FDIC does things by routine examination,
very different approaches. We wanted to present this in
a very coordinated way to show them the different ways
they could do things and see what might work best for
them because as on our system, their system is
completely based in law. This wasn't something they
were creating. It was based on the consumer protections
designed in an existing law that they had passed.

That being said, we were very cooperative with
each other as agencies, but also in our mission which
was to show that consumer protection and economic
development are never mutually exclusive but they need
to be done together. As we learned, not only did they
not really conceptually understand how a credit bureau
system worked, there was a tendency to want to, even at
that stage, with a very basic understanding
over-regulate it and basically quash any economic
development that could come from it.
So during our first week, having that understanding the very first day sort of tailored our program to show them the economies of scale, how things could work, and what other types of impact in our economy could be gained from this far beyond just the very finite consumer protections that we were talking about.

MR. STEVENSON: Let me ask you: Who was the audience and who do you think should have been the audience? In the previous panel there was some discussion about sort of -- and I think Graciela had raised these issues about sort of different people you might focus on for providing the assistance, maybe a comment about that.

MR. LAFLEUR: The audience was chosen by our Egyptian counterpart, and she actually did a fantastic job of getting a room full of people who probably would never be sitting together. There were actual examiners from the Central Bank of Egypt. There were managers from banks. There were representatives from the credit bureau that was getting ready to open its doors, pretty much every stakeholder in this process so that they could see each other's faces, hear what each other had to say and really talk about their different points of view during this whole development project.
So it really, at certain points promoted arguments, but generally a very rich discussion, and my hat's off to them for really understanding what needed to happen because clearly going into it, we weren't aware of sort of where they were at in the life cycle of this.

Subsequent to that trip, it was more of a presentation and let them ask a lot of questions both not only in the consumer protection way to regulate the players in this industry, but also how a credit report works for the average person because what we learned there is that less than 5 percent of their population actively uses a bank, and typically bank underwriting, for even the most simplest of transactions, involves hiring a private investigator who will interview your neighbors, your boss, your co-workers. It's a very long and drawn out process, something that was highly educational to us just to contrast how their credit market operates.

Where we left it at the first trip was sort of the two ways to regulate this type of industry and some of the consumer protections that they would need to be aware of so that fraud, potential fraud and other things wouldn't undermine the system as it developed, and also to get buy-in not only from the users of the system,
from the banks, but also consumers to understand their safety in this sort of aggregation of information about them without the sort of private investigator interviews in a credit situation. That was in 2006.

As it evolved after we left, the folks in our seminar were then tasked with different assignments to go back and actually start drafting up a system, so we went back late last year to actually sit down and work with small groups of people to come up with an outline of the regulatory scheme.

Myself, someone from an American credit bureau and an attorney from the FTC broke up into three groups actually to provide some very hands on guidance, not to tell them what to do but to show, compare and contrast their law to ours and figure out what might work best for them so that they could buy into it, develop it themselves, and it was more of just an interactive presentation as opposed to this is the best way to do this. We wanted them very much to see what we do but choose for themselves because there are a number of options.

So the benefits that I feel they obtained particularly from that second trip where we did a lot of hands on work together is I put in my own notes, we calmed nerves. I think culturally there's an aversion
to wanting to let anything about yourself be known
really to anybody, much less your creditors, so by
showing the system and how a strong system of controls
could be placed, it really opened their eyes to I hope
consumer protections in the system and how that may work
to benefit in getting this thing off the ground.

More than anything, I think the benefit is what
I took away, which was really a new found understanding
of the possibility of consumer protection being used to
stymie economic growth really because we're so far in
the system in this country and we tend to work in a silo
of strict consumer protection issues dealing with the
worst case scenario really gave me I think much more
than I left, which was a benefit of understanding how
these issues might be taken to the enth degree so much
so that they sort of undermine the entire purpose of the
project.

So in that regard I think it was an extremely
valuable experience for me personally coming back as a
regulator and as someone working on implementing the
regulations here at home.

MR. STEVENSON:  Maybe we should compare that to
the experience that the CPSC has had.  We have here Rich
O'Brien who directs the international matters at the
Consumer Product Safety Commission, and Rich, maybe you
could tell us a little bit about the experience you've had that may be analogous to what was just described.

MR. O'BRIEN: Thanks, Hugh, and my thanks to FTC and DOJ Antitrust for the invitation to be here today. Before I begin, I have to make the usual disclaimer from our agency. This presentation has not been reviewed and approved by the commission and may not reflect its views.

Just to set the stage, I want to quickly review what it is we do at CPSC. First, we make sure that where product safety standards should exist that they do exist, and those may take the form of either mandatory or industry consensus/voluntary standards.

Secondly, we communicate those standards, and I would say 30 years ago we for the most part communicated those standards to domestic American manufacturers. These days we spend a significant amount of time communicating them to manufacturers overseas.

Third, we enforce compliance with the mandatory standards and applicable U.S. law, and those take the form of many types of recalls, fines, preventing release of product at the port and so forth.

Fourth, we do market surveillance and emerging hazards analysis. A new example is we're forming a new import surveillance division. An old example is the
periodic public service announcements about not operating emergency generators in your home.

Finally, most of what I'm going to talk about relates to the second activity I mentioned a minute ago, which is communicating standards information. My office is responsible for the international work, and a great deal of that connects directly with today's topic which is technical assistance.

Of the consumer products under CPSC's jurisdiction, somewhere between one third and a half measured by value are imported, and of those imports, around 40 to 50 percent come from China or in the ballpark of $250 billion worth of products every year.

Sixty-one percent of all recalls announced by CPSC in fiscal 2007 were of products made in China. Fifty-three of the 61 toy recalls in fiscal 2007, and that's nearly 90 percent, involved toys made in China.

You can see the logic then of focusing on China when we discuss technical assistance. For purposes of my talk, technical assistance simply means those activities where we work with a foreign government or foreign industry to improve compliance with U.S. safety rules.

Many of you have heard that CPSC has a Memorandum of Understanding with the Chinese government.
and that China has agreed to ensure that Chinese exports will meet certain U.S. standards such as no lead paint on toys. What I thought you might be interested to hear is something about how their system works or is intended to work and how CPSC is trying to leverage the Chinese system through our technical assistance.

The first thing to understand is that China has a long tradition of government factory inspection for virtually every product. This goes back to right after the Revolution where you might have something like Beijing people's clothing factory number 1 and a government inspector standing over a seamstress to ensure that each and every article sewn had however many stitches per centimeter that they were supposed to have.

Now compare this with the United States where you could almost count on one hand drugs, certain food processing, meat, aviation, those are the industries where you find government inspectors in the factory, but that's the exception, not the rule in the United States.

China is now a major export power, and its inspection system has changed to reflect that fact. It separates government factory inspection for consumer products into two major bureaucracies. First, for domestic products they have about 2000 local technical supervision bureaus called TSBs with 180,000 employees.
working at the provincial level.

Secondly, for export products, they have 300 local China Inspection and Quarantine bureaus called CIQs with 30,000 employees working for the Beijing headquarters which is the Administration of Quality Supervision, Inspection and Quarantine, affectionately known as AQSIQ.

Every Chinese company that exports needs an export permit, and any consumer product on the national special expert list needs a CIQ certificate before it can be exported. Long standing official Chinese government policy is that no product may be exported unless it complies with the safety standards and laws of the export market, and toys are on the special export product list requiring CIQ certificates.

That's why the Chinese government feels it can make a promise to ensure that its companies will comply with foreign export market rules. This is the kind of promise that many, if not most, governments in the world simply cannot make. Chinese Vice Premier Wu Yi publicly recognized last summer that official Chinese government policy was not actually translated into industry practice, so she and her senior party colleagues created a high level commission on product safety.

Since then the message from Beijing to
inspection officials and industry has been to stop
embarrassing the country and make whatever changes need
to make to get it right.

The pipelines for many of the Chinese products
CPSC regulates are very long, and it's still too early
to predict what will be the impact of the crackdowns of
the past few months. There's some evidence that the
CIQs and the Chinese industry are taking Beijing's
message seriously. We've seen revocation of export
licenses and creation of approved supplier lists for
items such as paint for toys; numerous high profile
standard seminars, many of them sponsored by the
government, many articles in Chinese trade press calling
for safer products from China and a heightened
discussion of industry best practices and quality
assurance by the government.

We also know that without major systematic
changes, specifically Chinese industry's genuine shift
from end to end best practices for compliance assurance,
even good intentions are not going to translate into
compliance. We know that big sophisticated companies
have experienced breakdowns in their compliance
assurance systems, and the fact remains that there are
thousands of small Chinese suppliers that lack the
sophistication to get it right.
U.S. importers and the Chinese CIQs are going to have to be vigilant to get them out of the production chain. Without in any way minimizing the primary and statutory responsibility that U.S. importers have to ensure that their products comply with our laws, let me explain how CPSC is working directly with the Chinese government and Chinese industry to try and bring about the needed systemic changes.

I should first add that we are not alone in our efforts. European Commission, European industry, American industry are all sending the same message. One problem area we knew we had to deal with, many Chinese producers had no idea what the U.S. standards are. They either produced specifications from a U.S. importer who is not specifying the standards, or they make a product that finds its way into the export stream without regard to the standards of any export market.

CPSC's response to this is to get standards into Chinese language text and to communicate our standards and our requirements to Chinese inspectors to give them a better understanding of our rules. A number of texts have been done already. A lot of material is now available on the Internet, by the way, and we're about to launch another round of translations.

We've also tried to get the point across to the
Chinese producers that knowing our standards is vital to their financial health. While we can and do fine U.S. importers for violations, after all they are the parties within our jurisdiction, a recall can cause a disruption to the Chinese supplier's business that could be disastrous. We want them to see their stake in this too.

I've made two recent trips to China during which I've pushed that message. Feedback from Chinese industry association officials suggest that they agree and are willing to push that message to their members. The Guangdong Provincial Toy Association actually quoted me delivering the financial self interest message in its membership magazine.

CPSC outreach to foreign stakeholders, both the technical messaging and the more general guidance, is also about to move into a new digital dimension. We're gearing up to begin webcasting seminars to Chinese producers and inspectors. The Chinese have told us that they would welcome this kind of outreach so we're anxious to see how well it can work.

Another problem area we identified is Chinese inspectors don't always understand how we do our testing so they can't always replicate it. If we're going to leverage Chinese government policy to inspect their
exports, we need to ensure they can get it right.

In response, we're finalizing a plan now to provide training in critical areas in order to help Chinese inspectors do their jobs better. As I mentioned earlier, they have an inspection intensive system that's grown out of their communist history, but if U.S. consumers can benefit from, and we'll try to provide the necessary training.

MR. STEVENSON: Thank you very much, Rich. I appreciate that.

I would like to turn next to ask Russ Damtoft, his name came up I noticed several times in the last panel on the competition subject, to say a little bit based on his experience about how this area -- how you would compare providing technical assistance in this area with providing it in the competition area.

MR. DAMTOFT: Okay. Thanks, Hugh. It's an interesting question, and I think the answer for me really depended on how closely the area we were working with related to the core mission of the FTC. The idea between -- at least in technical assistance terms between looking at them together is you use competition assistance to help create a situation where competition can create choice for consumers, which brings about all of the usual good things that it does, and then consumer
protection allows them to meaningfully exercise that choice.

Now, when I was a long-term advisor in Lithuania, I was actually housed in the Lithuanian agency, which had a deceptive advertising unit that roughly corresponded to our Bureau of Consumer Protection, and I spent time working with them in really exactly the same way that Craig described working on the competition side.

We were looking at ad interpretation and trying to bring some economic cost benefit analysis into their way of thinking but it was really not appreciably different.

In the other countries I worked with as a long-term advisor, I also branched out from Lithuania to Estonia where the agencies were completely different, competition and consumer protection, and the same was true in Romania when I was there.

The question I asked is: Where can I add value in a way to help promote the idea that consumer choice ought to be at the center piece of a consumer protection strategy? There was a little bit of a challenge there because in many cases, the Consumer Protection Agency without being informed by our body of economics in how consumer choice really should be leading the way, they
simply had a law enforcement view that if it's bad, then we should regulate against it, and that was often about as far as the analysis would go.

Now, that was actually not the true case in Estonia or Romania where they were both a little more forward thinking than that, but there were some agencies where there was some truth to that. So I would reach out and find areas.

In Romania, through the Consumer Protection Agency, they were very interested in the idea of business sponsored self regulation, as Tim Hughes described earlier, and we tried to see if we could help create an analog to the Better Business Bureau, and we reached out and had some cooperation from the Council of Better Business Bureaus in doing that.

In Estonia, the Consumer Protection Agency realized that consumer education was the area that they really needed to work on the most, so we said, fine, and that was the area we worked on, and I reached back to the predecessor of the office of consumer and business education here at the FTC, and we really helped them formulate some strategies to do that.

The other area which was actually within the competition agency was looking at competition advocacy as it came up in consumer protection regulation.
was one country I was working in in which an agency that was not the Consumer Protection Agency proposed a set of regulations for the guidance of commerce, and those regulations said there should essentially be no selling of consumer goods below cost under any circumstances, that there were criminal penalties affixed to that, and that sales reducing from the regular price could only happen twice a year.

I actually had the opportunity to discuss with the competition agency why this might present some competition issues and why it certainly didn't do very much to protect consumers, and that actually led them to try to -- what I did was try to help them be more effective advocates for sound competition policy.

When you reached outside of the spectrum farther and farther away from the core mission of what the FTC does, there was often very little that I could do to add value, so, for example, we would sometimes get questions about consumer product safety, and frankly I didn't know enough about that to say anything useful, so we would simply provide the contact for Rich or his predecessors and hope that would lead to something useful.

It does lead to a very difficult question of defining, for the purpose of technical assistance, what do we mean by consumer protection. At some level almost
everything that government does is for consumer
protection, but you have to draw some boundaries, and
where I really tried to draw it effectively was the
process by which competition and consumer choice helps
make markets work better.

Mr. Stevenson: Thanks, Russ. Actually it
reminds me of a remark Rich O'Brien had made to me
earlier today about the challenge of putting some of the
agency's particular work in context. I don't know,
Rich, if you wanted to comment on that as a useful sort
of thing in dealing with agencies in other countries.

Mr. O'Brien: In one of my recent trips to China
I did a talk for the State Department, four city tour,
and the talk was on the history of consumer activism and
consumer policy in the United States. The reason for
the talk was to somehow maybe subliminally get across
the point that recalls and product safety activity in
the United States didn't suddenly start springing up out
of nowhere with China as the target, that in fact it's
based on my historical count anyway 135 years of
consumerism in the United States.

So I had this one hour presentation where we
actually did this talk on what's the background, and
invariably the reaction from the audience in China was:
We didn't know that, wow, you mean it didn't all just
start in the summer, and I was reminded while I was
sitting in the audience awhile ago that on an upcoming
trip to Vietnam, I really need to schedule making the
same talk. I was going to do technical work, but I
think I need to get the embassy to schedule me for the
same talk because it is that useful to set the context
for what it is we are doing, why we do our jobs and so
forth.

MR. STEVENSON: And, Virag, I think you were
commenting before, maybe to pick up on the other point
Russ was making of this sort of issue of what is
consumer protection and how that plays out -- sort of
the challenge of defining it in terms of how to deal
with agencies on this subject.

MS. BALOGH: Before that, if I just might give a
short history of the consumer protection work in
technical assistance that has been done with the
Hungarian Competition Authority and the FTC in the
recent years.

I think actually that it's a great metaphor that
Csaba and I are now here, he presenting the more
developed, well respected antitrust side of the
Hungarian Competition Authority's work and me being a
less experienced but eager to work, enthusiastic young
colleague who is just looking to work in the consumer
protection area.

And I have to point out that from the beginning, from 1991, the Hungarian Competition Authority had the jurisdiction over the deceptive advertising, misleading advertising cases, and a lot of times as it was mentioned earlier by Russ or Pablo, the technical assistance workshops actually contained parts of deceptive advertising or misleading advertising.

So the notion was already there when I joined the Authority in 2004, but it just somehow didn't cumulate in our everyday work, and somehow around when I joined the agency, we started to get a feeling that we needed more sophisticated view on consumer protection, and we needed more empirical background to the cases, and we needed to define better what we want to do with our consumer protection jurisdiction.

So our real first down on the consumer protection side was last spring when we had the chance that the chairman, Deborah Majoras, was in Hungary, and attached to that visit we had Pablo Zylberglaït and Russ Damtoft gave us a one day seminar, a really good seminar on the work that the FTC has done in the consumer protection area, and I think that really got the ball rolling kind of.

Since then, we've been reading papers. We've
been keeping in touch with them. Csaba has been visiting Pablo, and we had teleconferences, and this whole cumulative effect just ended up with me being here as an international fellow, and so it might be just our unique experience because in the consumer protection world, every country is so different, but I think for us the real benefits of technical assistance came on the consumer protection side when we already had something in mind, when we already could phrase our questions right, when we already had some ideas about how to place ourselves, what to put as a center piece of our work, so when we were already on a path to somewhere.

We obviously had to have some directions, some help on what path to choose and where to go, and that's what was extremely useful I think with the one-day seminar and the work since then, and I hope that will just be enhanced with me being here and seeing your work.

So I think back to your question, I think what Russ said was really important about consumer choice, that that's the thing I think we would look at as the most important part of consumer protection, that consumer choice must be free in order to choose best, in order to be able to choose best, because in this way we have this integrated view -- we would like to have this
integration of consumer protection and competition, and we hope with the frequency of choice that automatically comes with free competition, and then the other side too, competition helps to protect consumers.

It's funny that I'm saying these sentences because these were almost the exact sentences that we heard last spring, I don't know either from Pablo or Russ, and obviously it stuck in my mind, and I just keep repeating them.

MR. STEVENSON: Well, thank you. You talked a little bit about the different sort of forms in which the assistance had taken, sort of the shorter term seminars, obviously here now SAFE WEB fellow. We had some discussion earlier about the kind of long-term advisor model or long-term merchant model in the competition side.

Do you think that has a role in consumer protection, and if so, what? And maybe our other panelists also might have a thought on that.

MS. BALOGH: I obviously think it might, but I just would like to point out the fact that Graciela has made in the previous panel that on the consumer protection side, the need for adaptativity is even greater than on the competition side because consumer protection, in my thinking, is closer to the culture of
the country itself.

I mean, the consumer protection is more diverse
than competition, that's obviously true, so I think
that's a higher notion there in this area.

MR. STEVENSON: Okay.

MR. ZYLBERGLAIT: I just want to follow-up on
what Virag said, which follows up on what Graciela said.
I think Graciela gave the example of you should know
when to say something and when not to say something. I
can't tell you in my experience how politically linked
and how this is a human rights issue in many countries,
this idea of consumer issues.

I can't tell you how many times I quote JFK's
consumer rights from the '60s, which we don't often
necessarily quote these days, but this idea that
consumer rights are -- it's a civil right, it's a human
right, and that leads to a lot of rigidity and a lot of;
But this is not true, why should we allow it. Try to
have an economist argue, Well, this is not efficient,
let it go, it's not important.

You would really need that cultural
understanding to be insightful for a long-term advisor.
That's effective, but you really need to be embedded in
that if you're going to be effective in consumer
protection. Just saying this is our deception policy
statement and that's how we apply the principle, it's just not going to carry you very far.

And that's why I think the long-term advisor is vital in the future because it allows you to gain that understanding and maybe in a couple weeks or a month begin to make those sound choices.

MR. STEVENSON: Russ, did you want to comment on this?

MR. DAMTOFT: Oh, just I think the long-term advisor makes sense in the case where people are looking at cases and actions and you have an opportunity to take advantage of the kind of teachable moment that Craig described this morning.

If you're working really more at the policy level, I think that's when maybe the more short-term mission is appropriate. I think the key thing we have to bring to bear from the FTC is economics, to have an economic way of thinking about consumer protection. The person I learned the most from is sitting on the left side, Tim Daniel, when he was at BE, and if we can take advantages of those opportunities, it's worth doing.

MR. STEVENSON: To follow-up on that point, I think in the competition area, the economists have been involved quite extensively in the provision of the technical assistance, and is it equally useful to have a
role or what is the dynamic of the potential for economics as sort of a basis for technical assistance?
Maybe if, Russ, you wanted to comment on it and then Virag.

MR. DAMTOFT: I think it's critical, and it's interesting. When I first went over as a long-term advisor, there's always been kind of a friendly tension between the lawyers and the economists, and I immediately looked to make contact with the lawyers, figuring that they were really from my tribe, and I found exactly the reverse was true, that the economists understood what the purpose of both the competition and the consumer protection law was supposed to fulfill.

And those were the people I had the most receptive audiences with, and I think if I wasn't able to bring over some of that kind of thinking, then I would probably have been wasting my time.

MR. STEVENSON: Virag, go ahead.

MS. BALOGH: I think it's extremely important to have economists on the consumer protection side, and it would be useful as a technical assistance program too. Actually during my three months here, I'm stationed in the Bureau of Economics, so that's exactly what I would like to study here, how the FTC uses economic data and economist's arguments when making cases.
I just think that the hard part of this being that -- I mean, competition economics is something that has been well established for a long time, and everybody agrees on the main principles of that, whereas the economics behind consumer protection I feel, and my understanding being very narrow on this, is that it's a lot more fragmented.

Sometimes there's even arguments about the principle thoughts of that area, so it's something that's still developing, so it's harder to apply something that is still in the stage of development to something that is well established.

MR. ZYLBERGLAIT: I also wanted to add that most of the countries we deal with in technical assistance are civil law countries where the attorneys are the guardians of the law, and they're very focused on these very elaborate complex legal principles and make sure that we're following the bureaucratic letter of the law.

Most of the bureaucrats that we deal with in the Consumer Protection Agencies are not attorneys themselves, but the heads of agencies, that if you're lucky, have some economist or some engineer or someone trained in the business.

The economists really are the messengers of that market system. They're the ones that can really explain
the underpinnings of why we're doing this, and forget
that law, it doesn't really help you, it doesn't help
consumers. If you do this, you're going to see prices
come down, quality go up, et cetera, et cetera.

So I think that's why it's fundamental that the
economists come along, and I frankly don't want to be
stuck having to explain a medical survey to somebody.
The economists at the FTC do a much better job.

MR. STEVENSON: How about on enforcement in the
role of technical assistance related to working on
enforcement? I think our DOJ colleague from the
previous panel talked about one useful role being there
sort of in the moment of application of the law and that
kind of thing and whether to bring cases and how to
bring cases.

How important is that in this area of technical
assistance and is that an area to focus on as opposed to
say the policy, the economic analysis?

MR. ZYLBERGLAIT: I think that's key. That's
where the rubber hits the road. You can spend months
talking about the policy. It's also worth explaining.
A lot of the agencies we deal with have no prosecutorial
discretion. If the problem is dropped on their lap,
they must act on it, and I think we have a key role to
play in the degree to which you act, and there is a
certain leeway there.

Another example is, for example, the Costa Ricans wanted to roll out a campaign against what they call miracle products which would be your typical completely phoney, baseless weight loss products or cure products, and we have the good fortune of doing a seminar like the week before and be there for the press conferences. If you can be there as they're crafting their message, as they're working within industry, which is a form of enforcement prevention, if you will, you can do a lot of good, and so I think those are two important things to keep in mind.

MR. STEVENSON: I guess one last issue is where we go from here and whether there are certain areas geographically in terms of subject matter that it would be useful to focus on in technical assistance efforts.

MR. ZYLBERGLAIT: I always have something to chime in. Substantively speaking, we're seeing more and more of the penetration of the Internet, and it's amazing how quickly things can go like wildfire on the Internet.

One analogy is the analogy of people in Vietnam who somebody mentioned on the previous panel you couldn't get a phone for 17 years in some countries. That was the case in Vietnam. They leap frogged the
technology, and everything is cellular over there. The same thing with the Internet use. You see how quickly things can develop.

We need to develop the confidence in that medium to spread the markets so it's important that we keep putting out the message of, look, you don't have to pass a new law in ECommerce, just the same law of advertising, substantiation and truthfulness applies to the Internet.

MR. STEVENSON: Rich, I'm sorry, if I can ask Rich O'Brien maybe just in terms of the product safety area where the sort of priority areas are as you see them.

MR. O'BRIEN: Well, first of all, I'll piggyback on Pablo and then talk about the geographic aspect. For us the Internet is equally an issue, but we have a problem in that we don't know the answers so we can't share them with anybody else, and by that I mean, when we ban a product in the United States, we ban it through commercial distribution mechanisms over which we have regulatory authority.

In the United States, with the rights of an individual to act in a certain way, it's a very difficult thing to say, therefore; We also have the authority to ensure by whatever means that you cannot
order something directly from a foreign supplier and
have it delivered to your home because we've decided
that it's an unsafe product.

That's a very difficult issue for us, and it's
hard for us to tell other countries how they ought to
handle it.

As far as geography goes, for us the question is
very much all of the things I told you about China.
Where do we have to prevent those kinds of issues next?
Where do we have to look for the trends in boom consumer
product manufacturing that's going to get ahead of
quality and safety capacity potentially? So, we're
looking at the countries around the South China Sea
area. That's for us the next area to focus on.

MR. STEVENSON: Thanks, and I'll give the last
word to Virag.

MS. BALOGH: I just wanted to point out a notion
that maybe is not classically technical assistance but
international cooperation related; that the European
Union is on their way to unify consumer protection laws
in its member states, so it would probably be a good
idea to look at the European consumer protection law in
comparison to American consumer protection law because
what I feel is it's really important to have the same
notion on the two sides of the Atlantic because of the
importance of global trade and everything. So, yeah, that would be an area.

MR. STEVENSON: Okay. All right. On that note and promoting dialogue, we obviously have a lot of work ahead of us. I would ask you to please join me in thanking the excellent presentations of our panelists.  

(Applause.)

(Pause in the proceedings.)
MR. PITTMAN: Welcome to our next session. Sorry we're a little late getting started. We all plead complete innocence and blamelessness for this.

This session, as you know, is on the world experience in delivering technical assistance, and we at DOJ and FTC have always cooperated with and learned from our friends and colleagues at the bank and the OECD and the EC, but I think there's probably a lot of room for more.

So we thought this session we would start by having each of our panelists talk about the different
work, and then maybe get to some discussions of how we
might all coordinate better on some of the common
issues.

We're going to open with Alberto Heimler, who is
the chief of the policy section I believe, Research and
International Affairs at the Italian Competition
Authority and has been involved a great deal in the
EU's training program, both personally and in his
professional role, so Alberto.

MR. HEIMLER: Thank you very much. As Russ
said, I'm here mostly with a European hat, not so much
with an Italian one. This is so because I will talk
about the Italian experiences with the training projects
that the EC launched in 1998, right at the time when the
new institutions in the transition economies had been
already in place for quite some time and needed
directions and indications for action.

The training projects, as you know, are just not
on competition. Since 1998 there have been more than
1,000 projects, on all areas where European regulation
has an influence, from agricultural matters, customs,
organization, police cooperation and of course
competition and state aid. Indeed there have been 13
projects on competition in these past ten years. The
Italian Authority participated to six of those (three in
Romania, one each in Czech Republic, Malta and Bulgaria).

Indeed the Italian Authority took these project seriously, and in 2000, just two years after the twinning projects had been launched, we replied to a request by the Romanian Competition Authorities and submitted a proposal for conducting a two years program in Bucharest. Up until today I thought that many national competition authorities had been involved with these twinning exercises. However, looking at the list that was given to me by the EC commission for the preparation of this talk, I noticed that the Italian Competition Authority had quite an important/leading role, which until I gathered material for this conference was unknown to me.

In general independent competition authorities did not participate to the twinning exercises. Ministries did also in twinnings in competition. In particular the German Ministry of finance played a leading role. This was the case because most of these projects has a State Aid component as well, a matter about which competition authorities of the (old) member States did not deal with. The idea of these training projects is to train the administration of a beneficiary country with the help of an administration of a member
country of the EC in a long term relations whose aim is to bring the administration in question to the European standard, and this means a lot of things, not just hard law. It means soft law and organizational matters as well.

My experience is very much related to the fact that the success of these programs is case by case. It's not really the program that makes the success, but it is the relationships between "demand" and "supply" that defines the "equilibrium". There is a supply and there is a demand of technical assistance.

The objective of these programs was to guarantee that a particular country in a specific subject matter had reached the level of a member State of the European Union. As a result these programs were quite important for these countries, and they had to accept them (in order to show their desire to comply with European standards) and also they had to accept the advice of the competition authority or whichever administration was in charge in order to comply with European regulation so as to gain accession faster.

So in this sense the twinning exercises had a political dimension that is not very common or usual for technical assistance programs. However this does not mean that there was always confidence that the
assistance would be beneficial in a substantive way. Demand for technical assistance was driven by a political objective more than by a modernization objective, so there was a risk that the agency would try to comply only formally with the European standards and pursue whatever domestic objective it was considered politically convenient to pursue. Sometimes of course this was the case. In many other, which of course had to do with the person in charge with the authority, with the specific circumstances of the country, there was a genuine desire by the beneficiary country to modernize, not just to comply with EC rules and EC regulations and what we call hard law, but to comply more in general to have an organizational structure that would make the enforcement of competition law more effective and more efficient.

It's difficult to know when this happens, but certainly it is related to the management and the leadership of the authority of the time and what type of vision that leadership has at the time. What we always thought was that what matters is the enforcement of competition law, and the enforcement of competition law is not just related to rules and to the substantive rules, but also to procedural matters, such as guaranteeing the rights of defense of companies,
ensuring transparency, and also, as Craig suggested this
morning, organizational issues, like obtaining and
maintaining high quality staff, organizing the
authority in a way that would guarantee an efficient
decision making process, making sure that there were
enough resources for the most serious cases.

The problem was that many countries lacked the
culture of hiring good people, and they did not even
have a hiring law or practice that would make sure that
good people would apply to the job and would be
selected. In these instances our advice also went in
the direction of making sure that there was a
transparent process of hiring which was related to the
identification of competences, not so much on university
degrees, but on the actual capability of people working
for the authorities that they were indeed capable of
applying the antitrust laws, that they knew something
about the law and economics of antitrust.

And also in some countries, we heard this
morning Ecuador, suggesting how indeed there was a
problem of high turn over in the authority staff, which
is quite common everywhere and has been quite common
everywhere in Eastern Europe. Romania, when we got
there in the year 2000, had very young staff, and that
staff was revolving quite rapidly, so they did not even
have the time to train them and they had already moved away, and the reason certainly was not the fact that the job was not interesting.

The reason was a very bad salary that the staff of these authorities were receiving, and so we had an experience to share at that time which was the Italian experience where indeed the salary structure of the Competition authority was the same as that of the Central Bank, a system we tried to promote that in Romania and other countries as well, suggesting that indeed what is the most important element for having an effective antitrust enforcement agency is for the authority to have a high standing in the country, and the high standing is also related to the position of their employees within the public administration of the country.

The reputation of the authority had also to do with the leadership of the authority. The higher the standing of that leadership, the higher also of the standing of the authority as such, but also of course the position of employees within the authority, within the public administration of the country is quite important. There were instances in which indeed the Italian experience was followed successfully, and it was quite an important one to follow because the Italian
Authority was created in 1990, not so much before the authorities of the countries we were trying to help and the experience we were relating to was quite recent and therefore easy to follow.

But of course what really matters is the enforcement of competition law, and in this respect, as I mentioned before, of course there are the substantive issues of the hard law that is being applied. These are easy to adopt. Procedural issues are more difficult to change because they also depend on the administrative law of the country. For example, in the Czech Republic the first appeal against a decision of the Authority is with the Chairman himself, a procedure that was impossible to change because it was an enshrined principle of the Czech administrative system. There are also some important issues related to soft law matters like the way substantive provisions should be interpreted, transparency of decisions, rights of defense, access to file, etc.

All these soft matters are very much under the control of the competition authority. Nowhere is it written that the competition authority should not publish its decisions, should not make its decisions available on the web site, and in this sense I think the role of technical assistance is to enhance and to make
sure that the greater transparency is achieved.

This can be done just by showing what we do in our countries, and competition authorities -- my experience is a very good one, but only when competition authorities are willing to modernize, are open and have a genuine interest to modernize. They don't just promote these programs because there is the money or because they are there and just to put a paragraph in an annual report, but there is a genuine desire to modernize. They're very happy and willing to follow.

There are also the organizational issues, of which we have experience, like the way to manage complex organizations of 100, 200 people. For example whether to have a sectorial approach or a functional approach in the organizational structure, is an issue we have dealt with quite frequently.

This is where a long-term technical assistance matters because issues like the standing of the authority, the reputation, the transparency or organizational matters are very difficult to be achieved with short-term missions. You can only do this with long-term assistance, staying in the country, understanding its culture, its legal system, its political environment. Of course there is a funding problem with long term programs.
We were quite lucky in Europe because the European Commission had the political goal of quickly integrating these countries within the European Union and has continued to do so now with countries at the edge of the European Union, like Ukraine and the Mediterranean countries like Morocco and even Russia. Funding was quite substantial.

Just to give you an idea, the budget of one training project, is around one million Euro over a two years period. Not all of the money is spent, but nonetheless, this is the order of magnitude of the cost of these projects. Altogether a multiple the $600,000 I heard today Chairman Majoras referring to as the total funding of the US technical assistance on competition.

I would like to end by saying that the bureaucracy associated with these projects is key to their success. There is a discipline that originates from bureaucracy and which makes this twinning programs quite effective.

There is a covenant that starts with objectives that need to be achieved, and then also there's a final report that shows how these objectives have been achieved. Furthermore the final report contains some policy recommendations to the authority and to the country. These recommendations can be used if by the
competition authorities to promote change. Because of
the reputation of the institution that recommends them
(the winning team) and the reputation of the European
Commission that approves them, these recommendations can
be and have been influential.

MR. PITTMAN: Okay. Thank you, Alberto. Our
next speaker, Shyam Khemani, senior competition advisor
for the World Bank.

MR. KHEMANI: Thank you very much. It's a
pleasure to be here. I would like to preface my remarks
by pointing out that whatever I'm going to say and
discuss is in my own personal capacity, partly because
the World Bank really doesn't have one uniform view.

The principal objectives of the World Bank Group
are to promote broad based, inclusive, sustainable
economic development and poverty alleviation, so
fostering investment, especially private sector led
investment and competitive markets are considered an
important, if not the critical way for achieving these
objectives.

Now, during the past two decades along with our
sister organization, the IMF, we worked with member
country governments to promote sound economic
management, monetary fiscal exchange rate stability,
reduced government deficits, trade investment
liberalization, deregulation and the like.

Policy measures in these and other related areas have generally been pro-competitive and have led to widespread economic benefits within as well as among countries. However, the World Bank view is that the sustainability and benefits that accrue from an improved competitive environment are also dependent on policies such as having a clearly defined, accountable and transparent legal and regulatory framework, minimal barriers to entry and exit, flexible and responsive markets for labor, land, finance, good provision of infrastructure services and other productive inputs.

Here most of developing countries face major challenges that need to be addressed, and if the emerging competitive markets, economic environment are to be maintained, protected and promoted, then these challenges have to be addressed in these areas.

These challenges are also importantly conditioned, the nature and type of the World Bank Group policy advice, technical and financial assistance programs and the relative role and positioning of competition, antitrust law and policy in the broader framework of policy advice to promote a market economy in our member countries.

At the outset, it may be useful to note that
within the World Bank Group there is no single unit, division or directorate responsible for promoting competition, competitive markets or for providing competition law and policy advice.

Yet the recognition of the role and importance of competition in fostering sustainable broad based economic development is a common thread connecting many of the World Bank policies and programs, whether this relates to the provision of infrastructure services, export promotion, attracting foreign direct investment, government procurement, developing tourism or policy advice relating to specific economic sectors.

However, the broad consensus in support of competition tends to be less pronounced within the World Bank Group when it comes to encouraging countries to enact competition laws and establish competition agencies. This may come as a bit of a surprise and as a disappointment to many of those in the audience here who come from or support antitrust agencies.

The doubts partly stem from the fact that many member countries need to address problems of a higher priority, such as providing basic health, education, water, sanitation, roads and other infrastructure services to its population, and also to fight HIV/AIDS. Also due to weak government structures and limited
institutional capacities and capabilities in areas such as the civil service and judiciary, the enactment of competition laws and the creation of competition agencies are viewed in some quarters of the World Bank as possible vehicles for unnecessary government interventions and emerging or nascent markets, may be captured by vested interest, corruption and the like.

The case for competition laws and agencies becomes weakened when tangible and clear examples of their impact on alleviating poverty and improved consumer welfare cannot be provided. Yesterday I had a meeting with Bill Kovacic, and we discussed that indeed this is a challenge for competition agencies in developing countries as well as in industrialized countries to point to tangible examples of the benefits of competition to the common man.

Citation of examples such as reduced cost and accessibility of mobile telephone services, domestic passenger airline travel services, automobile, et cetera, are viewed more as testaments to market liberalization than to the impact of the actions of competition agencies.

In other words, one can have competition without having the competition law as many developing countries and indeed many of the fast growing East Asian economies
have shown over the past two or three decades, and
enacting a competition law does not necessarily ensure
competition as we know that there are now about 120
jurisdictions, and when one does a survey, one finds
that it is very spotty in terms of the success and the
implementation of competition law policy.

So the World Bank Group's technical assistance
specifically related to competition law policy and
competition agencies has generally been ad hoc in
nature. Broadly speaking it has been demand driven and
is based on requests by governments as part of an agreed
package of policy and structural economic group forms
and lending programs where competition policy or
competition law policy and agencies happen to be one of
the several other elements as part of a package of
policy advice to those countries.

Contrary to the popular misconceptions, only on
rare occasions have the enactment or strengthening of
competition law agencies been a conditionality of World
Bank loans and programs. I myself worked in the bank
for now about 15 years, and I can only think of about
two or three examples, Indonesia, Korea where we
insisted on strengthening of their competition
provisions of their financial crisis, Argentina and
maybe a few others.
So the nature and type of technical assistance programs that the World Bank does provide when it receives such demands spans the range of the provision of advice that we have discussed this morning, drafting new and amending existing competition laws to training of staff and institutional capacity building to conducting sector specific competition assessments to funding study tours, internships, resident expert advisors for short and medium time periods and on occasion also arranging for expert advice on case specific matters.

For example when Brazil was facing major consolidation in the brewery or beer industry, they asked the World Bank could we pull together a team that could provide them how merger cases in such industries had been handled in various jurisdictions.

So given the World Bank itself has limited internal capacity and expertise in competition law policy, much of the technical assistance programs and partnerships with the industrial countries -- much of the technical assistance program is delivered through consultants and where possible in collaboration with and partnership of industrial countries' competition agencies, so we have collaborated with the Department of Justice, the Federal Trade Commission, the Office of
Fair Trading, the Canadian Competition Bureau and a number of other agencies around the world including those in developing countries where technical advice from one country that is slightly ahead on the learning curve has gone to countries that are just starting in this program.

Now, when we cannot provide tangible benefits about competition and also when, as the discussion on consumer protection the earlier panel indicated, there are problems in markets, what happens importantly is that it undermines the faith in markets and competition, and so that faith is not as wide spread in developing countries as one would tend to think is prevalent.

So the World Bank Group advice and analysis with respect to competition policy has primarily focused on public policy based restraints to competition such as government regulations impeding entry exit price controls, the time and procedures taken in conducting doing business, registration of companies and so on.

In areas such as the main provisions of competition law policy relating to cartels, abuse of dominance, mergers and acquisitions, advice is provided and issues relating to what are the priorities are tailored to different countries in different situations.

So for example when David Lewis from South
Africa feels that countries should be giving prominence to addressing merger and acquisition transactions and restructuring, as you said in the Fordham Law speech a few years ago doesn't really apply to Tanzania which doesn't have very many listed companies and or a high pace of mergers and acquisition activity.

Now, recently the approach towards strengthening and promoting competition in the World Bank Group really is starting to focus on what we call systemic issues of competition, that is various government rules and regulations affecting markets that particularly impact on the poor and provide inputs to multiple other industries.

So, for example, when it comes to electricity, telecommunication services, the transportation services and so on, which are vital inputs for competition, integrating markets and promoting competitiveness as well as every case and sector specific analysis relating to such products that are staples such as rice, beans as we did recently in Costa Rica, or vegetable oil or cooking propane gas because that's where consumers can see the benefits of changing the regulatory environment, of enacting an effective competition law and therefore build faith in the market mechanisms.

We also have been through these types of
programs engaging in universities and building up local
consulting capacities, and so if in recent years one has
found that the World Bank is less demanding of U.S. and
Canada or industrial country based consultants for
services, it's because we're really trying to identify
qualified consultants in local economies in the region
to build capacity so that they can apply these within
their framework.

I do want to mention, as a final set of remarks,
that there is a big gap between the methods and
approaches of industrial countries in doing competition
analysis, including the application of economic
principles. I do not agree with the statement made
erlier today that economics is the same across
countries. Yes, economic laws and analytical methods
may be somewhat similar.

However, the situation in developing countries
is far more challenging. For example, in economies
where it takes 175 days just to register the name of a
company may be a significant barrier to entry. You say
why, it's only 175 days, it's less than a year. But
without the name of the registration -- of a company,
you cannot borrow. You have no legal entity. You
cannot recruit. You cannot hire labor. You are not
given a recognition.
So it's a bit like Gulliver being tied down by
the Lilliputians with a series of little pinpricks and
threads because of the lack of a business infrastructure
that is very important for facilitating competition and
supply responses.

The time period that we use in merger guidelines
in the U.S., Canada and the UK -- where we say, Well, if
it takes three years or so or more, barriers to entry
are high -- are not applicable in developing country
contexts. We need to go back to the drawing board
because entry could take place five years, six years,
seven years because access to capital is not there. The
infrastructure is not there. Access to land is not
there.

So let us not assume that markets for land,
labor, capital are as fluid and flexible as they were in
the United States or in Canada. They are significant
gaps in institutions. You don't have credit bureaus.
You don't have information. So how do you
do competition assessment in an informationally poor
country where you can't -- you don't have scanner data,
price data, and neither do you have the resources in the
competition agencies to send out a slew of survey
questionnaires because there's distrust with government
and so on?
So I personally think the lessons that I've learned from the World Bank experience is that we have to collectively put our minds to some other approaches to handling competition problems that challenge developing countries, and it may mean going back to methods that were applied prior to the computerized techniques and quantitative mathematical and econometric techniques that we are so used to here maybe the kind of techniques that were used in the 1950s and '60s.

Thank you with that.

MR. PITTMAN: Thank you, Shyam. Our third speaker is Edward Whitehorn. He's head of the competition relations with non-members at the OECD.

Edward, welcome.

MR. WHITEHORN: Hi, and thank you. What I would like to do is give you a brief overview of the OECD's technical assistance program. The OECD's program, like the program of the two U.S. agencies, started in earnest in around 1989 when the Berlin Wall came down, but in intervening years the focus has shifted from Eastern and Central Europe to cover most parts of the world today.

We have regional programs, for example, now in Asia and in Latin America and of course in Eastern and Central Europe. The OECD's particularly fortunate in being able to call upon the expertise of its member
countries in delivering a technical assistance program. So, although we have a relatively small secretariat staff in Paris, we are able to put on quite an extensive program, and we use experts from the agencies like the two U.S. agencies who very generously give of their time and their expertise to act as experts or as panel members in events which we organize, and most of the program which we put on is events, training essentially for officials in new competition authorities, and last year, in 2007, we organized 21 such events in different parts of the world.

Apart from these fairly regular training events, we do also annually put on two big events. One is the global forum on competition, which this year is due to take place in a couple of weeks time in Paris, and this is a big gathering of this year we anticipate about 90 delegations from all around the globe with a total of probably something like 300 people in attendance.

This is not strictly speaking a technical assistance event. It's more what we call in OECD jargon a policy dialogue occasion, but it is an opportunity for officials from the newer authorities to participate in a discussion with more experienced officials about a range of issues, some cutting edge issues, some rather more pedestrian day-to-day issues.
It's in the context of those kinds of meetings that we conduct peer reviews of countries, which Alberto mentioned a moment ago, which is a form of assistance, if you like, which the OECD I think has pioneered where we look in-depth at the competition law and policy of a particular country, produce a report together with recommendations on how things could be improved, and that report is presented and discussed in the meeting with usually one or two examiners posing questions and the country under review responding in the meeting to the points which are raised.

Our second big annual gathering is a Latin America competition forum which last year was held in Mexico and attracted 14 Latin America countries. Apart from these events, we do also do some other work which I'll just mention in passing, for example, commenting on draft competition laws, which again has been mentioned earlier today.

We too were involved in helping the Chinese over a good number of years to develop their draft law which has now been adopted, and much of the work that we do is today concentrated in the two regional centers which we have established, one in Seoul in South Korea and the other in Budapest in Hungary.

These regional centers are a cooperative joint
venture, if you like, between the OECD and the host
country, and essentially the OECD provides the
professional expertise and input to the center, and the
host country provides finance and also administrative
support in terms of organizing the program of events.

Each of these centers has a regular program for
officials in their region: The Seoul center clearly
serving Asian official and the Budapest center the
Eastern and Central European countries, and typically
there are about six events each year in each center, and
they would on average last about three to four days and
attract perhaps something like 20 participants to each
events, so as you can see this attracts quite a large
number of officials during the course of one year.

The courses are at various levels. We have
introductory courses, more advanced courses and try to
target a particular audience when designing the program.
As you would expect, the subjects are the usual
competition pillars, the three obvious areas: Mergers,
unilateral conduct and restrictive agreements including
of course cartels, the kinds of things you would expect
to see in a competition training program.

Another technique which we use quite extensively
in these centers, and again I think this is probably an
OECD originated scheme, is to ask the participants to
each bring one case with them, so they bring details of a case which they're working on at home or have worked on, and this case is then presented in the seminar.

It's discussed with the other participants and with the expert panel, and everybody has an opportunity to learn by looking at a real situation and considering the various issues and the various options and perhaps looking at the way in which that particular authority has dealt with the case.

At the end of each event, we do ask participants to provide some feedback for us, to complete an evaluation form, and I'm pleased to say that that evaluation is generally pretty good and pretty positive, and it also helps us to plan ahead, to plan for the following year and to make sure that we are responsive to the needs and requirements of our target countries.

I think this is a very important general point in a seminar such as this, that we should not lose sight of the fact that what we are doing is providing a service of benefits to others, and we should be very aware of the fact that there are specific needs and requirements in each of these countries, and we need to be very aware of what their needs and their requirements are in order to provide an effective technical assistance program.
This brings me to an issue which we have been thinking about quite a lot just recently, and that is the sustainability of the efforts which we make in this area. There is a danger it seems to me in doing a lot of ad hoc seminars and workshops which, although no doubt are very useful in themselves, don't lead anywhere, and we have been thinking a lot about how we can try to build on our previous efforts and to have a cumulative effect so that we feel, with some confidence, that the authorities who are benefitting from these programs are actually making progress, are able to use the knowledge and experience which they gain in one event to improve and therefore to have a more effective performance.

This is much easier to say than it is to do, and I don't think there are any easy answers, but one project which we have recently launched tries to elaborate this idea, and it's a project to reduce bid rigging, which we have recently launched in Latin America and what we plan to do is to work with individual countries and to follow through over an extended period, so this is not a one off seminar on preventing bid rigging and in procurement but rather a program of work looking at the particular issues in a particular country and saying: What is it that we could
help with in order to produce a better environment for reducing bid rigging, for example?

And we currently are working with two countries, with Brazil and Chile at the moment. The project has only been underway for about six months or so, but we have now devised a work plan for both of those countries in which we have identified a number of issues which we think are important in trying to reduce the level of bid rigging in public procurement.

And to finish, ladies and gentlemen, I wanted to just raise the issue of coordination which I think is also important. There are, as will be very obvious from today, quite a number of providers of technical assistance from around the world, and I think it's a good idea that we should bear this in mind, all of us, and coordination is something people often say is a good idea to avoid duplication for example.

It's also a good idea I think from the recipients' point of view because they probably get rather uncoordinated efforts of help that may not corresponded exactly to their needs, so with that in mind, the OECD has recently produced a calendar which we've called the calendar of global capacity building events, which is now on our web site, and what we did was to contact all the providers of public assistance
whom we know about, and we have asked them to provide us
with details of events which they have planned over the
next six months or a year.

We have compiled this all into a calendar, which
as I say is now available on our web site, and I hope
will provide a useful indicator both to providers and
recipients of technical assistance of what is going on,
what is available, what people are doing and where and
help to provide a more coherent and coordinated program
around the world.

Thank you.

MR. PITTMAN: Thank you, Edward. Our fourth and
final speaker, my colleague, Anne Purcell White, who is
going to talk a bit about the International Competition
Network and its role in all this.

MS. PURCELL WHITE: Thank you, Russ. I have
felt funny sitting up here because I'm obviously not an
other provider, but did want to touch on briefly the
ICN's work in technical assistance.

For those of you who don't know, ICN has a
competition policy implementation working group. That
working group's mission is to work on issues of
importance to new agencies. One of the projects this
year that the group is working on is how agencies set
priorities, and then more importantly how do they
execute those priorities organizationally once they've
set them?

The other important line of business in the
competition policy working group has been the subgroup
on technical assistance, which has been very ably
chaired by the Federal Trade Commission, first
Commissioner Kovacic and then Russ Damtoft has been in
charge for the past few years.

This group has benefitted, I'm looking around
the room from a number of you, Eleanor Fox, George
Korsun, and forgive me if I'm missing some of the
others, Danny Sokol. We have benefitted very much from
non-agency assistance.

The main work of the technical assistance
subgroup has fallen into two categories. One is trying
to establish a mechanism to make it easier for case
handlers of new agencies to draw upon the experience of
case handlers in more mature agencies, and the subgroup
set up a mechanism, it's really sort of two forms.

One is more called the partnership model, and as
the name implies, it partners more formally one new
agency with a more mature one. The Federal Trade
Commission is involved in that and their partner is
Barbados. The other mode for facilitating contact of
this type is more informal and what we've been calling
the consultation mechanism.

DOJ is a member in that mode, and basically what we've done is put an advertisement of sorts on the ICN's web page listing the sort of topic areas of what we think we can help new agencies with, and we've designated a point of contact that new agencies can call, and then that point of contact will put the case handler of a new agency in connection with a case handler at DOJ.

Unfortunately, neither of these two models have been used very much or as much as we thought they would be. One of the things the subgroup is working on this year is trying to figure out why that is and trying to improve this line of work. A number of ideas have floated around in that respect.

I think this morning we heard about the importance of personal contact, and it may very well be that these two methods of facilitating communication may be just still too virtual in nature and, therefore, not used as much as we thought.

The other line of work for the technical assistance subgroup has been publishing findings on technical assistance. You all should have these findings in your folder you received when you registered. They are ten findings on technical
assistance that were based on a very comprehensive and quantitative survey that the working group conducted in 2004 and 2005 of 49 recipient agencies of technical assistance.

I'm not going to go into all of the findings in detail. I believe Danny Sokol will address some of this as well as George Korsun later this afternoon. They have studied the data today from the survey in much more detail than I have, but there were a few findings that I thought I should at least point out to the group which I found in particular to be interesting.

On the subject of advisors, what the survey revealed was I think or more or less confirmed is that the quality of an advisor is very very critical to a project's success. What I think was more surprising though was what qualities in particular agencies valued in an advisor, and those were knowledge of the subject area, applicability of the advice and the quality of the materials.

Surprising at least to me was that knowledge of local conditions was really not considered a very important qualification in terms of evaluating the effectiveness of an advisor, though I suspect there's probably some link between an advisor's adaptability and knowledge of local conditions. I don't think an advisor
can be quite that adaptable if it didn't know going in
some of the local conditions of the market in which it's
working.

The other finding that was interesting was that
current or prior employment in a competition agency is
very highly valued by recipients of technical
assistance, both for -- fellow agencies are valued both
because they have the practical experience in
investigating cases, but also because recipient agencies
now have somebody in a fellow agency that they can
maintain follow-up contact with.

The third area that the findings address, which
I think is interesting, which again this sounds obvious
in its broad sense, which is that technical assistance
must be matched to the capacity of an agency. Okay,
that sounds obvious, but some of the details were sort
of interesting, and that is that long-term advisors and
study missions were found to be more effective in
relatively mature agencies and maybe even
counterproductive if introduced too early on in the
stage of development of a new agency, and that
short-term seminars are particularly useful to very new
agencies, and with that I'll close.

MR. PITTMAN: Okay. Do we have any questions or
comments from our colleagues in the audience?
I was very interested in this calendar that OECD has developed. I think we've for a long time been in a situation where we've done a lot of informal coordinating among all our agencies, and I think the ability to coordinate that would be a big benefit.

I wonder if you, Edward, you or Alberto would like to say a word or two more about evaluation. Edward, you mentioned people evaluating programs when you're finished with them.

Have either of you in either the training or in your programs figured out ways to do that beyond was this a successful program? Did you learn from it? Is there more to it than that? Is there more that we can do?

MR. WHITEHORN: I'm not sure there is a lot more. The usual kind of evaluation form we have used quite extensive, and we do as a matter of course ask participants after each event to fill out a form, giving us some feedback on all aspects of the event, from the facilities and the food provided to an individual assessment of each presenter and each panel member.

So I think that is useful, particularly if one can look at a number of events and compare the kind of results you're getting and see whether there's a trend over time, whether things are getting better or worse.
and how perhaps one regional center maybe compares with 

some other venue.

So we do do that, but I think there is obviously 
a clear limit on the amount of weight one can put on 
that immediate response from participants.

We do also conduct once every two years a more 
extensive survey where we send again another form to all 
the countries who participated in our technical 
assistance work over the previous year, and we ask there 
for a more reflective view: After a time, what do you 
feel has been the benefit of attending a particular 
course, a particular event you've put on?

And again those results I think are useful, but 
going much further than that I think is difficult issue: 
How does one actually make an assessment of whether the 
input you're providing is really making a difference in 
the recipient authority? And I think that's a more 
challenging topic. Perhaps Alberto can say a word about 
that.

MR. HEIMLER: Well, as I said these training 
projects have an objective which is political 
objectives, and that is integration to Europe so there 
are objective ways of identifying whether the project 
led to results, and in fact they're written in the 
covenant all the time that is the contract that is being
made between the recipient authority and the giving
authority where indeed all the objectives are being
identified.

And these objectives usually are that the
country would incorporate EC regulations in their
legislation (or better prepare the legislative text for
approval), so this is an objective way of seeing whether
the program was effective, but also there have been many
other things that have been put in this covenant.
Unfortunately, we cannot speak of effective enforcement
or good cases since these are not objectively
measurable.

But other things like, for example, improving
transparency, making sure that the web site operates
well, that sort of things have been included as
objectives to our technical assistance programs, and I
think those are objective ways of measuring the results
that have been achieved.

As for programs, seminars, training events and
study visits they are part of the covenant, but they are
just the inputs since you cannot force the audience to
listen to us. You have your privilege to think of your
own things, and this is true also in class or in
seminars so there is no way we can -- or make exams.
Since we dealt with DG Enlargement and DG Enlargement
wanted to make sure that what we said was really learned by the staff of the authority, there have been occasions were they wanted us to make sure that these inputs would indeed translate into better knowledge or better abilities to analyze restrictions of competition. We could not give exams, so these training events remained among the objectives of our programs as such.

There are things that you can measure; other things you cannot measure, and in the case of training you measure just the input hoping that you had listened too.

MR. PITTMAN: Okay. Thank you, Alberto. Shyam?

MR. KHEMANI: In the World Bank projects, we have monitoring and evaluation indicators, and we have to indicate the success or lack of success of a project which so what is the impact? So let me give you a few examples.

When it comes to addressing systemic issues on competition policy, for example, broad competition policy, which is, say, the time it takes to register a company, the number of procedures that are involved, the cost of licensing -- we monitor that. And when the number of procedures gets reduced from 12 to 3, the number of days gets reduced from 175 to a hundred, and then the target being Canada, United States -- not
United States, Canada, New Zealand where it's two days and in the U.S., it is five days, and then we sort of say, Are the countries moving towards that?

Another measure of impact we use is that if we have been doing sector specific work like we did on telecommunications in many countries but particularly in Costa Rica recently, have the recommendations of the studies been factored into the telecomm policy of that country or not? And there we could say quite categorically that they have been.

Another indicator of impact is on the rice sector study, the competition agency was able to mobilize the findings of the study and support a constitutional challenge to the government for creating a monopoly supplier of rice in that country -- so those are the kind of tangible benefits.

We find that when we do that, we start getting support from the general population for competition.

MR. PITTMAN: Thank you, Shyam. We need to finish up. John, is it very quick? It needs to be very quick or we'll have no time for lunch.

MR. JOHN HOVEN: Do you find that the obstacles to pro-competitive policies are more frequently a lack of knowledge and understanding about how markets of competition work or more frequently problems of
incentives and interests that are opposed to pro-competitive policies?

MR. KHEMANI: Is that addressed to me?

MR. JOHN HOVEN: Yes.

MR. KHEMANI: Well, I'm not of that school where I feel that in developing countries there is a lack of knowledge about how markets work. When I was a teenager and someone in Moscow wanted to buy my Levi jeans off me, I knew that markets worked because he wanted my Levi jeans. I just refused to go back to the hotel in my underwear.

When I saw gasoline being sold under a bridge in a black market, I knew there was demand and supply, so I don't believe in that school of thought.

Where I do feel that there is an issue in developing countries is vested interest, and so in Brazil, when the beer mergers were taking place, you found Ambell wrapping itself in the Brazilian national flag and talking about how many jobs they create and so on and how many sports events they support and, therefore, one should not allow a foreign firm to take over that beer company.

That's where the waters get very muddied, and that's where education and knowledge and pointing out the advantages of competition become critical for
institutions like ours.

MR. HEIMLER: I just wanted to say that the enemy of competition is never monopoly. This only happens in the university textbooks. The enemy of competition is always something else, security of supply, stability of markets, employment, whatever, so that's the problem. Everybody understands that competition is a fight for monopoly. I don't think that's ever the issue, not in developing countries nor in developed countries. What is not understood is that monopoly is bad with respect to all these other objectives.

MR. PITTMAN: Anne?

MS. PURCELL WHITE: I just wanted to talk a little bit about coordination. I just wanted to add a thought. This is not related to your question, John. Sometimes, and this has come up in ICN and it has come up in UNCTAD.

There are proposals to basically have us providers divide up territories for technical assistance essentially, and saying -- you asked why don't you focus on Central and South America, this country focused on Europe and Asia, you focus on Asia -- and I'm very much in favor of coordination.

I'm very much not in favor of that type of
coordination because I think implicit in proposals like that and sometimes proposals to coordinate our efforts is the suggestion that duplication is in and of itself a bad thing, and I don't think that's necessarily true to the extent, for example, that the U.S. agencies and Alberto are delivering consistent messages, I think that may very well be a reflection of consensus on an important issue and that's important to hear.

On the other hand, I once heard Graciela talk about how she had to devote one person full time to just managing multiple providers. That's an issue. But I do think that it's for the recipients to say who they want to hear from and how many of them they want to hear from. That's all I have to say on coordination.

MR. PITTMAN: Thank you very much. I think we really have to end so we can have lunch. Thank you all very much for a very interesting panel. I appreciate it.

(Applause).

(Whereupon, at 1:03 p.m., a lunch recess was taken.)
MR. DAMTOFT: Good afternoon, and welcome back. This is always a difficult position on the agenda to be right after lunch. So we will do our very best to keep everybody awake.

This morning we've talked about what the agencies have done in the past. We've looked at consumer protection work and what efforts have been done
in technical assistance around the globe. This afternoon, we have to talk about what the needs are because if we're going to talk about technical assistance, we have to think about what needs it is that we are trying to fulfill.

Talking about needs in technical assistance is a huge topic. If we were to break it up into a couple of pieces, we would look at what needs to be done and where should we be doing it. Now, we can look at that from a number of different perspectives. One is from the point of view of a recipient agency.

Another is from the point of view of businesses that are operating around the world and that are going to find themselves interacting with a competition agency or perhaps dealing with anti-competitive conditions.

Another way to look at it is from the point of view of economic development and yet another is from the point of view of U.S. government. Any one of these could be a panel by itself, but we are going to endeavor to try to compress all of this into 75 minutes. I am enthusiastic about the chances of success because of the quality of the panel that we have before us.

Again I'm Russell Damtoft. I'm in the Office of International Affairs at the FTC. Moving from my right is Angel Lopez, who is the Director General for Planning
and International Affairs at the Comision Federal de Competencia in Mexico, and Russ Pittman, who you met earlier, with the Department of Justice, director of economic research and director of international technical assistance in their economic analysis group.

To my left, your right, is Nick Klissas, who is with the U.S. Agency for International Development. He is an attorney, and he has been the point person for most of USAID's work in the competition policy area as well as other economic growth areas.

To Nick's left is Eleanor Fox, who is a professor at the New York University Law School. She is a very astute observer of developmental issues involving competition policy and many other topics. She is well published on the subject and has herself been a provider of technical assistance in a somewhat different capacity from what we do at our agencies and in many countries around the globe.

Moving to the next spot is Stan Anderson, who is senior counsel to the President and Chief Executive Officer of the U.S. Chamber of Commerce. He's also currently chairing the Chamber's effective effort on global regulatory cooperation, and in the far left position --

MR. RILL: Unusual spot. I'm not usually
positioned here. I feel like Huckabee at the Reagan Library debates.

MR. DAMTOFT: -- is Jim Rill who comes at this issue from more directions than we have time for today to even introduce him. He's currently a partner at the Howrey law firm. In that capacity he represents clients who interact with competition agencies around the world.

He was the Assistant Attorney General of the Antitrust Division at the time that our technical assistance program was founded, and I think he can quite properly be called one of the founding parents of the program. He was a cochair of the International Competition Policy Advisory Committee.

So I think we have a good group to talk about these issues. We're not going to approach through formal presentations, but we will try to make this as much of a conversation as we can. The first question I would like to take on is really from the point of view of a newer competition agency or a middle aged one, what is it that's needed? What does the agency itself think are its needs for assistance from outside?

And I would like to turn first to Angel Lopez to hear your take on that.

MR. LOPEZ: Thanks, Russ. Thanks for having me here today. I'm not sure 14 years qualifies as a middle
aged agency, but I'm not really sure. What I can tell you is that needs evolve as an agency matures. I haven't had the opportunity to actually experience firsthand a very young agency, but I've had some experience advising some very young ones in El Salvador, in Honduras, in the Dominican Republic, which indeed are very young agencies where pretty much everything needs to be done, from the institutional setup, to the way you organize internally, to very basic training on specific techniques and handling of evidence.

So for very young agencies, whatever they can get in terms of technical assistance is useful as long as it's done in manageable chunks. I found if you get too technical, if you get too long-term, then the absorption capacity is just not there. So you have to do it in a way that keeps it in very manageable bites and does some very basic things.

As an agency that matures, then some of it just stays because the Mexican experience is that you have a very high turnover, which is pretty much structural I think. Alberto Heimler was talking a while ago about how badly officials are paid. Some of that is inevitable. The private sector in our countries will always pay more than the public sector, so you'll have
to live with a lot of turnover. That means that you'll
have to retrain and retrain people as time passes, and
that part stays pretty much constant. It increases, I
believe, in terms of facilitation and of the degree of
detail, but some of it is just cyclical.

But there are things that kind of come with
evolution as an agency matures, and one of those is that
advocacy within the jurisdiction becomes more and more
key as you have the basic plumbing sorted out. That
means a relationship with regulators, a relationship
which is crucial with judiciary, and we've been working
on that for some time now with the support of the FTC
and the DOJ, so you have to reach out to new audiences.

You have to reach out to even consumers and to
public opinion because I agree that people understand
the basic market mechanism as long as they're involved,
but if you talk about policy issues, that jump is not
always done in developing countries. So you know what
you're supposed to pay for something, and you know that
supply and demand are there in your basic everyday life,
but if you take the jump to policy, it's not always that
clear for the people in the street.

So as an agency matures, you have to focus on
that more and more, and there's the legitimacy that can
be provided by outside voices via technical assistance.
That can be very useful in getting that message across, so that's what, with the very limited time available, I would like to say about that issue.

MR. DAMTOFT: Jim, you've been involved in this from the early stages. What do the needs look like from your point of view in the newer agencies?

MR. RILL: One of the basic questions you're asking is do they evolve over time? And the clear answer to that is, yes, they evolve over time, but at the very outset in our experience one needs to deal with literally: What is the role of an agency within the framework of the economic and political structure of the country involved, which varies of course from nation to nation?

And some of the basic questions that arise in a newly created competition regime is: What am I doing here? I do remember I think on a trip to one Eastern Europe country in 1990, we found that the staffing of the price fixing board was immediately transported over to be the staff of the competition agency, which created some vast need for retraining.

I think that something so fundamental and basic as assistance and advice as to the role of competition, not theoretical or too technical, in the context of the national economic and political structure is the first
step, and that leads to work on things like framing legislation and some sort of converged notion of sound economic thinking, institutional advice.

We never suggest there should be two equally general jurisdiction competition agencies existing under the same umbrella, I wouldn't want to talk about that today, but we do suggest that there is the need for some level of independence and independent review, preferably judicial review in framing the legislation.

I think Angel makes an excellent point in saying there should be counsel on relationships. Certainly relationships and advocacy function between the agency and other instruments of government, particularly when one is devolving from a command and control economy, and the vestiges of state control are still working abroad, and assistance is needed there.

It's no secret that we have some scar tissue in the U.S. in that vein, but also relationships with the private sector. Those are, if you will, the customers of competition policy, and I think that there hasn't been enough of the endorsement of that type of relationship or its importance.

Even indeed, discussion of possible press relations. I remember when we were involved in the structural competitive talks with the Japanese, that the
chairman of the JFTC was always saying, "well, how do
you deal with the press?" Well, we said, "very
carefully," but the point is that that's a mature agency
that's existed since 1947 and that's still struggling
with that particular issue.

I think Angel's point is very good about not
getting too technical too soon, but I think as many
speakers this morning indicated, the sooner that one can
get into hands on long-term assistance, the better the
assistance and cooperation is going to be. So those are
some of my thoughts as to your first question, Russ.

One other point: As part of the general overall
approach, I think it's very, very important to say don't
use antitrust for anticompetitive purposes.

MR. DAMTOFT: Russ, you've been doing this from
the very beginning and have probably been to as many
places as anybody. What's your take on where the needs
are?

MR. PITTMAN: Well, I only have a couple things
I guess to add to the excellent remarks already. Both
of my predecessors here have mentioned practical advice,
and I think that's one of the first things we noticed
was that even in the agencies where the staffs had been
price controllers, whatever the staff's background was,
it seems like they had had a fair number of lectures on
how cost curves are drawn and what's wrong with
monopoly, and maybe not enough advice on what you do
when you get to your desk in the morning and there's a
merger case or an abuse case, and I think that's
something we were able pretty early on to successfully
get involved in.

We started working on it with these hypothetical
cases, and I think maybe Craig's pickle merger was the
first one that we ever did, and it was very successful.

In terms of the -- in terms also of the
background of the staffs and the focus of the staffs, I
think one of the very useful functions we performed and
still perform is to try to focus people both at the
management level and at the staff level on the idea that
competition is a process rather than an outcome, and
that if the market works well, you don't need
bureaucrats trying to figure out if the prices are right
or the profits are right.

Of course it's a temptation we're not immune to,
and I think in many of the countries we work in, they're
not immune as well to thinking, gee, let's make sure
that all these outcomes are right rather than having the
confidence that the competitive process will take care
of itself. I think that's something that we've tried
hard to share.
MR. DAMTOFT: We also think about assistance to a competition agency as Shyam alluded to earlier, as being part of the development agenda. What is it that helps bring a development economy into a functioning market economy and that's really part of the purview of the USAID's assistance program, and, Nick, where do the needs tend to be from your perspective?

MR. KLISSAS: Well, competition policy, the kind of work that we ask our friends at the FTC and the Department of Justice to do for us, fits into activities that we call the business enabling environment. (By the way you guys do an excellent job, thank you very much!)

I work in the Economic Growth Office of the Bureau of Economic Growth Agriculture and Trade as a commercial law reform advisor. I have worked on issues like commercial laws, trade liberalization, and the micro economic policies of countries.

USAID has focused on economic growth issues for quite a number of years, particularly since the break up of the Soviet Union and the fall of the Berlin Wall too.

So in terms of the business enabling environment, the things that we look for in our commercial law methodology are four things. One is property rights. That's something that the noted Peruvian economist Hernando de Soto has trumpeted: The
idea that if people can only obtain secure title to their property, they can at get better access credit, make them feel more secure in their households, and better enable them to pursue a better livelihood.

Another thing is what we call the sanctity of contract, that is that contracts are enforceable in courts. It means that individual engaged in business can have some predictability that if they go to court, their business agreements with others will be enforced.

A third thing is something that we call business rights. This means that people have the right to go and start up their own business, to become entrepreneurs. This is an area to which competition policy applies. To put in other terms, competition is meaningless without the possibility of other firms, other businesses, have a right of business entry.

Countries need to become more competitive. They need to engage not only in domestic commerce but international commerce, and if you limit people's ability to form businesses, to compete against other businesses, these countries then lose out on the ability to be competitive.

The fourth thing is dispute resolution. I mentioned that already when I talked about contracts. I'm somewhat saddened to say that competition policy
doesn't typically come up in the typical economic growth officer's sort of list of priorities that he or she should be examining when they're out in the field. Unfortunately, many of our USAID counterparts in field missions lack an economic growth background. Fortunately, however, they usually refer questions that arise on these issues back to us in Washington, D.C.

Competition policy will come up usually in the form of maybe a direct government-to-government request, whether to USAID mention or to FTC through the International Competition Network.

I would say that the importance of competition policy work becomes more pronounced the more economically advanced an economy becomes.

There is an anecdote, and I'm not sure if it was FTC origin or not, but the Egyptians wanted to start a competition policy agency maybe about 15 years ago or so. Once it was established, people were asked why it wasn't working, and the head of that agency said it was because there was no culture of competition. The point is we had to encourage a culture of competition in society in order for these concepts and these institutions to take hold.

I think we'll leave it at that.

MR. DAMTOFT: Eleanor, you've written and
thought a lot about development issues. Where do you think our competition fits into that?

        MS. FOX: Yes, thank you. First I feel have to be humble in the presence of this audience, which includes such people as Shyam Khemani and Bill Kovacic, who have done so much work in this vineyard, and I'm really trying to build on their ideas.

        Secondly, partly repeating Shyam and partly repeating Nick, competition law is a tiny, tiny piece of good market policy for developing countries. Developing countries have such immense needs, from medicines to infrastructure to chipping away at perverse and pervasive exclusionary regulations.

        Competition policy, and for many countries competition law, has done wonderful things in opening markets, creating opportunities, helping consumers lower prices and more choice, priming economies to grow. There are daunting challenges, however, in many developing countries, especially those at the bottom end because they have huge political obstacles and huge lack of will, corruption, cronyism, if not perpetual civil war.

        I have just read the book, by Paul Collier, "The Bottom Billion: Why the Poorest Countries are Failing and What Can be Done About It." The book is about 50
countries at the economic bottom, which comprise one sixth of the world's population. Some have competition laws. Some ask for technical assistance.

Collier is skeptical that technical assistance to these countries, of any kind, can work at all until much deeper problems are solved. This is, however, he says, a window of opportunity, perhaps when the country gets a new leader, in which assistance can "take" and be meaningful. My lesson is by no means to forget the bottom billion. The book has impact in both putting antitrust in perspective, poignantly calling attention to context, and underscoring that there are windows of opportunity. As to the last point: Do our decisions as to what missions to take and when to take them match the windows of opportunity? I suspect not. Can we do better?

As to context and attention to beneficiaries needs: I have been stuck by the vision of Hernando de Soto and much of the work of the World Bank (Shyam Khemani, Mark Dutz and others) concentrating on breaking down the huge state barriers that keep the masses of people from participating effectively in the economy. In my article, "Economic Development, Poverty and Antitrust: The Other Path," in the Festschrift Symposium for Lawrence Sullivan, I propose concentrating also on
the other side of the coin: Breaking down the barriers
placed by commercial market actors (this includes SOEs)
that disenable the people from effective market
participation.

These nations need as a priority, to build
ladders to economic mobility and participation on the
merits. An integrated economic policy would
conceptualize, together, perversely restrictive
sovereign and commercial restraints.

I think this concept echoes some of the
sentiment in the remarks that Nick Klissas has just
made.

MR. DAMTOFT: Angel, standing back from the
needs of the competition commission itself, but looking
at the developmental interest of Mexico or countries
like Mexico, where do you think -- what do you think the
world would play in that and what you need to fill in?

MR. LOPEZ: It's a bit like the old saying that
if you have a hammer, that everything starts looking
like a nail, but at least for the countries like the
states in Mexico, I mean, countries that are past the
very basic stuff but still not quite there yet, what I
feel and perhaps this is more Latin American than
anything else, but there is a certain tiredness with
market reforms, people saying: This is just not
We've been at it for 15, 20 years, and income distribution is the way it is and our competitiveness is dropping and where's my piece of the pie. It's a very valid point, and it's potentially a tragedy in the sense that we have not really had real market economies yet. We've been selling them for 15, 20 years now, but the process of reform hasn't quite reached the stage where it starts to really click in many sectors.

I was making the distinction in Mexico between the economy that is -- the part of the economy that is subject to all sorts of competition via foreign trade, and that's a part where you can -- I mean, if you went there as an American, you would recognize the way it works. It is a market economy, and then you get to the other part where the non-tradables are, where the services are and so on, and that's not a market economy in many ways because there is no source of foreign competition that has revolutionized the rest of the economy.

So my very personal point would be that if you don't have a very vigorous competition policy, if you don't really bring about deregulation competition because those two in this kind of country tend to go very much hand in hand. Many of the obstacles to
competition are related to faulty regulation. Then you can't really speak about a market economy. You run the very real risk that you discredit the whole idea of reforms that has been carried out with stops and starts and very much effort for the past 15 years if you don't add to the mix a very vigorous competition policy, at least for countries that are broadly at Mexico's stage of development.

That's one of the things that's -- well, you have to try and get across to the general audience in your country. It's not very easy to do, but it can be done, and I think it should be done and again if there is outside help on that, that's very useful for competition authority.

MR. DAMTOFT: Stan, your members are down in developing countries all the time. What do the needs seem to be from your perspective?

MR. ANDERSON: Jim, you and I can share this I suppose.

MR. RILL: I suspect so. We're both on the extreme left.

MR. ANDERSON: I wanted to see maybe if I could take a little different perspective. I don't disagree with anything that's been said, but obviously from the business sector, the need for a strong domestic economy
is obviously important in order for us to sell our
products and our goods and services, but it seems to me
also one of the aspects that need to be -- that needs to
be examined in addition to kind of the aspect of
competition policy per se is the element of -- and the
combination with respect to trade policy and regulatory
policy.

As indicated earlier, one of the things that I'm
doing at the chamber is overseeing a broad based effort
to try to look at this whole issue of international
regulation, and it seems to me that those elements are
all three interrelated in any kind of effective
technical assistance program.

So I want to talk later about some of the
specific elements of that, but it seems to me that we
have to look at these issues in a much broader
perspective than just competition policy or just trade
policy or just regulatory policy.

MR. DAMTOFT: Okay. Russ, did you have a couple
points?

MR. PITTMAN: Two quick points. Stan mentioned
regulatory policy. I think one of the very useful
things that competition agencies have been able to do in
many countries, in many developing countries is work on
the restructuring of the natural monopolies.
We have played a big role and the agencies have played a big role in helping governments figure out how these big old state monopolies can be restructured to get greater efficiency and to get competition where possible.

I also just want to respond to something Angel said. I think we've missed -- and maybe this is what Angel is saying as well. I think we've missed a great opportunity in Latin America in the last 10 or 15 years. We had this wonderful Washington consensus that had all these things that economists loved about liberalizing and privatizing and so forth.

There's very little in it about how to make sure that the poor got their share of it, and I think it wouldn't have been too hard and maybe it's too late and maybe it's not. I want to echo what Shyam said earlier today. I think we have a real role to help make sure competition policy and competition agencies focus on areas that help the population, that help the poor, that make sure the liberalization -- the benefits of liberalization are going to be shared because otherwise it gets a bad name.

We're just helping -- we're just maybe helping local businesses get more money but we're not helping the citizens.
MR. DAMTOFT: Nick?

MR. KLISSAS: I would like to add just two points, and it's really relevant to what Russ and to what Eleanor just mentioned, and that is that one of the things that we're attempting to do at the agency is when we look at the business enabling environment, we're not just looking at people that live in capital cities -- not just merchants or urban dwellers -- but we're also looking at people in rural areas -- the farmers.

And there's a lot of evidence that many farmers in Africa are subject to the vicissitudes of oligopolies or cartels. For example, there might be only one authorized fertilizer supplier for a region. Any you can bet that if there's only one, those prices are really high.

Similarly they may need additional consumer protection, which is not measured in our global business environment surveys. I think it's really important that we kind of dig into this kind of stuff.

The Washington consensus as a development formula was fine as far as it went. But from my standpoint as a commercial law reform expert it didn't deal with the difficulties of starting a business and all the other regulatory hurdles or costs associated with running a business.
They just said lower your tariffs, privatize, stabilize inflation, and presto you have a market economy. Well, we later found out that, no, we don't have a market economy if you only do those things. You have to go the extra mile and look at the business enabling environment, and competition policy is part of that.

MR. DAMTOFT: I want to come back to you, Stan, for a moment. Businesses are a key user of the system in many ways of competition enforcement systems, both as complainants and occasionally as objects of enforcement activity. Where do you think from that point of view the needs ought to be or how do you think the needs ought to be viewed from that perspective?

MR. ANDERSON: First let me make an overall comment that since I've been increasingly involved in these issues, I've been struck by, at least from my perspective, the lack of kind of a long-term consistent strategic approach to the kind of issues we're talking about, and I'm going to talk about funding later because I think that's an important element.

But it just seems to me that from what I can see, a lot of these things are very ad hoc in their nature, and we need to have a longer term strategic approach to the kinds of issues.
So what does business look for? First I think consistency across jurisdictions with respect to competition law, it seems to me to be extraordinarily important. Businesses, if they know what the rules of the road are and they know how they're going to be applied, they can operate effectively, so it seems to me first of all consistency across jurisdictions.

Second, it seems to me there's an increasing concern about industrial policy and competition rules and regulations being used to enhance particular countries' industrial policy, and so I think it's necessary for our programs to recognize that that's the case and deal with it as effectively as they can.

As part of that, it seems to me it's important in whatever sets of program that we're actually talking about to make sure that we have a broad based approach. It seems to me that it is fine if we're just dealing with a regulatory agency in one country or another, but that may not be where the ultimate decisions lie.

And so it seems to me that we have to have a broader based approach to what we're talking about to make sure that those who actually make the decisions in any particular country are the ones that are actually benefitting from our technical assistance activities. We can provide all the technical assistance in the world.
to foreign regulators, but it will not matter if those
regulators are trumped by higher ups in government who
are looking to push an industrial policy.

Finally, I think again from our perspective,
there's increasing concern about state owned enterprises
and their effect on the marketplace and on the economies
in all kinds of countries, but particularly in
developing countries, and it seems to me that our
existing agencies don't really have a lot of expertise
in that area. Europeans perhaps have greater expertise
than we do, at least with respect to the subsidy side of
that.

So I think any kind of longer term program needs
to recognize that state owned enterprises and subsidies
are an increasing problem for companies operating in
these jurisdictions.

MR. DAMTOFT: Jim, you represent people who do
business in these countries. How does it look from your
end of the table?

MR. RILL: First of all, I think Stan made some
very excellent points, and I agree with everything he
said. In addition, I think that business -- first of
all, once the fundamental recognition of the importance
of the contract rights, rule of law, private rights of
property is underpinning any system. They would hope
that there's an acceptance of sound economic principles and the recognition, as someone once said, that really a competition policy is better than the alternative for the growth and development of business.

They want honest, unbiased, independent review, free of corruption. They want clarity and transparency to understand, as Stan suggests, what the rules are and that the rules are clearly explained and articulated in any determination of outcome.

They want as nearly as possible an efficient operation in the sense of if there's to be a review of a merger or a joint venture or competition practice, that it happened in a timely function, in a timely manner within a reasonable scope and again is expressed in the outcome with transparency.

Finally I want to underscore what Stan also said, that I think business is very anxious to see as much substantive convergence as is possible. Increasingly as business operate across multiple national markets, the frictions involved in efficient business in an attempt to comply with a volume of inconsistent time periods, regulations, approaches it's difficult.

I'm not dreaming that we'll ever have harmonization. That was tried shortly after World War
II and came apart very early on in the early GATT days, because there are national differences, but there's a lot of work that still can be done and should be done towards convergence of competition principles.

MR. DAMTOFT: Angel, if the Commission -- your commission is anything like our commission, you hear from the business community from time to time about what they think about all this. What are you hearing? What would the business community be saying in your country?

MR. LOPEZ: I think at least in Mexico it's hard to talk about one business community. I'll talk about two different kinds of business users that have very different things in mind, and one is business being at the receiving end of enforcement, and there what Jim Rill said about transparency, about predictability, about an independent review that works and that is in and of itself predictable, that's extremely important.

And that's the job of the authority of the commission is to provide the guidelines to give certainty, to be consistent, to try and enhance the technical problems of the judiciary and so on in order to provide that kind of predictability and consistency and transparency.

And that's of course a very important goal for us, and that's one of the things that needs to be worked
on by an authority where technical assistance of course comes in very handy, but there's also a second way in which you relate to the business community, and that's especially for small and medium enterprises that might be suffering from anticompetitive behavior from suppliers or from clients or whatever.

And there the first thing you have to do is create awareness that there exists an instrument for them to solve that problem they're facing to provide avenues for them to actually use enforcement mechanisms that are out there and to make life or access to the systems for them as easy as possible.

And that's also in Mexico a non negligible challenge to actually get the point across to them and make them realize that this might be something they might find useful if they actually used it, and that's also a very important branch of our involvement with business.

When one thinks about business interests in this, one tends to think about the first portion of what I was saying, and also the second portion, especially in developing countries like Mexico. You have to make a significant effort for them to realize that this is an instrument that might actually help them, and also there are significant needs for younger agencies in developing
countries.

MR. DAMTOFT: Okay. I would like to take the panel back to the map, which we saw early on which showed the countries in which we had had a technical assistance activity, since we got into this business since Jim Rill's time in government.

The assistance we have had, especially from USAID and also from TDA has been funded in response to a development agenda that tended to focus on certain baskets of countries. Typically lower income, the "bottom billion" countries I think, but not exclusively. But there may be other interests, business interests or other development interests that suggest that maybe those aren't the right targets, and maybe that we are -- maybe we're not all focusing our efforts in the right place.

And I wonder if there's any thoughts on how our priorities ought to be set from a geographic point of view. Jim, do you have any thoughts on that?

MR. RILL: Not so much from a geographic point of view, but I think certainly there's a certain asymmetry, if you will, between supply and demand in this particular area. I think maybe demand in the terms of need may be somewhat different from where the supply is focused, and the supply being focused in the poorer
and underdeveloped countries whereas the need or the
demand, if I could call it that, may be greater in more
mature jurisdictions.

Let's get rid of the term technical assistance
for this purpose for a second, as Tom Barnett suggested
this morning. Let's call it overall cooperation or
competition cooperation or at least maybe technical
cooperation, listen as well as speak, but in our initial
experience in the former Soviet satellite nations, those
were not underdeveloped countries.

They were command and control economies but they
were industrial economies that were not at the bottom
end of the production sphere other than the fact that
they were hampered by command and control, and I think
the infusion of competition assistance in those
countries was very salutary.

I think another target that may be ignored or at
least not part so much of the USAID notion of technical
assistance are inputs or cooperation in a more intensive
way with countries that are not the U.S. or the EU,
although there seems to be a cooperation there, but
countries with somewhat newer -- let's say middle aged,
if I may, competition agencies where there's a certain
amount of vigor that's been put into the system.

And whether it's increasing activity, I'll be
very open and say areas such as Brazil, which is an increasingly active competition agency, certainly Korea, which is very much involved now in unilateral conduct issues that seem to actually have reached out for advice and assistance on a listen and talk, not command and control, if you will, assistance; Korea putting out a request for quotation on how does the European Union handle unilateral conduct issues.

I think that's an area where wholly apart from the USAID project, technical cooperation can be extraordinarily valuable and certainly extraordinarily valuable for the purposes of the business communities effort to work under a system and world system that moves toward convergence.

MR. DAMTOFT: Nick, what's your reaction to this?

MR. KLISSAS: Maybe I don't have so many hesitations about calling it technical assistance because that's what we call it at USAID.

One great thing to focus on are countries that are just adopting a new competition law and greeting new institutions. It's great if we can get in on the ground floor in establishing the laws and creating the institutions. One example was when Armenia decided that it would establish a competition policy commission. But
what it did was to take the Russian law as a model.
And the Russian law had some provision in it where some
poor soul within the competition policy agency had to
survey the entire economy and figure out which
businesses had more than a 30 percent market share.

And then these businesses would be put on a
suspect list for further examination and reviewed. This
was, needless to say, very formulaic. And what's so
interesting about competition policy to me is it defies
formulation. It's not something that a computer can do.
There's an art to it. You have to look at a given
situation from many different angles. There's an
economist's perspective and there's a legal perspective.

Of course there's a divergence between
countries that need to enhance their business enabling
environment for development purposes and countries where
U.S. business, would like to get additional traction for
their investments. China, for example, just recently
established a new competition policy agency. But
China's not a place where USAID is active because
they've become a wealthy nation. But many people ask
whether we nevertheless be able to provide some kind of
technical cooperation with Chinese counterparts? It
would not only be good for Chinese consumers, but it
will also be good for U.S. investors.
No doubt, the economic welfare of the planet would be enhanced if the Chinese adopted a good competition policy regime. But it's not necessarily something the should come out of USAID's budget.

MR. DAMTOFT: Stan, it seems like you might have something to say.

MR. ANDERSON: Well, Nick, I couldn't say it better myself. Russ, you asked a couple questions, and the first one was what countries the business community are most concerned about today, and I think Jim mentioned a couple of them. I would mention certainly China, India, Brazil, Korea as countries where we think there are enormous problems that technical assistance in its broadest context can really have a significance.

It seems to me that the issue I raised earlier becomes even more important here when we're talking about a long-term strategic plan for some of these countries and the need for resources. My view is there are inadequate resources from the U.S. government perspective being applied to the kinds of issues that we're talking about.

We fully support all of the funding that comes through AID, but as Nick pointed out, there are restrictions with respect to where AID funds can and should be used, and so that's why we made an effort last
year about following the antitrust modernization
commission to go to the Congress and urge them to
appropriate additional funds, new funds, funds that can
be used for these kinds of purposes to both the
department and to the Commission.

We're going to continue to make a push with the
Congress because we think that's extraordinarily
important, and that if we're going to have a long-term
view of these issues, we need to have the kind of
resources necessary to accomplish that.

Secondly, you asked what kinds of priorities
should be used in the development of our programs, and
my sense is that there may be four different elements
that should be looked at when trying to identify
countries in which we should be more active.

First, whether these countries currently misuse
competition policy; second, are there fundamental
questions about the rule of law basic due process and
are there concerns about that? Thirdly, is there a lack
of clarity with respect to the legislation, the
regulations implementing that legislation, or the
implementation of either the law or the regulations.

And finally, certainly from our perspective,
again whether or not there's a multiplicity of state
owned enterprises and subsidies that global businesses
are having to deal with. It seems to me that those are
the priorities that should determine what countries that we're focusing on.

MR. DAMTOFT: Technical assistance or this larger concept that Jim alluded to is something, which is done by a lot of people. You heard from some of us who have done it from the U.S. government point of view this morning. We heard about international efforts later this morning, but we also know there are people involved in this from the private sector and from academia.

I wonder if we could focus for a moment on what extent does U.S. government assistance meet the technical assistance needs that we've addressed, and to what extent should the private sector in the academic sector be involved in providing technical assistance, and what are the relative strengths of each?

I think I would like to ultimately run the table on this one, but let me start with Russ.

MR. PITTMAN: Well, I think the short answer is all of the above. We need all of the above and all the perspectives that all of these people can provide.

If there's one thing that the government agencies can do better perhaps than anyone else, it is something that Anne Purcell White referred to earlier
this morning, and that is the establishment of long-term relationships, the following up on individual events, the development of long-term consultative relationships with agencies.

I think that one of the ICN survey results that maybe Danny is going to talk about later is that this is one of the things that makes technical assistance most effective, and I think certainly one of the things we found is that if we've done some events in a country, maybe we've had some long-term advisors, these things are all to the good, but really the best thing over the long-term is if Csaba and I have each other's Email addresses and phone numbers and call each other when we have questions.

And I think that that's something that the government agencies can do maybe better than the private sector agencies, partly because if I leave my job to somebody else, maybe not named Russell but maybe named Russell will take my position, and they'll be getting the calls and providing the answers.

So I think that's a real strength. We have some other strengths. We bring also the direct focus that we are enforcers and you guys are enforcers, and that's a perspective that we can share, and we certainly have very easy access to a wide range of experts and
MR. DAMTOFT: Okay. Jim, let me go to you on the private side.

MR. RILL: Well, I don't think there's any disagreement but that the private sector has a role to play in the cooperation technical assistance programs, and it's stated at page 6 of the FTC-DOJ report on this program.

I mean, after all, the private sector at least from the business side is the principal customers of competition policy, the principal users and pay user fees in the process, and it's important to have -- as in any public administration course will teach you, it's important to have the consent of the regulated for an effective regulatory program, and for that reason it's important to have the private sector play an intensive role in the development formulation assistance of the competition policy program.

And I think the private sector brings a different perspective than that of the enforcement agencies, not more important but certainly important with perhaps a better sense, on line sense of what's actually workable, what actually would be the effect on the frictions within the actual operating business -- community business segment of the economy, what would be
the more efficient result from the standpoint of the
users and how can that be brought about?

Well, I think in a variety of ways. First of
all, there has to be trust both ways, and I don't say
that as a platitude. I think there's a problem out
there that exists not in the United States, not in the
European Commission so much, but I sense in my travels
that there's not always the greatest degree of
confidence between the enforcement agency and the
business community, not to the same extent that it, well
frankly, exists in the United States, and I think that
has to be something that needs to be fomented.

I think that the provider governments can help
in stimulating that attitude. There are a variety of
things that can be done. The private sector can
participate in specific workshops, especially those
dealing with hypotheticals. There can be more
generalized programs, symposia, round tables that the
private sector can promote and work with -- work
cooporatively as we do in the United States with the
enforcement agency.

There can be internships which is a situation in
which somebody from the agency would go into the private
sector. We do that here. We've had people in our law
firm on internships from developing and more mature but
still relatively new agencies. A number of law firms do that, that type of internship and then a return to the government. Working on the confidentiality issues of course can be very challenging.

Angel mentioned this morning, not this morning but a few moments ago, that there's a turnover within the agency because of the perhaps more remunerative climate in the private sector. I would say you could work that the other way. Recruit from the private sector for responsible jobs within the agency, even if the person is only there for two years. Many people do that or three years. Many people do that here.

It's a bit of a revolving door, but I think it provides both the agency and the private sector with the cross fertilization of ideas and expertise, and also can build more of the climate of trust that I think is critically important.

Those are just a few points I think that would enhance the role of the private sector and I think enhance the efficacy of the entire program.

MR. DAMTOFT: Angel, how does this look to you?

MR. LOPEZ: A couple things. One, I have to completely agree with Russ on the great benefit of having a day-to-day, pretty intensive relationship among the government agencies, and that's perhaps the most
important long-term outcome of a technical assistance
effort, building that kind of personal relationship
where you can pick up the phone and just ask questions,
provided that the whole waiver thing and so on is
handled.

The point is building a long-term relationship
that is based on shared goals, shared understanding of
things, and that makes it very worthwhile for -- it's
one of the points where a newer agency derives most of
the value from the technical assistance, so that's one
of the things that I agree, it's probably just possible
to do that with another government agency but it's
extremely useful. That's one of the things that should
probably be aimed for consciously when setting up
technical assistance programs.

On the role of the private sector, I agree with
Jim Rill that there is, especially in developing
countries, a large degree of mistrust that has to be
overcome on both sides, but it's not very easy, and I'm
not sure that I can provide any easy answers for us as
to how that should be done.

Some of the things like interrelationships and
things likes that make a lot of sense to me. We've been
trying to get that revolving door working the other way
around. It's pretty hard. Somebody who is in a
significant position in the private sector has to take such a pay cut in our countries that he would have to be Mother Teresa or something to do that, and there's a short supply of that in law firms.

Maybe there are some things that the private sector, perhaps not -- perhaps one step removed via some kind of NGOs or something that the prospect brings to the table, and that's an agility of response that's just not possible to achieve for government agencies that are hampered by a lot of bureaucracy and paperwork and that kind of stuff.

One of the things that one faces when one receives and is very thankful for technical assistance is that there's a huge degree of paperwork involved, and maybe that makes sense for longer term programs but not so much for short-term put out the fire kind of efforts, and maybe that is one area where -- and I'm just talking off my head here -- where one could explore more involvement by the private sector without as many bureaucratic strings attached to get into the technical assistance effort that way, and that could be even a way of building some trust that could be used in ongoing efforts.

MR. DAMTOFT: What's the view from the ivory tower, Eleanor?
MS. FOX: Thank you. I want to precede that view with a word more on what is it essentially that the recipient needs.

Very often they need an reorientation into a frame of mind regarding what the competition project is and why competition is os immensely important and useful to them and their people; they need to understand competition and competition law as a means to help markets work and not to protect firms from it. If they don't want that, then maybe the technical assistance is just not going to work, but if they do, they are half way there. The technical assistance should be tailored to them, including their resources and their capacity to absorb. At least those that are newer, younger and least mature, may need something simple and translatable into language and concepts that they can use; information and examples that are sympathetic to their understanding; that resonate with them, and therefore can usefully be left with them.

So, okay, now I'm going on to who should provide it. Well, I mean I agree with what Anne Purcell White said earlier, that there should be a diversity of sources. There are so many kinds of assistance, some that I/we haven't yet mentioned.

Barry Hawk, I want to claim that you were the
first provider of long-term technical assistance to the European community in the early 1980s when you spent a year there. That was a point at which they needed and welcomed collegial assistance, from a wise, sympathetic academic, practitioner. Barry knew our law. He knew their law. He knew their context. He knew how to bring lessons from abroad to the European framework and culture.

Now, in this new era of a hundred antitrust jurisdictions, Barry, Andreas Reindl, and Fordham Law School are providing tailored training programs for the competition agencies, and for the competition judges which is extremely helpful.

There are also private sector providers of assistance such as economic consulting firms who often get funds from USAID. They assemble programs for long-term assistance. And then there is "my" model, which is opportunity shared especially by academics. We are invited to various jurisdictions, have many informal conversations, give lectures, visit the universities and try to inspire competition curricula, try to get to know our hosts, to understand what the problems are and how to help to suggest frameworks for addressing them.

This is more personal. It's not institutional at all.
MR. DAMTOFT: Nick, USAID has experience with both government providers of assistance and private sector providers. How does this look to you?

MR. KLISSAS: Well, certainly this is a multifaceted sort of problem that we're looking at, and it gets into issues of what I might call legal culture. What sometimes eludes us but is nevertheless very important is what is the mindset of people? Many of the countries we work in, have a civil code of tradition. But it's not so clear to us whether the difficulties we face in promoting legal reform reflect fundamental issues stemming from the civil code tradition itself or whether it's something else, like a tradition of bureaucratic centralism that we find in countries like France. Our experience is that those countries with a civil code tradition also have government agencies that want to enforce their writ and regulations, instead of being more customer service oriented. That's a lot different from the scenario I'm hearing around the table, and what Jim mentioned earlier, which was that in this country the regulated actually support the regulatory agency. This appears to be the best sort of environment to be in.

This is a paradigm shift from imposing government will. So we have a challenge before us of
how to use the private sector in developing countries in order to further a culture of competition. If we can do it, then that's a great way of moving forward.

On the other hand, there is also another fundamental challenge in our legal reform problems that we should face. That is how do you actually go about institution building, especially when you are trying to assist a competition policy agency that's just getting off the ground? Certainly nothing works better than having people that have actually worked in an organization like that and know how to establish administrative processes, how to develop the relationships that have to be developed with other agencies and parts of the government, like the judicial branch, the legislative branch, and if it's an independent agency, the executive branch.

MR. DAMTOFT: Stan, last word on this topic.

MR. ANDERSON: Thank you. I've actually never thought of Jim Rill as Mother Teresa until recently, but we're very appreciative of your two years.

I agree with everything that Jim had said so I don't want to repeat that. It seems to me that the business community and the private sector, which is what I think it's more important to talk about, so whether it's business community or academia or think tanks or
all of the related private sector organizations, all of
those need to be, in my view, much more active than they
have been in the whole technical assistance.

Certainly one of the things that we're trying to
do is to encourage the business community to be more
active. An example of that was last year as China was
finishing up developing its AML law, we had a group of
legislators in town for several days in cooperation with
the Commerce Department and walked them through a series
of meetings, and they went out to the valley in
California and spent a week there getting hands on
training with various companies.

It seemed to me that that's the kind of activity
that the business community can very readily engage in.
It is less bureaucratic. It requires less paperwork,
and frankly I think the resources available for that
kind of thing are greater and can be used and maximized
I think even more than they have been.

MR. DAMTOFT: I have one last specific question
I want to pose, and hopefully we can give pretty quick
responses, which is: We've heard about the tools that
both agencies and private sector providers have brought
to bear in the technical assistance arena. How well are
those tools meeting the needs which we've identified?

Angel?
MR. LOPEZ: Well, I have to say that it has been extremely for us -- and for this question I can speak of nobody but ourselves, but it has been extremely useful. We found that the efforts that have been made are very applied, which is extremely important. It's not, at least for an agency at this stage of life where we are, you have to go beyond the recipe, the checklist and go to make an effort, I mean, and tailor your message to the audience.

And I think that has been extremely useful. The flexibility that's been brought to the table is also extremely useful. What I was talking about a moment ago in terms of building a personal relationships -- personal is perhaps not the right word, but relationships that go on independently and beyond the specific technical assistance effort.

That's perhaps the most important take away for the receiving agency, and one other thing that has been extremely useful for us specifically in the interaction with the FTC and the DOJ is it's opened doors for us in other institutions, and I'm speaking here specifically of the development bank, and I think that's one of the things to keep in mind going forward; try and not only get accomplished what you set out to do, but provide ideas on further steps for the agency, that might or
might not be provided by the same let's call it donor.

Pointing an agency in the right direction to get
some additional technical assistance is I think one of
the things that could provide most value in terms of
what was said here before of providing a more long-term
perspective on that, and I think that has been extremely
useful for us too.

MR. DAMTOFT: Okay. Russ, how well do you think
we've matched what we do, and by we I mean all of us, do
towards where the needs are?

MR. PITTMAN: Well, we've learned a lot in 15
years, and I think we've improved at least. As I said I
think the hypotheticals that we used have been very
valuable. We've developed more and more of them over
the years. I think they've gotten better. They've
gotten to wider issues.

I think the first ones were very good, but I
think we've spread to a lot more, and I think those are
going to be one of the great legacies we leave, partly
to help people learn their jobs, learn what we do, and
partly as a train-the-trainers exercise, both between
agencies and within agencies.

As an economist, I think I would say that I
think in my experience we've done a pretty good job in
sharing economic tools. Obviously we don't -- we don't
expect agencies in developing countries to be estimating demand equations, but the economic way of thinking can be a very important part of competition law enforcement, and I think we've done a pretty good job of sharing the ideas behind things like cross elasticities of the demand and critical loss analysis and tools like that.

Finally, I think we've done a pretty good job of sharing our experience with competition advocacy, and I've heard you and I've heard Maureen Ohlhausen and I've heard a lot of my DOJ colleagues, and I think our experiences with competition advocacy, whether it's with advertising restrictions or natural monopolies restructuring, whatever it is, I think our experiences have been very valuable and instructive for our partners in other countries, and I think we've used those well.

MR. DAMTOFT: What do you think, Eleanor?

MS. FOX: I agree, Russ. I'm going to phrase the question a negative way and say: How have the tools not worked here? I want to repeat that great phrase of Angel's, which is "Beyond the checklist." We must go beyond the checklist. I mean really, conceptually, way beyond the checklist.

In my view, the most important thing that can be done and we all try to do it is to get our hosts to ask two questions: First, how can this enforcement help the
consumers, competition and the market? And second, does this proposed enforcement hurt consumers, competition, and the market? If they can just appreciate those two questions, they're very far ahead, and the details will come.

For my second point, I want to pick up on something Stan Anderson said. Given what are and are not the problems in the United States, we have a blind spot on SOEs. State owned enterprises and recently privatized enterprises have been built up not through efficiencies or organically, but as an emanation of command-and-control and statist regimes. Their nationalistic incentives -- to exclude for parochial reasons -- have been nurtured.

As a result, many recently statist jurisdictions have a very important unilateral conduct problem to address. In many countries that need aid, this might be the most important problem. Kenya is an example. We offer assistance on catching cartels, and many say, we don't have cartels because we don't have competitors, we have monopolists.

The general lesson is what we have learned to do well and what is very important to us might not coincide with what is very important to other countries, and we've got to appreciate that and get a way to deal with
it.

MR. DAMTOFT: When I was investigating cases at the Federal Trade Commission, usually the last question I would ask in a witness interview was: What else would you like to tell me that I haven't asked you yet? So in that spirit, I will ask for last words from each of our panelists, and I'll start with Angel.

MR. LOPEZ: A couple things. One, regardless of how we tailor it and so on, maybe there are countries where unilateral conduct is more important than the cartel side; I guess Mexico is one of those. The plain fact is I think that the effort that goes into technical assistance and so on and extremely rewarding for an agency that receives it and has some basic things in place to make it useful to it.

It is something that you can't acquire in any other way, but maybe 50 years of experience if you don't get it by a technical assistance, and so in that sense I'm not sure whether you feel that. I felt that sometimes, to a very limited extent, we provide some technical assistance that you ask yourselves: Well, is this being useful, am I getting across to the people and so on? I can tell you at least from our point of view that it is extremely useful.

Second thing is going back to exactly that
point. One of the things that -- and Russ Pittman just talked about it in exactly the right words, I think training the trainers. One of the things that I think makes sense is thinking about ways in which to multiply the efforts that goes into it.

I know that the budget for this kind of thing is not exactly extremely big, but one way of getting the most bang out of your buck is to focus your efforts on those agencies that are in a position for one reason or another to pass it on to others.

The way we have tried or we've started to try to do it, for example, in Central America. There is I believe a case to be made for developing countries talking among themselves, and sometimes it's extremely useful for the message not to come from one of those evil developed countries and so on. It's tragicomic, but it's still out there, the whole feeling about we don't want to be taught by those people and so on.

So beyond getting more return on your investment, it also maybe makes sense to focus things in this way of multiplying for that reason, and one of the things -- and with this I'll stop hopefully.

One of the things that are needed for that and I think some thought could probably go into that is to generate more permanent materials that stay on when the
technical assistance goes away. It has to do with the
benefit for the agency itself.

Again, I'm coming back to the whole turnover
thing, but it also has to do with the possibility to
pass it on to others to the extent that they are more
permanent materials, and I'm talking about hypothetical
cases or some kind of guidelines or some kind of
textbooks or whatnot. It's pretty open ended, but to
the extent that that is there and that is tailored to
specific profiles of countries, that could have a huge
multiplying effect for the whole technical assistance
effort that is, I understand, very time consuming and
resource consuming.

Thank you very much.

MR. DAMTOFT: Last words, Russ?

MR. PITTMAN: Boy, great points by Angel, and I
agree with every single word he said. I want to add two
quick things. First of all, what I've said earlier
today, I think the two most important things we do in
technical assistance is help people appreciate that what
competition law is about is the process of competition
rather than particular outcomes, and that we can help
the staffs of very young agencies understand not
economics or law, but understand what you do when you
arrive at your office and you have a case and how
exactly you go about approaching all that.

The other point I would say: I hope people like Angel appreciate this. I think for my 15, oh, almost 20 years of technical assistance now, not only because my boss said it's technical cooperation rather than technical assistance, but also because I'm quite convinced that every time I do any kind of technical assistance, I learn at least as much as I teach.

And I think there's an awful lot of cross fertilization there, and even when we are the evil developed countries who are lecturing, if we're doing our job right, we're learning just as much as we're teaching.

MR. DAMTOFT: Nick?

MR. KLISSAS: Well, for the record I as well agree with everybody on this panel, and I don't have anything further to say apart from some final thoughts.

Our agency is heavily involved with providing technical assistance to developing countries conducting trade liberalization. Considering some things that Eleanor and the other panelists around the table were saying, I've seen a typical pattern of our visiting countries and finding that there's a state-owned telephone monopoly, or a state-owned insurance monopoly, or even a state owned monopoly in banking. And we
encounter extreme bureaucratic and even popular resistance to privatize these monopolies. Oftentimes, the cry is that the state (or the people) are reluctant to do so because these entities, these monopolies, are like the crown jewels. Control of these assets is a matter of national security or of losing public pride. Sometimes, like in one country with a revolutionary history, the reason mentioned is that the monopoly should not be given up "because the people sacrificed so much" to acquire these things.

I only wish we could help these countries understand that competition in the provision of these kinds of services helps consumers, and that consumer income -- not state revenues -- is what the battle is all about.

I'll leave it at that.

MR. DAMTOFT: Eleanor?

MS. FOX: I propose that our agencies do a usefulness report as a debriefing exercise. When they come back from every episode of technical assistance. They should ask themselves honestly: How much has this helped our beneficiary? They should compile the data and see what it reveals.

MR. DAMTOFT: Stan?

MR. ANDERSON: Well, I do agree with everything
that's just been said, but let me just make two final
points if I might.

It seems to me with the proliferation of
competition authorities around the world that we really
are presented with a real challenge, and there's an
extraordinary amount of I think importance that is at
stake here and that we need to recognize that, and I get
back at, the fear of being Johnny One-Note, the
importance of having adequate resources both at the
government level and the private sector level in order
to deal with these kinds of issues. I don't think we're
doing nearly as much as we should do.

Second point: I think this needs to be an
operation that's across our government. It's not just
the two agencies that are sitting at this table or three
agencies. Other agencies have available resources.
They have expertise that also needs to be coordinated,
and I think that's an important point that I want to
make sure that I want to make before I shut up.

Thank you, Jim.

MR. DAMTOFT: Jim, you get the last word.

MR. RILL: Let me be just a little bit serial on
the last word because I think that all of this has to
precede from some fundamental principle. It has to be a
commitment on the part of the provider and the recipient

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both, and that is that market competition nourished by
an effective enforcement program is much better than the
alternative.

And the alternative is not, as many may think in
foreign countries or perhaps in the editorial board of
The Wall Street Journal, some kind of Utopian
untrammeled free market growth. The alternative is
stultifying demand and control regulation. Thank you.

MR. DAMTOFT: And on that, I would like to thank
all of my panelists, fellow panelists for their words of
wisdom. Thank you very much for listening.

(Applause).

MR. TRITELL: Thanks, Russ, and the panel.
We're going to take little break and try to be back here
as close as possible to 3:15 when we'll resume with our
last and centerpiece panel. Thanks.
PANEL 5:

WILLIAM E. KOVACIC, Moderator, Commissioner, FTC

PANELISTS:

SCOTT COOPER, Vice President of Policy, American National Standards Institute (ANSI)

MICHAL S. GAL, Professor, Haifa University School of Law

GEORGES KORSUN, Deloitte Financial Advisory Services, LLP

ANDREAS REINDL, Executive Director, Fordham Competition Law Institute

DANIEL SOKOL, Visiting Associate Professor of Law, University of Missouri School of Law

MARK WHITENER, Senior Counsel, Competition Law and Policy, General Electric Company

COMMISSIONER KOVACIC: My thanks to Jim Hamill, to Anne Purcell, to Randy, to the DOJ and FTC teams who put this session together. As you can imagine, something done well doesn't happen by accident alone and indeed requires a great deal of help, and my thanks to my colleagues for making this -- making this a possibility and making it come together so well. I've always wanted a session where we would provide panaceas and one size fits all solutions because they're so often said not to be attainable, but we're of
course going to tell you that they are actually not. I think in many ways we're going to be drawing together and perhaps expanding on themes that have been identified throughout the day today.

By way of a summary today, we want to focus on three basic questions to motivate our own thinking looking ahead, that is to focus first on what's worked, second on what's failed, and last future steps. That is, approaches for improvement both for our own programs and for related programs.

And to do that, we have a panel of people who spent a great deal of time working on these projects. I had been bargaining with them to take the what's failed session for myself because when I speak of failure in this area, I talk with authority.

I could simply recite to you the number of countries, which since my visits, have seen a dramatic plunge in GDP, but through failure of course comes wisdom. Just don't make a habit of it too much, but what we have are a collection of those who have done lots, a great deal of firsthand work, have spent -- are truly internationalists in the fullest sense of the word by reason of experience.

We have academics who spent time reflecting on these experiences as well as doing firsthand work, so if
I were -- there's a scene in Citizen Cain where Cain
gets all the reporters from the other newspapers and
takes a picture and says: This is the kind of newspaper
staff I always wanted to put together. This is the kind
of panel I've always wanted to have to address these
topics.

Our format is to take each of these topics
separately. That is, I've asked each to give relatively
short comments on each of the topics: First, based on
their experience, what's worked; second, what's failed;
third, what are the right steps going ahead.

We'll simply go down the panel asking each to
give us short interventions. We'll have time for each
segment to have a discussion among ourselves and then
move on to the closing two segments and wrap up with a
discussion of good steps going ahead.

And I would like to invite Danny from the
University of Missouri School of Law, again well known
to this audience, Danny, can you get us started on
what's worked?

MR. SOKOL: Sure. Thank you, Bill, and thank
you, DOJ and FTC, for putting this together. I'll give
you six broad issues to think about in terms of what's
been effective.

First of all, I'll limit it to what we know in
an agency setting of what has been effective. Primarily I am basing my comments on my empirical analysis of the survey that Anne Purcell had mentioned earlier today, the ICN survey, and the results we got from that, plus another 50 or so discussions with recipients and providers of technical assistance as some qualitative follow-up work to the quantitative studies.

First, it seems that our findings on long-term advisors echoes what we heard earlier today. Long term advisors seemed to work better than short-term advisors, than having various conferences or academics writing reports, so this is a point against my own personal interest that academic conferences and guest lectures seem to be not so effective.

Second is the relative influence for both the donor and the recipient on the design of technical assistance programs actually has a substantial impact on their reported quality, which is not surprising as we think of it as Jim Rill said -- not as technical assistance but as technical cooperation.

Third is an interesting finding, that perceived donor over-involvement by the recipients actually eventually leads to more effective technical assistance, which suggests that sometimes the people at DOJ and FTC, among others, know what they're talking about.
Fifth, we see a U-shaped curve which goes to some of these larger political economy issues that Eleanor, Shyam and Angel and others raised earlier, which is that our technical assistance seems to be most effective in one of two cases; either just as an agency is moving from a centralized economy to more of a market based economy, or in cases where essentially you are further along in economic development. You have more market freedoms.

So essentially it works best on the C students and the A students and it works not so well on the B students.

The final point I would make is with regard to institutional design -- it matters. We heard a few of those comments earlier. I would say that there are two additional elements to institutional design that seem to play a role in terms of how effective technical assistance is.

The first has to do with prosecutorial discretion of an agency. Technical assistance seems to be more effective where you tend to have more of it. Second, where you have agency independence and where the agency head has ministerial rank or higher, there seems to be more effective technical assistance.

COMMISSIONER KOVACIC: Thanks, Danny. I would
like to turn to Andrea who you know from OECD, from Skadden, and most recently and happily you know from Fordham. Andreas?

MR. REINDL: Thank you, Bill. I'm a little bit of a dissenter here. We heard throughout the day about the --

COMMISSIONER KOVACIC: I think we can move on to the next topic.

MR. REINDL: -- throughout the day about the effectiveness of long-term projects, Danny also mentioned. We all agree, that we would love to have people out there that are running long-term assistance projects and come back and telling us how wonderful everything was.

My point is that we don't live in an ideal world so short-term projects will still be necessary, and the question is: How can we make short-term projects useful from the perspective of the recipient. There are a couple points based on my work at OECD, and also on what we do currently at Fordham that can make short-term events potentially useful for people who attend them.

The first is that events ought to be very well targeted and well organized, and that's certainly true for short-term events. The amount of preparation that goes into them is disproportionate compared to longer
events because it just requires much more time compared
to the actual time of the events to get everyone on
board.

And when I say well targeted, it also means
organizing events not so much for a competition
authority, but for very specific groups even within an
authority; for example, the heads of agencies,
economists, or enforcers. These short-term events can
also be organized for groups that perhaps are not really
accessible for long-term projects, and one group that
was mentioned several times today is judges.

It's just very difficult to give judges a
long-term advisor who looks them over the shoulder and
tells them how to decide a case. So again, that's a
different group where a short-term -- well prepared
short-term event can be very useful.

Another key component for all events, whether
short or long-term, is a very good faculty. A good
faculty is not necessarily the great names, and it's not
necessarily someone from a competition authority. We
had very good speakers from competition authorities to
make that point.

COMMISSIONER KOVACIC: Extraordinary.

MR. REINDL: Extraordinarily good speakers and,
to be honest, we had speakers from some authorities who
were not the greatest success, and we had very big names from academia, who were very, very good, and we had speakers from academia that were not a great success.

This goes back to the planning. It's important to have faculty who really understands the purpose of a program, is willing to spend time thinking about the program ahead of time, and spending the time to prepare a presentation that fits into a program rather than offer the "off the rack" standard presentation that can be given at any kind of event regardless of its purpose or its audience.

And the last point that I mention which characterizes a good event is the preparation of good course materials. I think this is one of the most difficult things when you try to make an event successful. I've tried several things, and I still don't really know what a good course package is that actually will be used beyond the course. It's not just a deck of slides. It's not just randomly selected cases that speakers use in their presentations. It may include a bibliography, perhaps also some relevant articles. But it's a very, very difficult topic.

It's very easy to say we want good materials, but if you want a short-term or long-term event with some impact, we ought to think much, much harder about
what kind of materials we can use that both help during an event but also remain useful for the time after the event is over.

COMMISSIONER KOVACIC: Great. Thanks, Andreas.

Next we have Mark Whitener from General Electric. We probably claim Mark as one of our alumni. Welcome home, Mark.

MR. WHITENER: Thank you, and in that connection I was briefly part of the team of folks who were dispensing technical assistance, though that was many years ago, when I was at the FTC and the program was getting started, so that colors some of my views, although I don't really pretend to be an expert on what's been going on more recently.

So my perspective is mainly that of an advisor to a company that's on the receiving end of the regulation and enforcement that is dispensed by the recipients of your assistance, and I would probably, in the course of these minutes, echo a lot of what Stan said.

But GE is an example of a company that is global. The majority of our sales are now non-U.S. sales; strong emphasis on growth in developing countries and a strong sort of compliance culture that says we need to really try to understand what's going on in all
of these jurisdictions.

And the problems that businesses face that I think -- and again all kidding aside, I think you are doing a great job particularly with the resources that you've had at addressing, and Stan touched on these, our inconsistency, obscurity in enforcement policy and then finally, overly aggressive enforcement. But that last one is only one piece of the puzzle, and consistency and obscurity are also key issues, and I think what you've done in these 15 or so years and has been, particularly looking at the resources available, quite effective.

From my perspective, what's been particularly effective? I think bringing economics and a fundamental sort of market driven view to what you do is at least as important as the other critical piece, which is, as Russ Pittman said, the template for what you do when you come in and sit down at your desk.

Concepts like elasticity, substitutability, the SSNIP test, vital to be understood, but you can't apply them if you don't have data or at least the ability to ask the right questions, and I think at least from my experience, the providers from the agency have done a terrific job of bringing their experience to bear on those practical questions.

I think you have effectively built
relationships. Almost everything I'm saying has been said by somebody else just in the time I've been here, building relationships with enforcers abroad, and that I think has set the stage for what you see now in terms of ICN and other cooperation that couldn't have been imagined five or ten years ago.

My sense is a lot of the relationships that led to those successful broader types of cooperation were formed when folks from the agencies were out in the field and receiving their counterparts in what was called "technical assistance."

I think the agencies have been very effective at doing both the technical part of technical assistance, and also and probably even more effective, I would say, at the broader policy advocacy, so as we talk about the shortcomings, I'm sure there's more that can be done on the technical side to make this process more efficient, more effective, to measure and analyze what's been done.

But on the broad policy side, just in recent months, looking at what happened with the Chinese from start to finish, looking at isolated issues that pop up like the new law in India with some of the issues around merger process. The ability of the agencies and the international groups that they have helped put together to quickly respond to those points and to bring
constructive input to bear on them has been very
effective, and that's more on the non-technical side of
technical assistance.

COMMISSIONER KOVACIC: Thank you, Mark. Scott
Cooper has done an enormous amount of work dealing with
consumer protection issues and Scott comes to us from
ANSI. Scott?

MR. COOPER: Bill, thank you. I'm very pleased
to be on this panel. For those who follow the genesis
of agendas, though why anyone should I don't know, but
if you do, until the most final version, I was the
panelist to be determined, and so it is a great pleasure
to be here among this distinguished group.

COMMISSIONER KOVACIC: But we're really happy
with the trade. We're quite pleased, and the cash.

MR. COOPER: Pitch right, run left.

One of the things that I found in all this that
was very helpful for me is listening to the differences
between competition policy and consumer protection
policy, and coming out of some of the earlier panels,
the idea of the need for framing legislation, which I
think is very understandable for competition policy.

You have to have a body of law or at least an
understanding as to what competition is going to mean in
the real world, and you've got to aim for that, which
is what everybody then works toward.

I think for consumer policy, that may be a bit of waiting for Godot. Consumer Policies I think is much more of a loose term. I think it's a flexible work in progress, especially in the global marketplace where sovereign nations can't control what's going on with how consumers are treated across borders.

You need more players I think to participate in that work, and I think that that's one of the things that technical assistance for consumer policy should look at. Angel raised the point of the tiredness of current marketplace reform.

I think that's very true for consumers. I think they feel aggrieved, not just in the United States but I think around the world. They feel that somehow they're left out from this process. I think that in the United States we have a lot we can bring to the table however. One of the Russ' mentioned the BBB, a classic 'only-in-America' kind of organization. It's a quasi-public/private organization. In a sense it's deputized by AGs and the FTC for many services rendered.

At the same time it's sort of a bottom up kind of organization sponsored by 300,000 local businesses. They were requested by businesses in Romania to work with them to set up a trust mark. This was something
where they were induced to help the businesses of Romania. Why should Romania care?

Well, they can't sell to the global marketplace because nobody is going to buy from an autonomous buyer or seller in Romania. They needed someone like the BBB to give them credibility. Well, to do that, they're going to have to meet the standards and the requirements that BBB is going to set for them.

So you can have sort of a top-down approach where we have technical assistance coming from all our agencies to Romania or wherever saying: Here's what you need to do and you will get perhaps reluctant acquiescence to that. If you're a businessman in Romania, you know these are things you have to do.

So I think there's a lot of organizations like the BBB, I like to think ANSI as well. We're just doing something now through a TDA grant in Vietnam where we're going to Vietnam. We're going to be training a lot of people in a lot of different agencies in the Vietnamese government on the global marketplace. We're going to look at testing and compliance certification, inspection issues, WTO compliance, environmental sustainability, all these issues that will make Vietnam that much more credible and valuable within the global marketplace.

That's something where again it was a small
grant from TDA, so in a sense it's technical assistance coming from the government, but it was something that was asked for by the Vietnamese government, and we think that not only will we train the people for the week that we're there, but the expectation is that they will then train others, and you have this sort of diaspora of ideas.

Will it work? Well, we know it has in India and it has in China so we think that this is a model that perhaps, at least on the consumer protection side, could be more valuable.

We're doing something at ANSI now on the global supply chain. We have a new contract with the toy industry to try to get lead out of toys by the next Christmas season. One of the problems that the toy industry has is that they can't control the sub-sub-subcontractor in Guangdong Province, and even though CPSC has all kinds of MOUs for their counterparts just the way that FDA has or NHTSA does or USDA does with their peer groups in the Chinese government, we still have problems in the hinterlands of Guangdong Province.

One of the things that a group like ANSI can do is we can come up with contractual obligations that we can set as a standard, so everybody who agrees to that...
contractual obligation, such as Mattel or whomever, can force that obligation down the supply chain to that sub-sub-subcontractor, so that everybody knows that those are the rules of the road.

That's something you can do within the time frame of next Christmas, we think, we hope. That's something that the CPSC is probably not going to be able to do in a rulemaking anywhere within that kind of time frame, though we hope that ultimately they will ratify this kind of solution.

So I'll end there for the moment, but what I would like to offer is sort of a somewhat provocative idea is that we're looking at least for consumer protection for technical assistance. Try to think outside the box of beyond just all the usual suspects, all the usual agencies. Think of those quasis like the BBB, like ANSI or trade associations or whatever.

I'm not talking about Beltway Bandits or consultants or whatever, though they're certainly fine people too.

COMMISSIONER KOVACIC: Some of them, some of them.

MR. COOPER: The benefit of the doubt. Those who do work in these arenas and have a credibility that they want to hold on to, but also a credibility that is...
fungible and others know about, if there's a way to bring those groups in, I think that they would really help at least again in consumer protection and in expanding opportunities in the global marketplace.

COMMISSIONER KOVACIC: Thanks, Scott. That's great. Our next panelist is Michal Gal, and if you put the world of academia into different chronological cohorts, for her generation, she's the finest writer on development you can find. Michal?

PROF. GAL: I think I should shut up after this, can't meet this high standard. Well, thanks for having me. This has been a highly educating day, and I will just echo a lot of the observations that have been made during the day and maybe try to put them into a typology.

So before I elaborate the specific suggestions that I want to make, let me offer you the following typology, which I will use throughout my comments and I think might be helpful organizing a lot of things that we've heard about today. I suggest that the suggestions can be grouped into three categories: Those that refer to subject matters; those that refer to human resource allocation, both in the donor and in the receiving jurisdictions; and those that relate to wider macro issues.
So let me start and make a few points about subject matters. I would like to echo many of today's speakers in emphasizing the importance of long-term involvement, where such involvement is possible, and I would add to the discussion that was raised earlier, that long-term and short-term projects are not necessarily either/or.

Rather, I regard short-term projects as building blocks in the long-term relationship. Of course much depends on the budget that you have, but where possible, long-term relationships are very important.

The second point I would like to emphasize is concentrating efforts on a few well chosen projects. This is especially so because we are all strained for resources. Not only for money, think of time as a resource that we're all constrained with.

So given this, it's often better to concentrate efforts on a few long-term projects and see them to successful completion rather than focusing on a wide array of programs, set them on track and leave, relying on the agencies to find their ways in murky waters they have not treaded before.

Of course a lot depends on the specifics of the relevant jurisdiction. The stronger the ability of the agency for self help, the better its own economists, and
the better its human resources, the less the need for walking it through the steps of a case and vice versa. Yet when you're talking about a very young agency and inexperienced, I think it's important to choose a few cases and go the length with the agency.

Another point which is highly important in my view is assisting the authority in setting priorities on enforcement and advocacy. I will elaborate on this point later on, but let me just share with you a lot of people who do TA, have told me that they observed that many young agencies would like to take on Microsoft.

It's a sexy issue. It gives them the feeling they're doing something which the large players do. It has appeal in the public eye, but it is generally a very bad decision, and a much better decision would be to take on cases such like the bread cartel in Peru or the rice example that Shyam was using before, which are cases that are relatively easy to prove. They're based on a per se violation. In addition, the prohibition has immediate results on consumers, and this created goodwill of consumers through the next stages of enforcement.

For advocacy, what I think has worked well is building upon and pointing to the successful examples of antitrust regimes in countries which are regarded by the
relevant country as facing relatively similar problems.

You can use an example of a country which has benefitted from TA, but you really need to choose your example carefully because the receiving country has to regard that country as one that has faced relatively similar problems to its own.

And I think it's also important not only to point to the benefits of competition but also to point to its limits and costs in order to create balanced expectations. By the way, this point was made by many others, including Commissioner Deborah Platt Majoras and Alberto Heimler during the day.

Let me just offer you two more remarks: One about human resources allocation issues, and here I would echo what a lot of people have already said, that creating relationships based on a close personal contact is extremely important, because these contacts create a more sustainable and stable basis for future relationships and assistance, which gives the authority more confidence that it could continue to consult with a donor authority long after the official program has ended.

And one result of that or one suggestion is that it may be beneficial to designate the specific person that has provided the TA as the contact person, in the
agency, should that be possible.

My last remark involves micro issues. Technical assistance may well work best when assisting jurisdictions realize the unique problems that they face and assisting them in putting their efforts where it would be most beneficial. This is important because oftentimes we observe a tendency to cut and paste laws and enforcement tools and priorities of others, which are generally large and developed economies with long established laws and sometimes different objectives than those of the relevant country.

So emphasizing similarities but also working on the differences is important in order to enable the country to tailor the law and enforcement to its own needs.

Let me just give you one small example from my own experience. I work with mainly small economies, Micro economies may not need elaborate doctrines of extra territoriality as they won't need them. They rarely apply them in practice. Thanks.

COMMISSIONER KOVACIC: Thanks, Michal. That's great.

I turn now to Georges Korsun, who is an economist with Deloitte, and Georges is really the person who taught me most of what I know that's good
about doing technical assistance. Georges started doing this in a serious way when many of us were just reading about it, including spending several times in Mongolia in the early 1990s when Mongolia was not steered towards its destination, much less a place to do work.

Georges, thank you.

MR. KORSUN: Thank you, Bill. My reward for having been such a loyal and faithful friend to Bill is to be the last panelist on the last panel of the day. That's all right.

COMMISSIONER KOVACIC: But first in our hearts.

MR. KORSUN: Bill gave us four minutes on what's been effective, and I think four minutes of success stories is a little bit of a reach for me, so I'm going to just talk about one factor, and that is good design. We've heard -- all throughout the day, we've heard suggestions about how to do good design and how to design good projects. We heard from Andreas about workshops and how to design them.

I want to take a step back and think about maybe what's appropriate for a less mature agency and think about it in terms of a long-term -- taking a long-term perspective on what the agency needs.

I realize that's contrary to budget realities. The aid may come in small bites, but I think good design
begins with a plan for the agency that's comprehensive, 
and I think it starts with a comprehensive needs 
assessment, and that's a fairly obvious statement but 
it's kind of surprising.

If you look at the results of the ICN survey of 
the 40 some agencies, that received technical assistance, less than half had a formal needs assessment, and that seems to me to be such a 
fundamental prerequisite to doing good technical assistance that we ought to change that formula somehow.

I think good design means that one has to understand the structure of the agency. Obviously, one has to understand its capacity. One has to identify the champions, the local partners who are going to make a difference, and one has to really identify or appreciate or gauge the appetite for reform, both in the agency and in the country as well as the stature -- people have spoken about this earlier, of the agency and its heads.

I think more importantly though the program has to be put in context, and that means in the context of the kind of structure, the kind of economic structure that the country effectively possesses. We've heard a lot about the problems of state ownership, and that's clearly -- ownership in general is an issue because it goes beyond state ownership. It also goes to economies.
that are organized around sort of multiple boards that
control vast combinations of enterprises.

It goes to economies that are controlled by
monarchies where there is one big monopolist
fundamentally, so I think it's really important to
understand that economic context, the level of
development of the economy, and finally I think it's
important to understand the role of competition policy
in the much broader set of market liberalization reforms
that might be going on.

So I think if we do this and if we think about
this comprehensively, we might come up with a program
that would have a long-term perspective and that would
give us a number of tactical kinds of responses that
would be opportunistic perhaps, but at least within a
constraint that has to do with long-term development of
competition and market reform in that economy.

COMMISSIONER KOVACIC: I remember, Georges, one
place we worked where the monarch owned roughly 25
percent of the entire economy, speaking with one
government official who was looking at the monarch's
photograph and we said: What significance is there, the
monarch -- and how do you apply competition law where he
does have 25 percent? And we were assured I think on
that occasion that the monarch was just a passive
investor and not to be concerned, just probably looking at the statements every month seeing how they turned out.

I would like to just put --

MR. KORSUN: Passive and benevolent.

COMMISSIONER KOVACIC: Passive and benevolent -- to put one thought of my own on the table for what it's worth related to several of the comments here, and that is to emphasize again the benefit of long-term engagement, not necessarily a long-term advisor all the time, not necessarily the presence of many advisors or study tours or visits, but long-term engagement in the sense that the recipient and the provider have the expectation that year after year there will be continuing contact.

And long-term, I mean not to be six months but more like a decade or more if you accept the idea that the development of the institutional framework and the supporting institutions will take a long time, and it's a slow growth in many countries. It is the expectation that things will take a long period of time and that there will be a commitment in year one, year two, year three or year five. Why does that make a difference? First, it builds trust. I think when you scratch beneath the surface of many of our
relationships, there is a natural weariness on the part
of the recipient. When you have the pros come in from
Brussels, from Washington, from Ottawa, from all of the
well established jurisdictions, several doubts: Do they
really know what they're talking about with respect to
my jurisdiction?

Are they simply the running dogs for an agenda
being pursued by their own jurisdiction, and more
interested in feedback effects to their own capital than
to the well-being of my own citizens? And third: Are
these really development tourists who are here to
collect good stories, good souvenirs?

George and I remember one consultant who gave
the advice, always buy your souvenirs on the first trip.
Are these people really interested in the long-term? If
you have a continuing interaction over period of years,
a decade, that kind of trust develops.

Second, in the course of that, you begin to
actually have a much better feel for what local needs
are, and it can start with a needs assessment that
Georges discussed, but you actually acquire some
knowledge about local conditions and through the
conversation that takes place with the agency, you can
develop a far more refined idea of what ought to be
done.
And over a course of discussions over time, and many people in this room have had this experience, the moment that takes place -- the moment that you know your counterparts trust you for your advice, see you as being a neutral provider of options and an analyst rather than just an advocate, when that light bulb goes on, you know that's what we call in academia the teachable moment. Those I think are very, very fruitful, extremely fruitful relationships. So when I think about the long-term engagement, it's completely compatible with what Andreas was talking about, about the benefits of individual short-term interventions, but it's the expectation that there will be a continuing process of discussion and engagement overtime, and I mention it with a certain amount of sorrow because that is not our strong suit in this country. It's because the building, the great dome up the street likes to dole things out in short increments. It's that the institutions that we work for are partly a consequence of that tendency to look fiscal year to fiscal year to fiscal year for a variety of circumstances because their institutions are captured by fads, hobbies, individual interests and obsessions that come and go, new management.

Now, do I hold my breath in the face of a
Presidential election on this because in 1993 and again in 2001, I saw incoming administrations basically say, the presumption of idiocy that we attached to our predecessors naturally forces us to rethink everything we're doing, and it means that long-term sustained projects that had the promise of success were terminated or cut back sharply?

It's not our strength I think institutionally to do this, but that's exactly the kind of engagement that I think makes a difference over time.

On this point, and I think of how it is difficult to look in one place, and it's possibly something we can extract from this program, if we search through the different sessions and just take the advice that our panelists have given now. You can come up with a pretty good guide to the sorts of things that work well.

I was wondering if I could ask all of you on the spot, in some ways Scott's given us a terrific example, with working with NGOs and Better Business Bureaus. Can you think of a specific illustration or example, perhaps a country experience or a course you've done or a program you've put together that you walk away from saying that worked, that was a good event?

Maybe something you're working on now, something
you've done, an instance where you start to think about -- in my own experience I have -- when I work on projects I have two columns. One column says how soon can I leave. The other one says how long can I stay, and in the typical project, it is a manic depressive roller coaster through these. The two columns are relatively evenly matched for the most part, but I do have in my mind events where I think these were the good days.

Which projects, illustrations, examples, when you think that's an example of something that's worked well? And Scott in some ways has already given us one. Any that come to mind, that stand out? Well, that worked.

MR. REINDL: At the risk that I'm saying something completely wrong now by your own definition, there is no project that really did work, and it's not so much a country specific experience, but I can say that for whatever reason, our attempt to gather a highly specialized group of experienced enforcers from a large range of jurisdictions that makes more experience considered and less experienced jurisdictions but the common denominator is that these people have a great deal of experience of competition enforcement over several years and put them together for an entire week,
including from breakfast to the night essentially with
work in between, that really created an atmosphere where
everyone walked away with the impression that people
really benefitted and the feedback was very good.

Now, the question that you raised, which we
talked about I think towards the end of the day, but
what do we define as work, so I don't have data that can
conclusively prove that we had an impact on the
economies of all 20 participating countries, but in
terms of what people said about the program and what
they experienced, I think that that seemed to be quite
successful.

MR. WHITENER: Bill, I'll offer sort of an
anecdote. One of my first projects when I was at the
FTC was a short-term mission done with Poca Potencia
(phoneic) in Venezuela, which at that time was a hotbed
of very energetic, young economics trained folks who
were really trying to do the right thing.

COMMISSIONER KOVACIC: None better.

MR. WHITENER: And they had a resident FTC
advisor from the Bureau of Economics who had already
been there for three months, and so I'll give you sort
of the good and the bad. The good was he had very
effectively gotten sort of a fundamental understanding
of merger analysis imparted, and they were looking at a
local beer merger I think, and they were looking at it very much as the U.S. agency staffs would have done.

The other thing that the U.S. economist had done by the way is he had hooked them up to something called the Internet, and that was the first time I had ever used the word, and he hooked them up so they could get documents from the FTC Bureau of Economics to do their work so it was a great, early example of technology.

Here's the other side of things. They were working on what to do in terms of pre-merger notification, and the ideas they were getting, and I have to admit I didn't body block this, were very much sort of U.S. concepts of what you do when you want to have a pre-merger notification review, but they didn't get all the --

COMMISSIONER KOVACIC: You mean just ask for a couple cartons of documents, small steer document requests.

MR. WHITENER: Well, there was that, but I'm talking about just the thresholds, but once you translated the complex U.S. process to their mindset, and actually I don't recall where they went in the early '90s, but where those concepts sort of not really adequate explained were heading were toward the kinds of fairly egregious examples we see now globally of pre-
merger review and thresholds that really don't serve the interests of the local countries.

So maybe that's a good and a bad. The good was 
the long term advisor from BE was tremendously effective. The bad was the technical pre merger advice I think was totally ineffective.

COMMISSIONER KOVACIC: Thanks. Michal?

PROF. GAL: The example I would like to use is not a long-term technical assistance, just a few days program that I put together with a Supreme Court Justice in Israel voluntarily, in which Judges from all the courts in Israel came in for a four days seminar, and we provided the basics of antitrust.

We went through hypotheticals and real-world examples and we got all the leading economists and academics in Israel to do that, and I think it has increased the quality of some of the decisions.

I think what was extremely helpful is that we later spent a few days with the Judges' research assistants. Sometimes not going directly to the decision maker but going to the one who assists in writing the first draft of the decision might be helpful.

COMMISSIONER KOVACIC: Scott?

MR. COOPER: Very briefly, Janet Steiger in the
early '90s, undertook technical assistance programs on
her own to central Europe, just when things were
breaking loose. I wish we had sent her further East to
Russia where things might then have been different. She
got a tremendous amount of push back on that, 'what's
the FTC doing internationally?' 'They have no
jurisdiction,' a lot of huffing and puffing.

And she went I think at least on three trips, it
might have been more. I think that you could make a
case that made a difference with how Eastern Europe was
receptive to a lot of our philosophical constructs. I
am a big fan of hers, and that's one reason.

COMMISSIONER KOVACIC: I think the score card by
which enforcement officials are judged, the report card
says cases, and then how many cases, and then how many
cases, and can you tell us about the cases. This
doesn't show up in the box score at all, but it's I
think in many ways Janet and Jim Rill's finest moment.

Danny.

MR. SOKOL: Overall I would say there are two
things that have made it "work." One is where
expectations are low so you could -- what I always tell
myself is if you have low expectations, you could never
be disappointed.

What it also means is that you can actually
attain your goal, and that I think is the first step in building the kind of trust relationship, Bill, that you're talking about. Sometimes it's just as simple as making those initial connections between two people, but I would say where it's worked the best is where we've actually seen an overlap of technical assistance and capacity building on the one hand with our existing international organizations on the other.

And I think if we take a very broad view of what technical assistance capacity building is, I think the ICN is ultimately that part of capacity building that has worked and has been a success.

COMMISSIONER KOVACIC: I will offer three quick items of my own, and one deals with the larger spillover effects to the economy of building good microeconomic and legal training and analysis that in many instances don't stay just inside the competition policy system, but spillover into other areas, and I'll give one example that does involve Georges.

When I think, Georges, of the seminars and work that you did in Mongolia to pick one example, I think of the young kids who sat in the rooms for the microeconomic policy workshops. The people or the young kids in many instances became the government officials, the ministers, and there's a note in a bottle quality to
that. That is, you don't know who will pick up the bottle. You don't know if they'll read the note. You don't know if they'll follow the instructions.

When I think in a number of instances how as part of the training and the courses and the projects what was transferred and what continues to be transferred was some valuable intellectual capital, and I realize that's not directly tied to a specific technical assistance result, but to the extent that the effectiveness of market oriented reforms depends on that, I do see that as having been successful.

The second I think of is related and really tied many ways to Andreas' comment about good faculty preparation and good course materials. I think of the program that Shyam and Mark put together that we've talked about several times, that the bank conceived in the late 1990s to be in effect the universal course materials, the modules on competition policy, and Mark and Shyam spent an enormous amount of time trying to do what Andreas said: Pick the right materials, adapt them to the environment in which they were most likely to be used.

They vetted people who would teach. They basically insisted on auditions; that is, let me see what you're going to do, and I remember that the people
who auditioned were not invariably the people that got
the parts, and this was a way of testing their
seriousness about doing the work.

The materials were assembled. There was one
full prototype run in Washington, a local adaptation
developed in Singapore, and sadly the bank didn't
continue to pursue it. That is, there it was. Here was
the golden path I think laid out, but I think back to
the people who sat in those classrooms and attended the
programs and went, and we now see lots of those people
again and again.

It's the core of the group. I remember seeing
at one table David Lewis and his colleagues who have
been so instrumental in the development of South
Africa's program; officials throughout Southeast Asia
who began to work in the field in short, lots of
positive results from that effort to formulate good
materials.

And last I think about the experience of Csaba
and his colleagues at the Hungarian Authority where
there was a long-term engagement. Jim Hamill and I were
fortunate enough to attend the program that was sort of
the close of the continued efforts that USAID had
sponsored.

Not only, I think, was the interaction good for
ourselves and for our Hungarian counterparts, but the fact of having the seminars brought people from the region into Budapest, into the other capital so that now Csaba and his colleagues really play that leading role throughout the region. On a rainy day I like to think of examples like that to show how it can be done.

Well, part two of our session is to focus, and we've touched on it already, on what's gone badly, and in the way of growth and self development, we're going to turn to things that might have been done better.

Danny, can you lead us off?

MR. SOKOL: One fundamental issue and one that I don't think we've spent enough time on in today's sessions discussing is that sometimes staff needs are very different from agency leadership needs, and the kinds of technical assistance that we provide and capacity building has to of course make sure that we meet both of those types of needs.

Second, I would suggest that sometimes we've provided very good technical assistance but very bad capacity building, which is to say that sometimes either a short-term intervention or a long-term advisor comes in, and we get the result that we want to see, but it's the outsider that's done most of the work or most of the important work and has not really spread that knowledge.
of how to undertake a certain type of conduct in terms
of a case or the right type of competition advocacy and
really imparted that knowledge on the recipient
agencies.

I think that where we've seen significant
failure is where the donors, the providers and the
recipients don't actually communicate well with each
other, and it's not merely the donors and recipients. I
don't think we've spent enough time really parsing out
that sometimes donors and providers are different. Each
of them has their own agenda, and we have to make sure
that everyone is on the same page.

The third major point that strikes me is that
legitimacy matters, building off of what Michal said.
It's not just bringing on a good case that you can win.
It's bringing on the kind of case that can create
legitimacy for the antitrust agency to pursue its non
enforcement goals.

I don't think we've spent enough time today
talking about the competition advocacy work of antitrust
agencies, and you really can't be effective with your
advocacy work if nobody takes you seriously, and the
best way for someone to take you seriously is to bust
your bread cartel, your rice cartel, because those are
the things that are going to create the very populace
ground swell that you need to create a pro-competitive mindset in a country.

Another factor I think that's gone wrong is sometimes we have the wrong kind of advisors. Bill talked about the people who are looking for the exotic vacations, and I think that anecdotally I've gotten many stories of this from recipients, that they say that sometimes it's been the providers of aid that have learned as much as the recipients about technical assistance because the providers have been learning on-the-job.

Part of that problem strikes me is because you're getting people with the wrong kind of background in terms of the selection process. Another problem we see is how short-term advisors come in. I agree with Andreas that there's an important role for short-term advisors.

I think the reason that we've seen it less effective in the long-term in terms of the survey data and in terms of the anecdotal qualitative work that people share with me afterwards is because there's too much red tape when it comes to our short-term advisors. From the time you recognize say that there's an issue that you want to bring until the time that the person actually sets foot in the country may be six months, and
in that time, the situation on the ground may have
changed significantly, where they may no longer need to
be there for that issue but there's something else
that's come up that's more important, and so the wrong
person again is on the ground or the timing just didn't
work out well.

So the take-aways are: That there is too much
red tape, there needs to be more technical assistance
and capacity building that is done in-country, fewer
fancy vacations for agencies heads and their staff in
exotic locations where it's Bali, Paris, New York and to
the extent that agency staff used to travel for a
conference, make sure people are going for the right
reason -- to learn. For example, more conferences
should be held in industrial towns where it's easy to
get to air service, so when people are coming, say to
Bratislava, when they're coming, they're really coming
to learn and increase their capacity, not because
there's a nice beach.

And I'm sure there isn't one in Bratislava, so
it seems to me that those are significant take aways,
and all too often finally, we focus on the success
stories and not enough on our failures, and we have to
be spending more time thinking about what goes wrong and
not what goes right.
MR. REINDL: A couple points. If you want a specific example of something that hasn't worked, I remember my trip to Cairo to speak before the Arab League of Nations, and I had a wonderful presentation about cartels. Of course half of the audience were OPEC members. When I came back to Paris and I had to fill up my car the next time at the gas station, I noticed that my presentation was certainly very good but not very effective.

I think this summarizes what can go wrong. You speak to an audience that's not well selected. You speak to an audience or to participants who just are not ready to take on what you want to tell them, and you have an overly broad agenda that is not targeted to what their needs are.

Now, I think an interesting question is then: Would it be better to just stop talking about competition law before members of the Arab League, and probably the answer is, no. To some extent, in some contexts it makes sense. We should just not expect that we have effects like we've seen, say, in Hungary, that you find a competition authority that's actually following what you say. In the long-term building-up recognition of comprehensive law may be something useful.
-- maybe it helps in 10 or 15 years.

So I think broad and untargeted agendas and
countries are not ready to implement a market economy
are the biggest obstacles in these programs. All the
reverse things that I said before; unprepared
presentations, unprepared presenters, obviously that's
all the same thing as I mentioned before.

COMMISSIONER KOVACIC: I doubt there's anyone in
this room who does not know the difference in these
settings between a ghastly talk and a good talk, and how
many people here have been to a program, as I certainly
have, where the speaker in going from one exotic
destination to another, did not take the time to change
the location of the talk so it was the right day, right
topic, but it was Bali instead of Rio, and the audience
said, is this the right venue?

Mark?

MR. WHITENER: Okay. Well, first of all,
Andreas, I don't think you should feel too bad about not
single-handedly taking down OPEC, okay? It would have
been great.

Two or three comments. I guess I'll start with
some technical things and then bigger picture and then
it's always about money.

On the technical side, I get the sense from
those of you who know more about this area than I do
that there is still more to be done in terms of
measurement and sort of quantitative and objective
assessment of effectiveness. Eleanor talked about this
in terms of self assessment, which seems like a very
good way to approach it; obviously, assessments that go
out into the field and try to get information from the
recipients.

I'm not sure how the regulated parties like my
company could help. We can certainly point out which
countries have raised problems, but I'm not sure that
gives you a lot of insight into effectiveness of
technical assistance, but measuring -- if we're going to
have a discussion about failures, obviously we need to
know more than just anecdotes. We need to know what's
actually working based on some sort of objective
criteria.

A different technical issue, and I referred to
it before, is merger process. For most global
companies, except for a few that are always in the
headlines -- for most of us, our most frequent
interaction with global regulators are in merger
evaluations.

For the most part that's a technical process and
does not end up being a significant substantive process.
That is a part of the global competition law picture that is not particularly effective. I don't know how much the agencies could have done or can do now through technical assistance, but I think it's always been an important part of what you do. I suspect it was not as effective early on before people sort of realized what was happening, that all these jurisdictions were putting in place merger review thresholds that captured a lot of deals that really didn't have much impact on their country, so I think that's sort of a problem that got formed possibly in part because of assistance that wasn't as focused, and now it's something we all have to deal with.

On the substantive side, my main comment here because again I'm not expert in effectiveness of particular types of assistance, is just to look at the consequences of some things that government agencies in the so-called sophisticated or major jurisdictions do have control over, and that's their own policies.

I think from the business perspective, when we see enforcement decisions or policies articulated in the U.S. or the EU that may or may not be as well explained as they could be, that may be less rigorous as they might be, and that's not been a particular problem in recent years, but you will still see enforcement...
decisions from the EU certainly, from the U.S., that lend themselves to misunderstanding or even abuse when they're interpreted by non U.S. authorities.

I can think of examples from the EU obviously in the merger area, conglomerate mergers. Obviously when you go down that road, one thing you have to understand is even if the analysis that you're applying, you feel at the end of the day perhaps approximates your sense of consumer welfare, those theories when applied by others might go completely off the rails.

The U.S. isn't exempt, and I will just mention the recent case. This commissioner dissented but the End Data case, which I'm not intimately familiar with the facts, but I do know when I see an action like that, that has perhaps an absence of some limiting principles. If you just read what's public, you can imagine ways that those kinds of actions could have unforeseen and adverse consequences when they are endorsed by other authorities.

So I think that is more of a failure to fully account for the consequences of one's own policies as opposed to failure in technical assistance. The third point I would make and others have made is simply the U.S. government's collective failure to adequately fund this area, something that I hope is being addressed.
Then a fourth related point, which I'll talk more about when we come to recommendations, is I think more can be done in cooperation, and others have made this point, among U.S. government, non U.S. government, antitrust and non antitrust agencies, academic institutions, Bar groups and private industry to figure out how to bring resources to bear in the most effective way.

I think government to government technical assistance is still something that has a unique role. It's vitally important and needs to be funded, but there are other constituencies represented by various panelists today who have an interest in this, and I think if there was some greater effort to coordinate those efforts, we might be able to do more.

COMMISSIONER KOVACIC: Thanks, Mark. Scott, I cut you off before, and I think you had a success story in mind when you were in the queue and if you like, if you want to, start with the happy example before going to the sad, you're most welcome to take a minute or so to summon that one back up.

MR. COOPER: Thanks, Bill. Actually I'm going to go straight to the sad one because that's in front of me right now, and I'm weeping inside and I want to share this sad experience.
COMMISSIONER KOVACIC: I agree, too much happiness is definitely a bad thing.

MR. COOPER: This is your last panel. Back in the late '90s, there was a group called the Global Business Dialogue. Some of you may have heard of it. It was a CEO driven organization. It was Bertlesmann, Vivendi, Nokia, Deutsche Bank, Fujitsu, NAC, HP, IBM, Disney, AOL, Time Warner. In fact, the kabuki dance or the mating dance between Time Warner and AOL started really at the GBD, back then the CEOs were very larger than life.

You may remember late '90s, they were on top of their game, and what they perceived with the global marketplace was that is the writ of law did not run from sovereign nations. They were going to fill that void, and they made I think a pretty good effort at doing so before they all got fired because they were in Davos too many times.

But this was a high powered group. There were about 70 CEOs of all the largest multinationals who were really full of themselves from about '97 to 2002 or so. One of the issues they picked -- and my old boss was leading the effort with cross border trade because they were looking at economic commerce as really kind of the cross cutting issue here, where really the writ of law

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did not run.

What do you do with the cross border trade where you have in a sense two jurisdictions? You have the jurisdiction of the consumer. You have the jurisdiction of the business, and you have multiple laws out there. Just in Europe alone, you have the Treaty of Rome that says, no, it's the jurisdiction of the consumer that trumps here. And then you had that followed up with the Brussels Convention that said: Well, except in some cases it's the business jurisdiction when it's electronic commerce.

It really can be neither. You cannot have an either/or in a situation like this, and this is one of the problems I think we are going to see over and over again with the global marketplace. Unless you have not just bilateral rules, but multilateral rules that are truly effective across all boundaries, you're going to have to come up with some sort of third-party resolution to this thing, and this is what the GBD tried to do.

What we did about mediating disputes was through an alternative dispute resolution mechanism that won't take the place of the jurisdictions, but hopefully it will be successful enough so that people won't even think about going to their local jurisdictions because it won't be cost effective. If they feel they've gotten
basically their day of court through this.

And so what we did was we went to Consumers
International, which is the umbrella group for all
consumer groups around the world, and it took us three
years, but we sat down in a series of meetings, endless
Emails, 17 drafts in all. At the end of three years we
had a document, which was an agreement between this very
large business group and this umbrella consumer group on
the rules of the road for dispute resolution on cross
border trade.

This was not business to business. This was
strictly consumer to businesses, but what a wonderful
life we were living in back in the late '90s for lots of
reasons, and this seemed to be one of them. We actually
had resolved a problem and got it off the plate of the
FTC, the EU, Industry Canada and they all came back and
patted us on the back and said, this is great, we now
have a document.

Well, then how do you do implementation on
something like this? And this was something that was
the next step. This was rev 2. Unfortunately, Davos
intervened. The dot comm bust intervened. All the
supporters of this effort basically went on to other
things, and we sat there with a document and no
implementation.
And so the two points I would like to make here that I think have been made already, are: One, you need long-term engagement, and somehow we've got to get businesses as well as consumer groups involved in that long-term engagement, and how we do that, I think, it has to be tri-party. We have to have all groups working toward that same goal.

We can't just say, business, you go fund this and we'll pat you on the back when you're done, or consumers, we will pay for your way to these meetings, aren't we nice, but you're going to have to sign off on all this. And second, for government, for all reasons that Bill just raised, we've got to have this kind of long-term commensurate commitment from government towards solutions that may not come directly from the government in the first place.

Here we had something that all sides agreed on, but how do we ratify something that does not come from the government? How does the government actually give its imprimatur on something that was not invented there?

So these are issues I think that for going forward for the global marketplace, where again we're beyond sovereign nations being able to call all the shots, how do we find a tri-party consensus where we have business, we have government and we have what I'll
call civil society, which is basically academics, it's NGOs, consumer groups, whatever, all participants because that's the only way we're going to get credibility on public policy solution sets going forward.

It can't be just government saying, 'here it is.' And businesses can't do it either. They shouldn't and they won't. Consumer groups don't have the gravitas to be able to pull -- they have the gravitas, but don't have the authority to pull it off.

The three together, if you can get all three to agree to something, I suspect that's probably the right solution. So, I would just like to throw that out as a going forward issue.

COMMISSIONER KOVACIC: Thank you, Scott. Michal?

MS. GAL: Okay. Where have technical assistance efforts failed and what has accounted for the failures? Again, let me separate my remarks into the three different groups. Let me start with two remarks about subject matter issues. First, problems are created when the whole antitrust toolbox and agenda is imposed on a newly created agency. As our panel's chairman, Bill, has so clearly elaborated in his extensive research on transition economies, sometimes if you try to eat the
whole cake or make somebody else eat the whole cake, you might simply choke. So that the solution which was championed by Bill and others, which I would also like to echo, is of course to teach and coach gradually.

Second point: Technical assistance will not be effective where the one providing the assistance does the work rather than the coaching. I think of technical assistance as a bit like teaching a young child to walk. You cannot do it for him. You cannot carry him around all the time. He has to learn to do it on his own.

A point about human resources issues. I think that programs might fail where the receiving agency has not been able to hold on to those people who have taken part and enjoyed the TA programs in order to build upon what they have gained from them. We've heard about this problem this morning from Ms. Ortiz from Peru, and I've heard it also in the Caribbean, where they say that people enjoy the programs, and then they leave to the private market, which pays them much higher salaries.

In fact, this situation might even strengthen the problem of the agency as now it has these wonderful trained people on the other side of the cases that it brings.

Two micro issues: First one, even the best technical assistance program may fail where political
economy issues are not identified and dealt with properly. Let me use a metaphor that I used in another context, which compares the antitrust laws to a flower. In order to bloom it needs water, sun, minerals and pesticides. It's important to develop or, let me be more precise, assist the agency in developing "pesticides" that would deal with those forces leading the decision makers to deviate from socially beneficial policies due to their capture by interest groups.

Such capture might be especially strong where the competition culture is not yet established. Political capture issues might have to be dealt with before providing all the other types of assistance. And finally the most wonderful technical assistance program may fail where the law is incompatible with general legal principles and constitutional values. Here we have an example from Jamaica that had the very unfortunate experience of having a fundamental error in its competition law in that the investigative and adjudicative arms of the Fair Trading Commission were not separated. The court then found that this was a breach of natural justice.

COMMISSIONER KOVACIC: That can't be right.

That just can't be right, obvious judicial error.

MS. GAL: Well, obviously they have a bit
different laws than those in the U.S.

This problem has stifled their ability to bring
cases for many years now, and I think that this example
exemplifies the importance of understanding what each
country's needs are, what are the basic legal
principles, and not just suggesting that they copy
something from another agency where it has worked well,
because their constitutional values might be different.

COMMISSIONER KOVACIC: Georges?

MR. KORSUN: Sure, some reasons why technical
assistance does not always work: I think competition is
not always beneficial. I can think of one instance
where it's not beneficial for consumers, and that's when
it's going on among the technical assistance providers.

I've actually been involved in a number of
instances where technical assistance was being provided
to the same agency by countries with very, very
different philosophies about how to do competition law,
and in the extreme, I've sat in meetings with the head
of the agency at one end of the table and the U.S. side
on one side and then the other side -- I won't mention
the other country, but the other country on the other
side and literally going down a number of provisions and
having to debate in front of the head of the agency and
the head of the agency picking left and right, I'll take
this one and I'll take that one, and you can imagine what the end product looks like in terms of coherence and internal consistency.

I think it's a real issue. I think perhaps it's mitigating, but with all the work on convergence, but I think that's an issue.

Second, I think that a lot of the technical assistance narrowly targets agencies to the detriment of the wider population of affected parties, particularly the judiciary, the private bar and so on, and that's sort of a fundamental design flaw I think.

Other factors we've talked a lot about: The quality of the technical assistance advisors. I think perhaps this is an issue. I think there may be a supply problem on this question. There's so much material out now from multinational organizations that sort of establish the standards that advisors ought to be somewhat familiar with local conditions, despite what the ICN survey results also say, and certainly with what the multinational organizations are putting together in terms of best practices and standards, and I understand that's not always the case.

Then finally, I also hear, although I can't testify to this myself -- but I also hear that sometimes agency material is not quite appropriate for the
situation in which it's used, so hypotheticals and so on aren't quite tailored to the instance that they're applied in.

The last point I think on budgeting and donor funding, you know, there's sort of this three legged stool between the funders, the technical assistance providers and the recipients, and that really confuses the relationship between the client and the provider.

And I understand that relationship when the technical assistance provider is a private sector consulting firm. It's less clear to me why it has to be there when there's another government agency involved. I understand that there's a move to shift budgeting away from donor agencies and directly to the FTC or directly to the DOJ or to the provider, and I think that makes a lot of sense because that sort of three legged, three party communication about what the objectives are, I mean, all parties have different incentives, and I think it makes it much more difficult to have clear objectives, and if you don't have that, then it's very difficult to design an appropriate program.

COMMISSIONER KOVACIC: Yeah. Let me echo several of these comments and elaborate on them a bit, and then ask for reactions to what each of you have heard from each other.
One on my list is the first that Georges mentioned, and that's provider rivalry is out of control, not the fact of some rivalry, but the out of control nature. We may be thinking of the same example in a specific country where the voice in the room, as we were speaking, after everything we said, almost as a litany in the religious tradition I'm raised in, a litany where the response to each of our comments was: You have now just heard the Anglo-Saxon point of view.

And it was spat out as though it were a vulgarity, that is, you've now heard the Anglo-Saxon point of view about where we should have lunch and now you've heard the Anglo-Saxon view about how we should get from --well, we wouldn't want to identify the country, but it was an echo in the room after everything we said about the most unremarkable propositions about competition law.

I can think along those lines working in Indonesia where at one time for the then emerging KPPU, there were ten donor supported technical assistance projects, four of them from USAID, one from the bank, one from Australia, one from Canada. It was easier to come up with a list of countries that were not providing technical assistance to the KPPU than it is to come up with a list of those who were.
And I recall still one of Shyam's and Mark's colleagues at the bank, Louis Tamayo was sent -- almost like Martin Sheen going after Marlon Brando in Apocalypse Now, was sent up the river to try to find all these people and get them to talk to each other with just about the same result too.

He brought them together in a room and the question was: Let's start by just describing what we're all doing. You would have thought that you had walked in the embassy of North Korea and asked for a current breakdown on the production of electricity with nuclear power.

One to another, we're here for technical assistance. What type? With the KPPU. Right. To do what? The implementation of the competition law. It was like a deposition: Only answer the question. Don't guess. Don't say anything else, and Louis came in with the idea that he would at least be able to walk out of that meeting with a chart that said: Here are the 20 things you might want to do with a KPPU. Here's what people are actually doing, much less to get to the more difficult and problematic question of where are the gaps and where might we reconcile that.

And Louis' hope was that the bank might be the hub for at least an information clearinghouse, and that
died that day because the providers were guarding all
their projects and what they were doing as precious
know-how, attorney/client work product, only to be
coughed up in the face of dire oppressive demands and
weren't willing to cooperate.

I think more generally I'm struck in our city
here about how of all the people who do work, how often
do each of us who do work here sit down and talk about
what we do? How often do we gather regularly just
within our own agency where we have people coming and
going on a trip and sit down and say, You just got back
from? What happened?

We do a little of it, but we don't do it
systematically among those who do work. There's a lot
of know how packed in there, much less to cross the
chasm between 7th and Pennsylvania and 10th and
Constitution Avenue.

Where is the regular program there to say, You
went on a trip, I find out about this because I work
with some of these people from time to time, much less
to go to 19th and Pennsylvania, to go to the IADB, to
walk through the collection of providers and even have a
process for sitting down saying, In academia, we would
call this the technical assistance workshop.

It would be the process by which we talk with
other competing universities in the area of friendly competition. What are you doing, what are you working on, what are the results of that process? We do not even have a simple basic process to share know-how on that score, and yet here we are gathered once, maybe we'll come back in a few years to talk about this again, an astonishing lack of cooperation simply on the way in which we do work.

The other item I wanted to mention is related to the question of needs assessment that George mentioned before, and that is if you do a careful examination of needs, that really is a good step in going along, much like it benefits commercial airliners to plug into the mission control computer the coordinates for where you're going rather than simply flying to Los Angeles, to know where LAX is, the difference between landing in the Pacific Ocean and landing on the runway, a good preliminary process, as well as to have a process on the back end to actually assess and examine needs not simply in substance but in infrastructure.

To me, a book I have on my book shelf, and it's falling a part because I look at it so much, is what I think is still the best single diagnosis of the building of an institution and how an institution's working, and that's Eleanor's coauthored text with John Fingleton,
Damian Neven, Paul Seabright, that's a hall of fame team for you, that looked at the development of the systems in Central and Eastern Europe, Csaba's agency and others, a careful internal diagnosis of how things were going, the framework and profile of cases being brought, the development of the management team and the infrastructure, the key insight that the choices of institutional design shape substantive outcomes, along with the framing consideration of political economy concerns, why the agency was getting all of what looked like contract cases when in many instances because, well, the contract courts didn't work, people reframed their allegations in competition policy terms and came to them, just a wonderful assessment of how things were going, in many ways to add more of that to the mix would be extremely useful.

Last, perhaps too little honesty in our interaction with our counterparts with the political realities we deal with, that is to talk about how you cope with the political pressure when the minister calls, how you cope with the demands on the larger society for effective redistribution policies, how do you cope with the urgency pressed upon you to deal with transitional inequities that aren't necessarily within the immediate frame of reference of the competition
agency, but have everything to do with the acceptability
of the implementation of the competition policy program?

    Just on the politics point, I've gone to so many
sessions now where the U.S. agencies sit in the big room
with others, along with Brussels, this isn't just our
disease, and the question comes up: What do you do with
political pressure? The tendency for the adults at the
table is to say political pressure.

    It's not whether or not it exists. It's
ubiquitous. It's relentless. The real question is how
you deflect it, that is how you keep it from getting in
the way of doing good technical assistance day in and
day out, and this seeps in I think to the provision of
advice to individual countries because they think, Oh,
my God, I'm never going to get to where you are, how
could I possibly get to an environment where there's no
pressure?

    The pressure is relentless. The real candid
discussion is: Yes, it exists, here's how you cope,
here's how you start to build fortifications that
deflect it away from doing good work, so I think for
advisors and their donors, to be more candid in talking
directly about the political economy questions that
really count would be quite informative.

    Danny, Andreas, did you have -- maybe if we
could go down -- comments on the other discussion about shortcomings, and then we'll turn to our last segment?

MR. SOKOL: From what we can tell from the ICN data, political economy does play a huge role in terms of the outcomes, and it's something that shouldn't be lost in all the follow-up studies in talking to agency people what they suggested.

What didn't work well is in spite of how we read some of the data, all the qualitative comments afterwards, all the interviews, literally every single one suggested when there was a malfunction with the technical assistance, it's because they didn't understand the broader politics of the agency, how the agency interacts with other parts of governments, and within a larger sort of cultural understanding as well.

And one area that we haven't talked about is how agencies react and respond to sector regulators, and that was -- particularly as agencies, we're doing technical assistance or receiving technical assistance, that was an issue that came up time and time again of: How do we deal with these agencies oftentimes that have preceded us but oftentimes who do not have the same market orientation that we do, who are more prone to capture than we are and that somewhere have much more power than we do?
COMMISSIONER KOVACIC: Andreas?

MR. REINDL: One puzzle that Michal raised that I wanted to highlight is that programs need to be targeted to the absorption capacity of the recipient; start with easy things, go after the bread cartel before you move on to the next cartel and on to difficult things.

That may well be the right approach in some countries. The problem is that some of the recipients of technical assistance live in a different environment. To give you one example, we just started to work with Barbados on a technical assistance program that we put together, and one of the major competition concerns is how to control the telecoms monopoly. Essentially, all antitrust cases emerge in that industry.

That's just a very, very difficult thing, and helping to go after the bread cartel will not necessarily help them in a more complex area where there's enormous political pressure on them to show results. The second example that I remember is antitrust/IP; one of the most difficult areas of antitrust law and policy.

Our inclination would be to say, Well, start with all other things before you get to this difficult things. But I remember David Lewis, of the South
African Competition Council as he sometimes would explain that they were under political pressure to tackle, for example, problems in the pharmaceutical industries so practice in the pharmaceutical that raise IP and antitrust issues.

Again, you can't just tell them, Okay, go after the bread cartel and wait for a couple years and then do the difficult stuff.

I agree with Michal; obviously, you don't want to start there and you want to start at the easy part, but the problem is that in reality this is not necessarily what the recipients of technical assistance expect or need.

COMMISSIONER KOVACIC: Comments between the discussion here? Anyone else want to pitch in? Mark?

MR. WHITENER: Well, a point I thought about making earlier, there was a discussion in the last panel about state owned enterprises, and I guess the general point that brings to mind is not only perhaps at times the failure of leading agencies, leading jurisdictions to think about how their own policies get translated in other jurisdictions, but how the general principles we espouse get translated into actual cases.

And one thing that I'm thinking of here that I did mean to mention was beyond mergers, where a lot of

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companies deal day-to-day with the process, the area that I think creates the greatest risk for over deterrence or interference for official planning is single firm conduct. So when we think about, for example, state owned enterprises which is obviously a major characteristic of a lot of these jurisdictions, a lot of the less rational single firm rules that I have seen emerge from some of these jurisdictions that apply equally in some cases to state owned and to private or foreign enterprises -- when you look at them and you see how heavily regulatory they are and you go and explore the origins of them, you find they often stem from a legitimate goal of bringing in, to reigning in those state owned enterprises.

But when those principles are applied to private firms operating in global competitive markets you get over-regulation. So, I'm not sure how it fits into the discussion, but it's a point I wanted to make earlier in terms of the specific concern that I think businesses bring to this, and one of the areas where I think it would be useful to focus technical assistance going forward.

COMMISSIONER KOVACIC: Michal?

PROF. GAL: Just a short sentence relating to Andreas' remarks. I agree with you. I agree that you
have to relate to the situation at hand, so that gradual enforcement has to be geared to the problems of the specific country, even if it might require in some instances a different set of gradual enforcement then you would normally suggest.

But at the same time, I want to go back to a point I made before, which was that it is really important to emphasize the limitations of competition policy. You might have a severe problem that could not be solved through competition policy, or at least not with the tools that you currently have. I think that pointing to this limitation and saying, Well, let's start with the basics and let's go up, and eventually we might get there, might be important and even a better policy than trying to deal with the highly complicated cases straight on.

COMMISSIONER KOVACIC: I see the hardest case, and Russ Pittman and I last week were working with a relatively new agency that has one that looks just like this. The sector in question is a just privatized sector. It is a recently formerly state owned enterprise that continues to enjoy obviously advantages from its connection to the state.

It's not completely disconnected from the drive train of the political process, which means it has a
thumb on the scale with respect to import and trade policy. You have very tricky distribution downstream mechanisms that are reminiscent of the era of state owned ownership.

So it is a -- it's clearly going to have a lot of residual market power that's a consequence of these circumstances, with the state I suspect at different points quietly and formally, maybe not so quietly, tossing benefits in the direction of the firm.

So there's a real series of abusive dominance issues that are real and genuine, and if you're the advisor and you say: Don't worry, they'll give you a cold cup of coffee, get the car ready for you and you'll be on your way to the airport in a hurry, plus the related questions of: What happens with employment dislocation if you go ahead with this process?

What about in some instances the extent to which the firm provides the housing in which the employees live, supplies -- organizes medical care and education. It's been expected to provide the larger safety net, and the question that's posed to the competition agency: What do you do about all these transitional problems?

And an answer would be: You enact transfer programs, you have wealth redistribution programs, you don't use the state owned enterprise or the monopoly as
the vehicle for providing all the social services. You have a social services apparatus that does these things, and they say fine.

And where you certainly have in your magic bag the tools that put those in place right away, and there's a concern because they're not coming along, that the competition agency is going to be pressed to provide the interim solution, and at that point they turn to you and say, Okay, great advisor, what's your next move, and that's where you say, it's time for a tea break.

In the academic setting, you get to say: We'll get to that later, or you get to say: What do you think. But those ultimately don't work very well in that setting, and I'm not sure they're particularly good answers for dealing with that in that instance.

For a tour through the home stretch: What can we do better? Scott, please.

MR. COOPER: I should go with unrehearsed remarks here. I'm going to pick up on something that Hugh Stevenson brought up in his panel, which is the global supply chain issue. The perfect storm this summer, toys, toothpaste, tires, you name it, really raised the issue. I think that agencies that have the monitoring obligations can't do it when the manufacturing is no longer within the 200 mile limit of
the United States.

What do you do? So we have all these MOUs with foreign nations, a lot of technical assistance of which ANSI is doing, and one of the agencies represented here are doing. Does anybody feel more comfortable that we're on top of this situation?

One of the things I think that needs to go forward on this is we had a very good paper and recommendations coming out of the interagency working group on import safety back in November and followed up with the FDA on their import safety working group plan.

So I think the consensus is out there about how to move forward. It's got to be consensual. It has to be working with the private sector, all the right things. Who is going to build it, what's the next step for implementation? And ANSI is doing something with the toy industry and we brought in consumer groups. We brought in National Consumer Leagues and Consumers Union because the toy industry was truly motivated. They were ready to accept any kind of regulation; just make the pain, stop, especially before Christmas.

What about all those industries that are out there that we know are going to have the same kind of problem where it's not a question of sins of commission. It's sins of omission. It's somewhere along that supply
chain where things happen. When you have a situation where the manufacturer is telling the subcontractor, Just lower your cost, I don't care how you do it, just lower your cost because we have to sell to Wal-Mart or whatever. So it turns out that things like lead paint, not only are they cheaper, they dry faster, they're more brilliant colors. They have all the advantages except one, which is they're toxic.

What do you do to get back in control of these things? Well, it can't be just a private sector. We're doing a lot now again with contractual obligations, but there's got to be, again, we think this tri-party approach. It's got to be consumer groups who give it the gravitas. It's got to be business that agrees to these things, but there's got to be a role for government in a sense to participate, to ratify whatever it may be, and then to monitor whatever; these programs are still works in progress.

There are meetings going on all over in town. I'm sure people in this room are part of those things. How do we get that thing from the nice idea to implementation? And everybody is waiting for somebody else to make the first move, and this is a classic example where everybody recognizes the problem.

We know we have to do something. It's only
going to get worse. If we don't solve it by next year, next Christmas season, the worst of all solutions will probably come out of somewhere, mainly just down the way. So how do we get everybody -- not just in this room, but everybody who should be participating in that kind of decision process, to come out of their silos and actually work together?

One of the problems we have I think with government is if it's not invented by government, if it again was like the dispute resolution issue with the consumers with the business groups, they were happy with it, but they weren't going to ratify it because it wasn't their program.

What do you do to get all these groups together in a global marketplace? You can't do it alone. It's got to be somewhere where we all participate. I don't know, but I would love to throw the idea out.

COMMISSIONER KOVACIC: Maybe to anticipate the last part of our discussion, I think that one element of providing the assistance and specific projects, but linking it to the work of multinational bodies, forums such as ICN, is to offer for their consideration models that show that the broader collaboration can work, and I think, Scott, of your example of the BBBs, and the national advertising division on the consumer protection
That experience began over three decades ago as an effort to find creative ways to supplement public enforcement of national advertising standards with private initiatives, has proven enormously successful, and with all the weariness about providing solutions that come off the shelf.

From western experience, I think one useful thing that can be done is to show by demonstration for different audience models that have been successful to indicate how they succeeded in the context of international bodies so that if the intellectual vision behind them and practical experience seem persuasive, different jurisdictions will opt into them, but I think in thinking about larger solutions for perceived problems to think not simply the public sector, the collateral supporting institutions, the role of public and private enterprises, and to find convincing examples that show that where the incentives are aligned, as they are quite often in the case of keeping advertising to be perceived as truthful and honest and thus reliable for consumers, the focus of attention could easily be expanded to these more elaborative, cooperative strategies and perhaps brought to the attention of others through international networks in which we
participate.

Danny, can I turn back to you for the final lap, where we think -- what would we do differently?

MR. SOKOL: Here's where I offend everybody, but I'm allowed to because I'm an academic. So first, I would just say we're still in the dark. We don't really have a good sense of what works because we don't have much data. The ICN survey was based on a very limited sample of data.

Agencies don't share what they're doing as Bill said. Donors don't share what they're doing, so this is a great opportunity for us to get together and really think hard about technical assistance because what quite possibly could happen is in another five years time, we can have exactly the same kind of meeting with exactly the same kinds of points being raised and not much being accomplished because the will really isn't there.

We're happy to vent our frustration, but in fact we're not willing to take the really necessary steps that we need to, and all of us are to blame for that, and I'll go through our list of who we blame.

First, let's start with the donors. Are the donors actually identifying the right kinds of projects? And here I am of two minds. On the one hand, a number of our international donors and our bilateral donors
have a very good sense of what a country needs. But what a country needs generally is not specifically what is needed in competition policy; so we have a disconnect.

Second, we have the other problem that Bill raised, which is that we have fighting among donors. As it turns out, we do have some data from the ICN survey that suggests that technical assistance and capacity building seems to be different from certain donors than other donors. What I would like to conclude is that maybe some people should get out of this business.

Unfortunately, that's not going to happen, and since everybody is going to be giving money and everybody is going to be fighting these turf battles, the question is how do we take a very small pie and maximize its potential? And that's where I think that we all have to do a better job.

So now I'll attack our U.S. agencies. So for FTC, we heard lots of talk about enforcement. With the exception of I think Tim Hughes in the very first panel, we heard very little about competition advocacy and how to train people how to interact with other institutions. This seems to me to be just as critical as any kind of enforcement that we talk about, and we shouldn't think of our technical assistance as enforcement.
We should look at it more holistically. It strikes me similarly that for the DOJ, we heard in our opening session about cartels once again being the supreme evil of antitrust or something like that. It seems to me after hearing all the presenters talk about the power of the state and state owned enterprises and privatized former state owned entities, but yet somehow still in the bed with the state, we need to think that maybe cartels are not our sole priority but maybe the state is the problem.

And it was actually Jim Rill that I think really put his finger on it saying, You know the enemy of antitrust is not monopoly, the enemy of antitrust seems to be the state because in fact I think we have seen, those of us in this room, a lot of state intervention in the economy being the real source of anticompetitive conduct.

Moving to our academics, let me focus on where we've been failing. First of all, I think we don't follow-up as much as we need to. Some of the best technical assistance, I think we have to think again more holistically, comes from people coming to do LLM programs in the United States, and so the question that I have -- or Ph.D.s in economics, so part of it is on our end, How often do we keep in touch with our former
students, particularly those that are working in this field?

How often do we ask them the kinds of cases that they're working on? How often when they're in an agency are we making sure that the teaching process and the cooperative process continues beyond the classroom so that it's a long term relationship? Because part of the issue is it isn't just for the agencies to do this. It's not just for the private sector. We in the academy I think have not been doing the kind of job that we need to do.

But there is something else that we haven't talked enough about, which is the Bar Associations. I think one of the biggest providers of technical assistance in a certain way in terms of how knowledge gets diffused: The ABA spring meeting. The number of non-U.S. lawyers and increasingly non-U.S. economists that show up to the spring meeting is vast.

Someone told me when they were trying to get the spring meeting together in the early '80s, they desperately tried to get it to a smaller hotel. Now it seems like we can't get a hotel big enough for the spring meeting, and when I speak to people in a number of agencies, they talk about say, Bill, giving the introductory session about the basics of antitrust law.
and how to think about these issues, that's really critical.

I think again if we're acknowledging Barry Hawk, I think that the Fordham fall meeting, since the mid '70s, has been really critical in helping to bring people together and teach them, and we don't pay enough attention to that and how our bars and our conferences really play into each other and are a part of this much longer term technical assistance.

Part of it is about how we work together. I don't have easy answers for you. What I suspect is that we're always going to have problems. We're not moving to convergence, particularly not in unilateral conduct as Mark and Andreas mentioned.

So it's about how do we mitigate the problems, and here I think we have to be honest with one another about our goals, and we also have to do better with talking to recipients of aid so that they tell us if somebody else is involved so that at least we know we can get on the phone and talk to each other and then hopefully have a way to clear the air about what people are doing.

It strikes me also, therefore, we need to ask, What about the business community? We hear business' concerns. I would say where business has dropped the
ball is that if business is really concerned that not
enough money is being spent on technical assistance.
One option of course is to try to lobby members of
Congress, but I think another option, an additional
option is to actually put your money where your mouth is
and fund some of this yourself through various programs,
through training sessions, perhaps through scholarship
programs for people from agencies to come to the U.S. to
get advanced degrees.

So that you're creating over a much longer term
an intellectual community that understands the
importance of rule of law, that understands the
importance and linkage of competition law and economics
within a larger setting and things that are appropriate
to the country, but somehow are still good for business.

And I think also we don't do a good enough job
in bringing the message home that this is ultimately
about consumers, and once we stop -- once we stop sort
bringing that message home, it's very easy, therefore,
for some populist elements to say: Well, how are
consumers benefitting, and we don't do an effective job
in transmitting that message.

Now that I've offended everybody in the room,
now is probably a good time for me to go and catch my
flight. Thank you.
COMMISSIONER KOVACIC: Danny actually does have to go early.

MR. WHITENER: Sure.

COMMISSIONER KOVACIC: Thanks very much, Danny.

Thanks. That was hugely helpful.

(Applause).

COMMISSIONER KOVACIC: Andreas?

MR. REINDL: First, I think is recognizing and talking about the fact that not every program, not every event can be a success, and that applies also to long-term technical assistance. I remember -- I won't give names -- but I talked to someone a few years ago who then was general counsel at one of the U.S. agencies. He told me very critical things about a long-term assistance program where the materials essentially gathered dust in the basement. Staff was unwilling to talk about their cases with the long-term advisor, and the agency leadership was, what I remember, more or less, in his terms, dysfunctional.

Now, it would be interesting to learn from that experience, but that would mean that we actually have to accept that happened. Or it might be interesting to compare very successful programs, and there were lots of them, and perhaps then mildly successful programs.

I think it's no coincidence that today we have
Csaba here from the Hungarian authority and not someone from, say, Poland. We have the OECD regional center in Budapest and not say, in Bratislava and lots of the U.S. agencies' efforts focused on Budapest and not Bruno.

And you sent your people to all these countries, that's clear, but something happened in the process and some programs were more successful than others. Again, it would be interesting to compare and see whether there were other -- not just external factors but something in the program that could have been adjusted for local needs. That's the first point; accepting that the things sometimes work better and sometimes work less good.

The second point is that we need to work harder to develop evaluation tools, to come up with some assessment of what has been successful or not. There I think that's a task not just for one agency or not just for two agencies, but that's something that should be done on an international scale among all the donor agencies.

We all support the ICN. We all support the OECD. But just to give you one example; you, Bill, were at our workshop for heads of agencies a few months ago at Fordham, which I think was extremely successful. One reason it worked so well is that they met not at the
OECD and not at the ICN, and they did not have to hide behind a country flag and they didn't have to represent specific agencies, but they sat around a table in a neutral place, and for a day talked about what heads of agencies want to talk about.

Maybe something similar would make sense in the area of technical assistance, too. You have a forum among the leading providers of technical assistance, and you have a day long assessment of what worked and a frank discussion of what hasn't worked.

The third point, just an idea, because we talked so much about long term programs that should ideally also target a broader set of stakeholders, including academics and judges. One question is, whether in the context of a long-term assistance program, the agencies are always the best institutions to reach out to judges or academics.

Judges may not necessarily like to hear from the competition authority. They may be more comfortable hearing from fellow judges or from academics. Reaching out to academics may be a good thing to do for a government agency, but perhaps it would be better or more effective to cooperate with another academic institution and have them come with you to the recipient country and help expand contacts that the U.S. agencies
could establish initially.

COMMISSIONER KOVACIC: Thank you, Andreas.

Mark?

MR. WHITENER: Well, some of this is repeating things that I've said before, but let me just sort of sum up two or three things that I think would be useful to think about going forward.

Competition law discussions can get highly theoretical, and I think it's always useful to have a sense not only of what our concepts are, but what they actually do in practice. This applies equally to the agencies' enforcement efforts here in the U.S., and Mr. Kovacic and others have called for more assessment retrospective, if you will, of the effects of what the agencies do domestically.

And so I think just agreeing with what others have said, some greater measure to measure and assess the effectiveness of these programs would be useful, and I think the agencies get great credit for having this program today, which I think is essentially a step in that assessment process.

Second, and this is directed actually at people who may or may not be in the room, but those who are the leaders of the future, leaders of the U.S. agencies of the future. I think we're extremely fortunate to have
leaders of the agencies today who play such a high priority on, not only technical assistance as such, but the broader competition advocacy agenda, following on predecessors who have done the same.

I don't take for granted that that will be a priority for future administrations, so whether the future leaders of the DOJ Antitrust Division or the FTC or other agencies are in this room or not, many of us will probably know some of those people who come into leadership positions, and so I think we need to be sure that there is not the apex of these kinds of efforts, that we're really at the point where there's more to be done and the future leaders will recognize that, and each of us in our own small way perhaps may be able to whisper that in the ears of those who follow.

Then the third point, and this is a comment directed at current agency leaders, how to follow on what you've done today and how to build on the resources that I think as several people have said, and too bad Danny is not here because I agree with everything he said about what various constituencies can do -- how can you and the agencies sort of coordinate and build on that?

The ABA can do more here. Private companies like GE and other companies with a stake in this can do
more. We do have various programs in other areas of law where we have essentially done outreach and what would essentially be called technical assistance in various areas relating to the rule of law. Whether it's through the U.S. chamber through other groups other individual companies taking the initiative, there is more that we can do, and I can't think of anyone better to try to help coordinate that than the FTC and the DOJ because you guys know what you're doing as well as anybody.

And so I encourage you to think about how to pull us all together. I hesitate to say another workshop or a roundtable, but maybe it's just a meeting to get people in the room to say, okay, what resources can you bring to bear to this problem and how can we lawfully, transparently put those resources together for the maximum impact.

COMMISSIONER KOVACIC: Thank you, Mark. Scott?

MR. COOPER: Very briefly. I worry with Angel about the tiredness of marketplace reform. I think the case is clearly there. In the long run it works, but as Lord Keynes said: In the long run, we're all dead.

I think we need to find things that are short-term solutions that give people hope and inspiration and enthusiasm. An example I think was the BBB in Romania where the businesses in Romania knew that
they needed a trust mark, knew they needed some kind of help to be able to sell into the global marketplace. They would do a lot in return to be able to do that. If it was talked down, from government, they would probably be very reluctant. But coming from their own general needs, they could participate as well. That's exactly what I think we need to look at.

That's bringing in different players, more players. I think re-igniting some ideas that are out there, and I think it all comes back to the fact that it's a global marketplace. I think bilaterals just don't work as well as they used to.

COMMISSIONER KOVACIC: Michal? Thank you, Scott.

PROF. GAL: Okay. Subject matter issues, one point here. I want to emphasize that there's no one size fits all solutions to the issues of different countries, and so the technical assistance people have to assist the country in recognizing and setting priorities based on realistic expectations.

And here I refer to things that I have said before. Let me just group them. For example, recognizing unique challenges of enforcement resulting from the availability of resources, public and intergovernmental support, the ability to keep applying
remedies in practice, the availability of relevant information, recognizing legal limitations such as those confronted by Jamaica, and realistic cost-benefit analysis of activities based on complexity, cost and efficacy. Only if these are put together do I think that the programs could be successful.

Three points on human resource issues. The first is I think it's important to ensure that those who are trained in a technical assistance program have a long-term commitment to the agency.

One way to do that is to require them to sign a long-term contract with an agency, with a penalty for leaving and moving to the private market unless their reasons are very good ones. This has been suggested by some countries. I don't know if it has been implemented but I have heard it suggested.

Another supplementary tool involves ensuring that the agency has what might be called an institutional memory, so that future enforcement does not rely on knowledge held by specific persons.

One more point: It is helpful to involve in the TA Program people from agencies that have successfully created an antitrust regime and have tackled similar issues.

Last one, a question was raised by Anne Purcell
earlier this day about what makes the perfect advisor, and a lot of interesting and important qualifications were raised. One such qualification that I want to emphasize is enthusiasm towards the subject matter. You might have an incredibly knowledgeable person, but he is dull.

What we really need is to clone Bill, but if we can't clone Bill, then we need some other way of getting highly enthusiastic people to do that job because I think that then they transfer this enthusiasm to other people.

Macro issues, two very short points: The first one is I think it's important to assist countries in the creation and the sustainment of regional agreements. They haven't been mentioned up until this point today, but I think that if we're looking at macro issues and we want to assist developing countries, a lot of them are also small.

If we want to assist them in solving some of their resource problems, one way to go forward with this is to assist them in creating regional agreements which enable them to pool their resources. To give an example, the CARICOM agreement has just been put in place. Yet they have no resources. They put the commission in a country in which nobody wants to live so
they didn't get the good people to be on the commission, but apart from these issues, if they can be dealt with, I think that's one way that donors can suggest to countries to go forward.

Finally, I would like to recommend more conferences just like this one, which try to build upon vast experiences. I think the idea to organize such conferences is a wonderful one, and I hope it will continue.

COMMISSIONER KOVACIC: Thank you, Michal.

George?

MR. KORSUN: So what's left to be said at this point after a content -- full day? Have we talked about the need for monitoring and evaluation? I think so.

That's one of my critical points I think, and I don't really understand why this isn't going on. I understand the disincentives of doing it, but after awhile there is such a consensus in the community to do this that we really ought to be focusing on it, and I think there are simple mechanisms that ought to be attached on every single project, on every single technical assistance project, and people shouldn't get paid until they complete that initial step of the project, which is to design what the outcome measures are going to be.
It will force people to think about what the desired outcomes are, and I think eventually over time, we would evolve towards a kind of consistent methodology for evaluation.

It's a very tough question because it's occurring at the micro level, when we're talking about does having a left-handed advisor work better than having a right-handed advisor versus what's the real impact of this on the economy, what's it doing in terms of competition policy, what is that doing in terms of generating more economic growth? So it's a tough question.

I think it can be addressed. It's not an insurmountable problem. It strikes me that this is sort of an ICN topic in the sense that that survey exists. That survey asks lots of questions. I think people have learned a lot about which questions worked, which measures didn't work, and that ought to be, that could be a foundation for going forward and sort of seeing how one could systematically assess the benefits of different kinds of technical assistance.

My second point is that in that long list of guilty parties, I didn't hear anything about the recipient agencies, and we shouldn't necessarily let anyone off the hook, so I come to this from the
perspective of somebody who is in private practice, has looked at the decisions of certain agencies, and sometimes when I look at the decision of agencies in single firm conduct cases and so on, the logic and the level of economic analysis and the decisions are not always commensurate with the amount of technical assistance that the country has received.

So I think it's reasonable to think about this question, and really the reason it's reasonable to think about it is that that's the single most important outcome measure. When we think about monitoring and evaluation, the single most -- the dependent variable, the Holy Grail of dependent variables is whether the agency is functioning well with the quality of decisions and so on.

So let's devote some attention to thinking about how to measure that. I know there are lots of indices out on agency quality. There are the OECD peer reviews, but I'm not sure that anything really gets at the quality of decisions or other quality measures on the effectiveness of the agency. Again, I don't want to minimize the scope of the problem, but we ought to be addressing it as a group, perhaps again through the ICN, although I can see why that would be a difficult sale.

I think that's probably all. We've covered so
many important things today. The last point is that we need to keep a perspective. There's a lot of commercial law reform going on. There's a lot of market liberalization going on, and this is just but one small piece of it, and we're better off if we understand the broader context.

COMMISSIONER KOVACIC: Yeah. Thanks, George. I think one of the great contributions that the international networks can make is focusing attention on precisely the concerns you just mentioned; that is, making a commitment to a sustained process for monitoring and evaluation, and asking the larger question that you mentioned, which is: How do we measure agency quality?

What are the benchmarks of good competition policy performance? And by the way, for the adults in this business, that's a useful question to ask too, and I don't see general agreement in the areas in which we work about how you fill out the agency report card: Case counts, investigations opened, what kinds of cases? Are we going to measure outcomes? Where does advocacy fit into the mix? What about investments and institution building? That is, do you look at current leadership and say, I want to know what your capital budget is every year, namely and in particular?
I want you to identify the investments that will pay off when you're long gone, for which you will not be there for the ribbon cutting ceremony, and contrary again to the wonderful Washington aphorism, pick the low hanging fruit. I want to know how many trees you've planted so that when you're long gone, then we see how you today made investments that made your agency better later on.

And that is so contrary to the sick culture of this city that it is very hard to get people to take that, to take that seriously, but I think there would be enormous benefits to the well established agencies to be thinking about that question and to bring the focus on to the critical question of how you monitor and evaluate outcomes.

I think if you looked at it, if you began developing models, for example, of the life cycle of an agency: What kinds of benchmarks do you use to identify success over time? By what indications of activity do you measure performance?

And indeed to put responsibility on the shoulders of recipient bodies as well as the providers, because I think we can think of instances in which vast sums have been spent for lack of effort, that is: What is it that ultimately distinguishes the ventures that
have succeeded from those who don't?

I once again want to thank my colleagues for putting this program together because what it does involve in many ways I think is a willingness to ask questions about one's own performance and to think about doing it better over time, and I know there is a natural institutional reluctance to ask questions about how one does better, much less to discuss areas in which one has failed.

But the person who brought me here several years ago said: If you are afraid to subject your ideas to that kind of scrutiny, maybe it's time to get some better ideas.

Thanks very much for contributing to a useful and, I think, going ahead productive day. Thank you. And thanks to this panel.

(Applause.)

(Whereupon, at 5:35 p.m., the workshop was concluded.)
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