



The Federal Trade Commission

Opening Remarks of Chairman Deborah Platt Majoras

International Technical Assistance Roundtable February 6, 2008

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.¹ 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.

¹ See Organisation for Economic Co-operation and Development [OECD] Global Forum on Competition, *The United States Experience in Competition Law Technical Assistance: A Ten Year Perspective – Note by the US Federal Trade Commission and the US Department of Justice, Antitrust Division*, OECD Document CCNM/GF/COMP/WD(2002)20 (Feb. 6, 2002), available at <http://www.oecd.org/dataoecd/37/61/1833990.pdf>.

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

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

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

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

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

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

Since then, our program has expanded to Latin America and then to Southeast Asia, South Africa, and India, in recognition of the fact that the command-and-control economies that prevailed in those regions had adverse effects on markets similar to communism's impact in the Soviet bloc. For the most part, our efforts have been funded by USAID, although we have had some funding from the Commerce Department's Commercial Law Development Program, and the U.S. Trade and Development Agency, and also have funded occasional activities on our own. 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 Peoples' 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.³ 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 Developments* or a textbook.

As we will discuss today, technical assistance takes many forms. One of our most

³ E.g., INTERNATIONAL COMPETITION NETWORK [ICN], CAPACITY BUILDING AND TECHNICAL ASSISTANCE: BUILDING CREDIBLE COMPETITION AUTHORITIES IN DEVELOPING AND TRANSITION ECONOMIES (2003), *available at* http://www.internationalcompetitionnetwork.org/media/library/conference_2nd_merida_2003/FinalReport_16June2003.pdf.

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

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

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

First, meeting future challenges requires us to look at funding. Our funding has fluctuated over the years, but has 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 had 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."⁵ 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.

⁵ 154 CONG. REC. H16054 (daily ed. Dec. 17, 2007), *available at* http://frwebgate.access.gpo.gov/cgi-bin/getpage.cgi?position=all&page=H16054&dbname=2007_record.

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

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

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

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

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