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FEDERAL TRADE COMMISSION

TITLE TECHNICAL ASSISTANCE WORKSHOP

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**A CONFERENCE ON CHARTING THE FUTURE COURSE OF
INTERNATIONAL TECHNICAL ASSISTANCE**

FINAL VERSION

**FOR THE RECORD, INC.
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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

P R O C E E D I N G S

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3 MR. TRITELL: Good morning, everyone. Thanks
4 for joining us. I'm Randy Tritell, director of the
5 FTC's Office of International Affairs, and it's my
6 pleasure to welcome you to the Federal Trade Commission
7 for today's workshop co-sponsored by the FTC and the
8 Department of Justice's Antitrust Division on the future
9 of our international technical assistance program.

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

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

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

25 I would like to take a moment to thank a few of

1 the people who made this all possible today:
2 Principally, from the Department of Justice, Anne
3 Purcell White, and from the Federal Trade Commission,
4 Jim Hamill, and I would also like to recognize from the
5 FTC the work of Carrie McLaughlin, Ruth Sacks and Mary
6 Anne Radebach, and from the Department of Justice, Katie
7 Cho, Keith Butler and Nancy Olsen.

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

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

20 So with that in mind, let's get started, and it
21 is my pleasure and honor to introduce our opening
22 speakers. We'll hear first from Federal Trade
23 Commission Chairman Deborah Platt Majoras, and following
24 Chairman Majoras' remarks, we're going to hear from
25 Assistant Attorney General Tom Barnett.

1 CHAIRMAN MAJORAS: Good morning, and welcome to
2 the Federal Trade Commission. We are here today to
3 explore a topic that we have never publicly explored in
4 depth before: the role of the United States, and its
5 two antitrust agencies in particular, in helping ensure
6 that the spread of antitrust and consumer law and policy
7 is implemented in a way that maximizes consumer welfare.
8 When properly fulfilled, these laws and policies benefit
9 not only the consumers in the countries where antitrust
10 and consumer laws are being newly applied, but also
11 global commerce and, ultimately all of the world's
12 consumers. Since the early 1990s, the FTC and the
13 Antitrust Division of the United States Department of
14 Justice (DOJ) have operated a joint program to actively
15 share our experience with newer agencies. With the
16 antitrust and consumer protection worlds having changed
17 significantly since then, and with public interest in
18 our program having increased, I thought it was time to
19 take a look at where we have been and where we ought to
20 be going. Thank you for being here to participate in
21 this examination. I am especially grateful to our
22 panelists, particularly those who traveled to be here
23 with us.

24 The American experience with technical
25 assistance probably began not in the 1990s but in the

1 1890s, not long after the ink dried on President
2 Harrison's signature on the Sherman Act. With no world
3 experience to light the way, we embarked on what might
4 charitably be called an active experiment in
5 trial-and-error to get a handle on how we should use our
6 antitrust laws to protect competitive markets and our
7 consumer protection laws to ensure that consumers may
8 freely choose among the fruits of a competitive market.
9 Looking back, we amassed a fairly rich trove of mistakes
10 to learn from, as well as more than a few successes.
11 Because of our nation's commitment to a competitive,
12 free market economy, we persevered, learned from our
13 mistakes, and ultimately built a system that serves our
14 consumers well.

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

24 Our program of technical assistance had its
25 roots in those days. The FTC and DOJ, recognizing the

1 potential for competition law and policy reform from the
2 beginning, proposed jointly that the U.S. Agency for
3 International Development (USAID) fund an ambitious
4 program of assistance for the new antitrust agencies of
5 Poland, what was then called Czechoslovakia, Hungary,
6 and other nations in that region. Under the leadership
7 of Assistant Attorney General Jim Rill, who I am pleased
8 is with us today, and my late predecessor, Janet
9 Steiger, our program was inaugurated in 1990 at a
10 meeting in Prague with President Vaclav Havel. Soon
11 thereafter, teams of long-term and short-term advisors
12 were dispatched to the region, with our first two
13 advisors going to Poland. Both are still with our
14 agencies: Jay Creswell of the FTC Bureau of Economics,
15 who is here today, and DOJ's Craig Conrath, who is also
16 here and from whom you will hear later this morning. We
17 remained active in that region until 2004, by which time
18 the European Commission had picked up the torch.
19 Alberto Heimler, Director of the Research and
20 International Relations Directorate of the Italian
21 Competition Authority, is an old friend who's here
22 today, and he will tell us more about that later today.
23 Since then, our program has expanded to Latin
24 America and then to Southeast Asia, South Africa, and
25 India, in recognition of the fact that the

1 command-and-control economies that prevailed in those
2 regions had adverse effects on markets similar to
3 communism's impact in the Soviet bloc. For the most
4 part, our efforts have been funded by USAID, although we
5 have had some funding from the Commerce Department's
6 Commercial Law Development Program, and the U.S. Trade
7 and Development Agency, and also have funded occasional
8 activities on our own. Our program has taken our career
9 staff to 55 countries, ranging from Albania to Zambia.

10 Since our program began, we have gone from about
11 two dozen countries with competition laws to well over
12 100. (We say that so often that we almost become jaded
13 to what a powerful development that really represents.)
14 Depending on your definition, even more have consumer
15 protection laws of one sort or another. The People's
16 Republic of China passed an Antimonopoly Law last
17 summer, and the most recent additions to the list of
18 countries with competition laws are Trinidad and Tobago,
19 Guyana, and Mauritius. This is a remarkable testament
20 to the world's faith in competition and free markets.
21 But if this trend is going to bear fruit for the
22 consumers of these countries and world markets, the laws
23 must be applied with the wisdom that is dictated by our
24 ever-evolving understanding of law and economics. Can
25 we afford, in this global economy, for the application

1 of these laws to evolve through the slower process of
2 trial and error that we experienced? No, and indeed, it
3 is simply not necessary. It is incumbent on those of us
4 who have been lucky enough to survive and learn from our
5 mistakes to find ways to be able to share our
6 experiences with those who have recently chosen to begin
7 the journey down the path we first cut in the 1890s.

8 Technical assistance is a fluid concept, and it
9 can encompass anything from broad advice in developing
10 national strategies to foster competition and
11 privatization, to help with drafting competition and
12 consumer protection legislation, to designing effective
13 institutions, to training in analytic investigative
14 skills in law and economics for enforcement personnel.
15 All of these are important, and at one time or another
16 we have been involved with each of these. But in the
17 context of the FTC/DOJ program, we generally mean the
18 process of transferring investigative and analytical
19 skills from career agency attorneys and economists to
20 their counterparts in newer agencies. For the most
21 part, our own staffs learn the ropes through on-the-job
22 training by experienced senior enforcement attorneys and
23 economists, and we try to replicate that in other
24 countries where that kind of experience does not yet
25 exist. You don't get that by reading Antitrust Law

1 Developments or a textbook.

2 As we will discuss today, technical assistance
3 takes many forms. One of our most effective assistance
4 tools is the deployment of resident advisors who are
5 "embedded" with foreign competition and consumer
6 protection agencies for periods ranging from a few
7 months to up to a year. It puts our advisors where they
8 need to be when the teachable moment arises, and allows
9 them to explain and share concepts such as market
10 definition or ad interpretation not as abstract
11 concepts, but as the issues present themselves in real
12 cases. As those of us who have spent their careers
13 practicing antitrust or consumer protection law know,
14 you do not really learn it until you have a real case
15 with real facts and real businesses -- and maybe real
16 lawyers -- in front of you. A less costly variant is to
17 use short-term advisors to simulate investigations of
18 hypothetical cases that as closely as possible resemble
19 the kind of cases a newer agency might encounter.

20 Another effective approach we have used is to
21 deploy participants who were trained in our earlier
22 programs as co-presenters in our more recent ones. We
23 held our final programs in Southeastern Europe in
24 Budapest, with the Hungarian Competition Office
25 participating as a co-presenter. They know what these

1 problems look like in a transitional economy better than
2 we do, and their insights added richness and texture to
3 the program. Csaba Kovacs from Hungary is here with us,
4 and he has been a great help there. We have done the
5 same thing in Central Asia with the help of the Baltic
6 states, and in Central America with the help of Mexico
7 -- Angel Lopez from Mexico will be with us later this
8 morning.

9 Of course, ensuring that consumers have good
10 information about the marketplace and its options is
11 critical to a well-functioning competitive marketplace.
12 Accordingly, the FTC introduced consumer protection into
13 its technical assistance work in 1992, and even
14 dispatched two consumer protection long-term advisors,
15 Susan Cohn to Bulgaria, and Russ Damtoft, who is here,
16 to the Baltic states in the mid-1990s. Most resources
17 then and now remain earmarked for antitrust, however,
18 partly because consumer protection did not always loom
19 large on USAID's development agenda, and partly because
20 it did not figure on the economic reform agendas of the
21 recipient countries themselves. Yet, the countries
22 across the globe are discovering the importance of
23 consumer protection as well. They are understanding the
24 importance of consumer information, which consumers need
25 if they are going to have faith in the market. In

1 particular, as use of the Internet spreads, and with it
2 the danger of ever more efficient delivery of fraud and
3 deception worldwide, the developing world has
4 progressively greater understanding of the damage fraud
5 can do to markets.

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

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

1 international technical assistance program stands at the
2 crossroads, and raises a number of issues.

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

14 Until recently, we have not appropriated funds
15 to use for technical assistance programs. In passing
16 the FTC's FY 2008 budget, though, Congress provided the
17 FTC with money beyond what the President had requested
18 and stated, among other priorities: "[t]he
19 Appropriations Committees recognize and support the
20 FTC's international programs. The FTC should continue
21 competition policy and consumer protection efforts,
22 including training and technical assistance, in
23 developing countries." Apparently, Congress recognizes,
24 as do we, that in today's global economy, a foreign
25 assistance component of our work is integrally related

1 to our traditional domestic focus on maintaining
2 competition and consumer protection. I am pleased to
3 say that in the operating budget that the Commission
4 approved on Monday, we authorized a substantial sum for
5 international technical assistance. Of course, we hope
6 and intend to continue the very productive partnership
7 we have had with USAID. Nick Klissas of USAID will be
8 with us later, and he and his colleagues have been very
9 supportive. But now we have some ability, at least this
10 year, to supplement that funding.

11 Another important point to explore is how our
12 technical assistance program fits in with other programs
13 executed by other organizations and even private
14 entities. While I believe that there is a separate
15 "market" for independent U.S. assistance efforts, there
16 may be room to work more closely with others to use
17 precious resources in a way that does not duplicate or
18 even compete. The International Competition Network has
19 examined antitrust technical assistance through a
20 project -- co-chaired by the FTC, I should add -- of the
21 Competition Policy Implementation Working Group.

22 Undoubtedly, ICN can continue to be a valuable resource
23 as we think through the possibilities for collaboration.

24 We also need to explore the new issues that
25 developing economies present in applying new laws. For

1 example, while we hope that China's new Anti-Monopoly
2 law will be applied in a sound and nondiscriminatory
3 manner, concern remains that the law will be used to
4 protect Chinese companies at the expense of foreign
5 rivals. National champion promotion -- indeed, taking
6 into account at all the nationality of the firm in
7 question -- is simply inconsistent with the central
8 objective of antitrust law: to promote competition to
9 the benefit of consumers. If it became clear that
10 nationalism were the objective for a country, we would
11 have to think through whether we could assist in turning
12 that objective around, or if we could justify using our
13 taxpayers' dollars to assist in an effort that would
14 likely fail (i.e., not benefit the consumers of the
15 relevant nation) and also potentially harm our
16 consumers.

17 Finally, with consumer protection issues having
18 rapidly taken on global significance, we need to think
19 through the most effective way to implement an
20 assistance program. Fraud knows no borders, and now
21 more than ever, we depend on each other to safeguard the
22 marketplace and adequately protect consumers. The
23 Internet has dramatically reshaped how we work and learn
24 -- but it has also introduced new threats, such as
25 malware and spam, that threaten consumer confidence just

1 as markets begin to grow. If consumers in developing
2 nations lack confidence in new technologies, and lose
3 faith in the market system, they are less likely to
4 participate in the global economy. Another area of
5 potential need in technical assistance is that of
6 consumer credit -- an important ingredient of consumer
7 welfare. The regulation of consumer lending practices
8 can be exceedingly complex, and the potential for abuse
9 can be quite serious. Without adequate assistance,
10 developing economies may leave consumers unprotected, or
11 may overly regulate the area to the detriment of
12 economic growth.

13 For over seventeen years of providing technical
14 assistance, we have engaged in the struggle for
15 commercial law reform. Our passionately held position
16 is that where markets are open, economic strength and
17 prosperity are most likely, and where economic strength
18 and prosperity exists, citizen consumers are likely to
19 have the broadest choices in the way they live their
20 lives. But we cannot just put it out there and hope
21 that others see the light; alternative collective
22 experiences are too strong. Competition laws can be
23 applied to protect domestic markets, favor entrenched
24 interests, discourage foreign investment, and create
25 barriers to entry that are then inequitably enforced.

1 Governments -- often the enemy of competition -- can
2 manipulate competition agencies because they lack
3 genuine independence. So we have to work harder at it.
4 In today's workshop, we have an opportunity to consider
5 how to improve our strategy and sharpen our tactics for
6 the struggle ahead. Thank you for being here today.

7 (Applause.)

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

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

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

24 In a lot of contexts, I like to talk about
25 something called the marketplace of ideas and the

1 teachings of John Stuart Mill on the clash of
2 potentially conflicting ideas. The gist of his teaching
3 is that we should all affirmatively seek out and engage
4 those with other ideas because we inherently benefit
5 from that process.

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

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

20 Over the past two decades, the Antitrust
21 Division and the FTC have completed over 400 missions to
22 scores of countries on both short-term trips
23 and long-term advisory missions and have reached more
24 than 50 economies in Central and Eastern Europe, the
25 Commonwealth of Independent States, Central and South

1 America, Southern Africa and Asia.

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

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

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

23 I would like to take a few minutes and talk
24 about a couple of specific topics; first China.
25 Technical assistance to China has been and remains a

1 priority for the Antitrust Division. The Division and
2 the FTC have worked for years with the government in
3 China in its process of enacting the antimonopoly law,
4 which I'm sure all of you know was finally passed last
5 August and will go into effect this August.

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

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

20 In fact, we've already started that process.
21 This last July, we conducted an investigative four-day
22 merger enforcement in China for officials from agencies
23 already involved in merger review. We hope to conduct
24 other training workshops once enforcement
25 responsibilities and the agencies that will be

1 responsible for the law have been identified.

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

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

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

21 The shared priority on the detection and
22 disruption of cartels has led to improved cooperation
23 among antitrust enforcement authorities in the
24 investigation of international cartel activity. With
25 more antitrust enforcement agencies on the beat,

1 international cartels now run a greater risk of
2 detection in each of the jurisdictions in which they
3 operate.

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

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

19 Turning now to another aspect of technical
20 assistance, which is the importance of sound economic
21 analysis. That has been, from the United States'
22 perspective, one of the most fundamental changes in
23 developments domestically in terms of how we interpret
24 and apply our antitrust laws, and we believe that that's
25 a very important factor worldwide as well, but in this

1 regard, we're constantly searching for new approaches
2 that may more effectively meet the needs for training
3 and education in this area.

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

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

19 The first of these focused on the common
20 mistakes made in antitrust investigations. The second
21 practical program required the participants to analyze a
22 hypothetical case and then break up into small groups,
23 each of which was led by an experienced division
24 economist or lawyer to discuss how to investigate and
25 resolve the case.

1 Not surprisingly to me at least, our own DOJ
2 staff benefitted from the new participants and the new
3 perspectives that they brought to bear. Antitrust
4 agencies, young and old, frequently face similar issues
5 and benefit a great deal from sharing experiences with
6 one another.

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

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

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

24 We have found that the relationships that
25 develop over time are particularly strong between fellow

1 law enforcers, and we welcome the opportunity for such
2 ongoing engagement with our counterparts in other
3 agencies.

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

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

22 Our goal for this technical assistance workshop
23 is to enhance the overall marketplace of ideas through
24 an interactive discussion of the agency's programs, the
25 evolving needs of our programs, how we should meet those

1 needs and how the programs can be improved so as to
2 maximize their effectiveness in the future.

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

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

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

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

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

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

10 (Applause.)

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

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18 (Pause in the proceedings.)

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1 PANEL 1:

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

4 PANELISTS:

5 ELIZABETH CALLISON, Senior Economic Advisor, Bureau of
6 Economics, FTC

7 CRAIG CONRATH, Trial Attorney, Antitrust Division, DOJ

8 TIMOTHY T. HUGHES, Counsel for International Technical
9 Assistance, Office of International Affairs, FTC

10 CSABA KOVACS, Head of the Competition Policy Section,
11 Hungarian Competition Authority

12 GRACIELA ORTIZ, President of the Competition Tribunal of
13 Indecopi, Peru

14

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

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

25 Our second purpose is to begin what I hope will

1 be a tradition that will carry forward for the rest of
2 the day, and that is a candid discussion on what has
3 worked, what hasn't worked and how we can maximize the
4 future effectiveness of our technical assistance
5 programs.

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

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

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

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

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

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

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

21 Graciela has served as a very effective mentor
22 to competition authorities in her region as well as
23 throughout the world, and I have to admit she served as
24 a very effective teacher to the many advisors that we've
25 sent to her agency over the years.

1 Our final speaker is Csaba Kovacs. Csaba is
2 Head of the Competition Policy Section of the Hungarian
3 Competition Authority, which he joined in 1992, just a
4 year after it was formed. In the last five years, Csaba
5 has been involved in the provider side of technical
6 assistance, participating in programs sponsored by his
7 own agency, the U.S. FTC and DOJ as well as the OECD.

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

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

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

22 So if you didn't spend enough time last night
23 looking at maps of the U.S., I have a map up here of the
24 world, and the fact that it's in blue should not be
25 interpreted as any kind of a political statement.

1 You see, as Chairman Majoras mentioned this
2 morning, we have conducted a great deal of technical
3 assistance in Central Europe, and going through it
4 chronologically, the way it really developed was Central
5 Europe was where we began, obviously right after the
6 fall of the Soviet Union, and then we entered South
7 America and continued there for a little while in
8 Central Europe and in Venezuela.

9 The program then expanded. It took in the
10 former Soviet Union and then took in the rest of Latin
11 America, and that's pretty much where we were in the
12 1990s, and in the late 1990s, as the European Union also
13 became interested in Southeast Europe in the Baltic -- I
14 mean, in the Balkans, the program expanded into that
15 area.

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

25 Everywhere else that we have done work we have

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

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

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

1 we have two different models.

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

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

23 As I think you all know, there is the question
24 of to what extent the competition authorities in
25 developing countries should be involved in some social

1 issues, and South Africa is the classic example that we
2 always talk about. Their law itself specifically
3 mandates that their agency take into consideration the
4 long period of apartheid and the need to compensate for
5 that kind of discrimination that took place there.

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

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

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

1 remedies.

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

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

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

25 With that, I'll hand it over to the other

1 panelists who will go into a great deal more detail in
2 what we do as long-term resident advisors and what we do
3 on short-term missions.

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

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

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

21 So why is that and what do I mean by that? So
22 thinking back on this experience, I tried to answer:
23 Well, what was it that I and Jay Creswell and others
24 brought to the various agencies? Because certainly my
25 colleagues in the antimonopoly office were as smart and

1 as well prepared in their legal system as we were in
2 ours. What was it that made it worth the time and
3 effort to send us to live there for a long time? To
4 answer that I said: Well, why is it that I'm a better
5 competition law enforcer today than I was when I came to
6 the Antitrust Division?

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

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

22 We know that in every cartel there's going to be
23 one or two mavericks who think they want to cheat and go
24 around the cartel, and you know that those are the
25 places you want to look to find evidence that the cartel

1 happened because in order to bring somebody into the
2 cartel, you have to explain what the cartel is about,
3 and in order to make the cartel work, you've got to
4 enforce it.

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

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

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

20 So if that's what we have to offer as
21 competition agencies, as competition law enforcers, what
22 is it that enables us to transfer that in a long-term
23 program particularly well? In other words, why don't
24 you just write it down and give it to them or why don't
25 you just have a seminar and pass it on?

1 That led me back to the question of: How was it
2 that I learned this? The answer was primarily by doing
3 it, by looking at a lot of cartels, by looking at a lot
4 of mergers, and second, by doing it with some people
5 that had more experience and learning, both the staff
6 lawyers that I work with and then the leadership of the
7 agency ranging from Sandy Litvack, who taught us an
8 enormous amount about how to litigate, and Bill Baxter,
9 who taught us an enormous amount about how to think
10 about competition issues.

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

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

21 It's quite another thing when a problem has
22 arrived on your desk. You are responsible for it. You
23 have to write a decision saying yes or no and justifying
24 your reasons. That is the teachable moment, and if
25 there is someone there at that moment that you can turn

1 to, who can explain to you why this is a coordinated
2 effects problem or it's not a coordinated effects
3 problem, you will internalize that knowledge in a way
4 you could never do during a seminar. So teachable
5 moment is the first thing that is an advantage that we
6 get from the long-term advisor program.

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

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

19 The third thing that is unique to a long-term
20 advisor program is local knowledge. You can give advice
21 that's more likely to be helpful if you understand the
22 local knowledge, which can range from simply the facts
23 about the legal system, so maybe the first time I'm
24 talking with someone I say: Well, just send a subpoena
25 to the third-party, and after you learn that some places

1 can't send demands for documents to third-parties, you
2 start to think of more useful ways to give the advice.

3 You also learn that you have to reflect reality.
4 Certainly I recall once, I think with Jay, we were
5 presented with an issue that presented a distribution
6 problem, and distribution, don't even think about it,
7 entry is easy, and someone said: Why is that? Why is
8 that? Well, all you need to be in the distribution
9 business is a telephone and maybe a truck, and then
10 after a moment we realized just a couple nights before
11 we had been talking to someone who had been waiting for
12 a telephone for 17 years, and so you learn if you have
13 local knowledge, you can give advice that's more likely
14 to be useful to the recipients.

15 The fourth feature of long-term assistance
16 that's particularly useful is that you can give advice
17 about organizational issues. This was a surprise to me.
18 I expected to be asked questions about per se rules and
19 things like that, but it turned out that one of the
20 things that was most interesting in which we were able
21 to be helpful to the Poles was how to organize their
22 internal structure in order to make decisions to use
23 resources wisely and to organize the flow of work.

24 These were people who were actually remarkably
25 interested in how the Office of Operations works in the

1 Antitrust Division, and they were the first people in
2 the world that ever had that interest, but it was
3 actually helpful to them to decide how to avoid wasting
4 time, which was their scarcest resource, on matters that
5 weren't going to go anywhere. Because with an
6 application of a little judgment at an early stage you
7 could say: This is really unlikely to be meaningful,
8 let's get rid of it.

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

12 I think the final point that I would like to
13 make is that to all these long-term programs have a side
14 benefit -- and I believe that my colleague, Jay
15 Creswell, would prefer that I say "positive
16 externality" -- and that is that I learned as much as I
17 taught. Spending two years in a developing antitrust
18 agency -- in the Polish antimonopoly office from 1991 to
19 1993 was like working in the Department of Justice from
20 about 1890 to 1950.

21 Why is it exactly that price fixing is always
22 bad and how do we prove that these people agreed? Is
23 the fact that they all charge the same price enough, and
24 do we care as long as they're separate companies? Do we
25 care if they have the same owners? All these issues

1 arose in that institution, and for us, the opportunity
2 to explain and defend such policies deepened and
3 improved our ability to defend them and to employ them
4 at home.

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

8 Anne?

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

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

13 MS. PURCELL WHITE: Yes.

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

22 They're part of a set of commercial laws about
23 the operating of the economy, and with the exception of
24 cartel cases, application of competition law always
25 involves economic analyses of some form and

1 competition -- cartel laws, it doesn't involve
2 necessarily economic analysis at the time but it's
3 actually based on economic analysis, and we go straight
4 to the law.

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

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

21 The economists were better trained obviously
22 than the attorneys, but still there was a lot of work of
23 just basic economics to be done as well as what we do
24 here which is: Okay, got economics, now how do you
25 apply it? What information is important? What theories

1 are important? How do you look at this material that's
2 coming at you and sort through it to come out with
3 economic rationale?

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

18 A very important piece is emphasizing caution
19 and intervening in matters where, in fact, there isn't a
20 competitive problem. Many cases come to the new
21 agencies, particularly the new agencies where the
22 business community is not that familiar with competition
23 laws, and so they're getting hurt by a competitor or a
24 supplier, and they come and they complain that XYZ
25 company is abusing their dominance.

1 It's very important for the competition
2 authority to focus immediately on: Well, what is the
3 story? Listen to the person and what is the story? Is
4 there a market power that is plausible here? If there's
5 no market power by these firms, then case closed, don't
6 intervene.

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

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

17 I think that the benefit of the advisor is being
18 there in that process while people are learning, while
19 real facts are coming at them, and they have to make
20 decisions like Craig was talking about. They have to
21 make decisions. They have to figure out: Is this
22 likely to be harmful or not? I think that having an
23 economist is critical in there in helping frame the
24 analysis and helping determine what questions are
25 relevant, what questions aren't. Once you get the

1 information, what do you do with it? How do you tell a
2 story that this action is likely to harm competition?

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

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

24 I would like to echo what Craig said about
25 learning at least as much as you teach because being

1 forced to go back to first principles: Why is it that
2 this is important? It's something that we gloss over a
3 lot in the United States because we've been through it
4 so much. Understanding the role of the banking system
5 in competition, understand the ability to get financing.
6 It's not something we pay a lot of attention to in the
7 United States. It's critical in a number of these
8 countries.

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

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

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

25 MS. ORTIZ: Thanks, Anne. Before starting my

1 presentation, I would like to complete a list of things
2 that has been said before, and one important thing I
3 would say that the long-term advisor has to tell us is
4 in the moment. He has to consider that you cannot give
5 an advice or a counsel two weeks after things got
6 finished. It has to be given in the moment, and to know
7 the moment, you need somebody who lives there.

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

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

21 I must say that when we work with the Andean
22 community, there were five countries there. Now there
23 are only four, but we had three countries with
24 competition laws that had already an authority well
25 settled and well organized nationally, that was

1 Colombia, Peru and Venezuela. We had two countries that
2 had competition laws or authorities. That was Belize
3 and Ecuador.

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

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

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

1 that way.

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

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

18 We want to get the power. We want to be the
19 competition authority. The problem are the resources.
20 You are going to be the competition authority, where do
21 you get the resources okay? You get the faculty you're
22 going to have over powers of competition authority, but
23 you are not going to have more human resources. You are
24 not going to have more financial resources. Then this
25 fight just like doesn't -- it restricts the possibility

1 of getting a good authority, the best authority you can
2 get, and it sometimes goes: Who wants the authority to
3 get the national authority?

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

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

24 There is only one week where it's going to go
25 public to get the new opinions and observations and

1 comments, and I surely would send it to the friends here
2 in the Federal Trade Commission and the Department of
3 Justice for their comments.

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

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

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

23 That if you don't have universities that prefer
24 lawyers and economists, where are they going to come
25 from when the public sector is going to look for -- in

1 the public sector? So the people that is preferred and
2 is formed in the national authority, they are going to
3 go out to the private sectors, and the competition
4 authorities are going to stay without these big
5 professionals that have been preferred by the
6 cooperating agencies, and it's very important to think.

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

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

24 Also the judges. Maybe we have a very big --
25 the best competition authority in the world. What is

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

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

18 Now, that was in the late '90s, 2000, in the
19 first years of this new decade, but now we have a new
20 wave of competition laws being drafted and that's
21 because of the free trade agreements that are being
22 negotiated, and they do at least -- I think Colombia too
23 are asking, for example, that all these agreements have
24 a competition chapter. Never before the FTAA would have
25 free trade agreement considering competition chapters,

1 and that's because we're worried that benefits of the
2 organizations are going to be undermined by
3 anti-competitive practices, and that basically refers to
4 cartels.

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

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

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

25 We can have Federal Trade Commission, Department

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

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

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

1 there.

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

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

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

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

22 What I can speak about is basically just the
23 Hungarian perspective, and I understand that it can be
24 unique to some extent. So maybe there are some
25 experiences of Hungary which are appropriate to be

1 generalized but others are not.

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

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

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

1 including the U.S. authorities.

2 The first stage was in the first half of the
3 '90s when, as many other authorities, we received
4 long-term advisors several times from both the FTC and
5 the DOJ -- you know, they are always coming hand in hand
6 together -- and Hungary was clearly a pure recipient.

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

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

25 It is clear that Hungary was a pure recipient at

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

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

20 There were diplomatic reasons also not to choose
21 one of the recipients because maybe the others would
22 take it as a message, so another place would have been
23 needed, and we offered Budapest, and it was accepted so
24 actually Budapest was the place for that, so our
25 Hungarian colleagues could participate in the events,

1 even if we were not the main target of that program. So
2 we became formally a sort of provider, but not in terms
3 of substance.

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

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

24 And the same is true -- I mean, the same in the
25 sense that it belongs to the third stage -- to the

1 fellowship program in which we are really happy to
2 participate -- the FTC fellowship program in which Virag
3 Balogh is an Hungarian participant -- and we think this
4 is something really between technical assistance and
5 sort of cooperation, and we have very high hopes
6 regarding this, to learn a lot in a real working
7 environment which is different from just a seminar.

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

16 All of this really resulted in a great network
17 of contacts with individuals, so I completely agree with
18 Graciela that names are more important than authorities,
19 and these contacts help further programs and further
20 contacts. It was really nice to hear this morning Mr.
21 Barnett's words about the presentation in the last event
22 of the USAID seminar for Balkan countries about computer
23 discovery or forensic matters by one of my Hungarian
24 colleagues. He said that it sounded like a presentation
25 from the FBI.

1 It was like that only because our computer tech
2 guy before had visited the U.S. DOJ and the FBI and
3 others over here, and it was made possible. It was made
4 possible because -- it was not impossible at all. I
5 don't want to say that, but it was much easier to do
6 that because -- but let me step back and start with
7 that. We set up a cartel unit, we hired the appropriate
8 personnel -- maybe I could return to this a later
9 stage -- and so we had this unit. We had a guy there,
10 and they just discovered that there is some sort of
11 training in Florida for exactly the same purposes on IT
12 forensics. And then I told them, "Wait a minute, maybe
13 you should spend a few extra days in the U.S. to visit
14 the DOJ and maybe others, and I could call Ann Olek, at
15 the DOJ, who I knew from Vienna." So that's it, because
16 if I don't know her, probably it doesn't happen like
17 this. Maybe the Florida seminar was a nice one, but I'm
18 sure that the extra program was really useful.

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

21 MS. PURCELL WHITE: Okay. Thank you, Csaba.
22 Very interesting.

23 I think, Graciela, you touched on the fact that
24 in your area, there were countries that were receiving
25 assistance from us but that were at very different

1 levels of development, and, Csaba, you touched on a
2 similar theme that in your own agency that you went
3 through sort of three different stages.

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

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

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

24 Formation of personnel was very important for
25 the agencies with law and authority. They were looking

1 for what to investigate, investigative skills, whether
2 their investigative skills -- to have better decisions.
3 While the other two countries, even though they
4 participate in these events, we were trying to get the
5 people acquainted with competition language and the
6 competition term and the competition logics, but they
7 were more worried about how they could put this that
8 they were learning into the laws they were trying to
9 draft.

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

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

25 So really the needs are very different. One

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

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

10 MS. PURCELL WHITE: Csaba?

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

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

25 Of course they had an interpreter, but to be a

1 real long-term advisor, it is useful to read the files
2 or some documents, and it was impossible at that time,
3 and also the management of the authority was very
4 conservative in terms of giving access to information,
5 which was not necessarily sensitive, but you never know.

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

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

21 Also I think what is important, this
22 continuation of programs. Finally, in the early '90s we
23 decided a little bit to transform this long-term
24 arrangement into a series of presentations, so we used
25 the long-term advisors to have one or two seminars or

1 presentations in a week they prepared, and this way
2 there was a continuous dialogue between them and the
3 authority, so finally we could use them, but I think not
4 in the original way that was intended.

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

14 MS. PURCELL WHITE: Graciela?

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

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

1 ever get a long-term advisor.

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

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

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

15 MR. KOVACS: May I?

16 MS. ORTIZ: Yes.

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

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

21 MR. KOVACS: Language can be a factor in other
22 cases, I don't know. But in my experience, you know, if
23 you have this question, several items could come to your
24 mind like experience or knowledge or language skills or
25 teaching skills or teaching knowledge.

1 My experience such as -- I had contacts with
2 several people providing technical assistance, and my
3 experience is that these all can be important, except
4 for the language in the case of Hungary, but I think the
5 most critical -- it's difficult to measure -- but I
6 think are intelligences and a sort of professional
7 empathy. It is I believe, is the same as "adaptability"
8 in Graciela's words, because you have to be flexible,
9 you have to understand the local environment and the
10 problem, which may on the surface sound very familiar,
11 but if you just give advice on that basis, maybe that
12 advice would not be good enough, so you need to
13 understand the whole context on the one hand.

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

24 MS. ORTIZ: Okay. On long-term advisors even,
25 though I would say you're welcome, sometimes there are

1 situations that when something is said by a foreigner,
2 it is different than when it's said by a national, so I
3 know in some circumstances you need to be a foreigner,
4 and if a foreigner says something, it's very well looked
5 on and it's positive, but sometimes when a foreigner
6 says things in another situation, they're not so well
7 taken as when a national says the thing.

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

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

25 In a long-time advisor, in a long-term advisor,

1 it depends upon what's the job he's going to do. Is he
2 going only to work in the region, in the national
3 competition authority? Then maybe language isn't so
4 important if the people over there speak English, for
5 example.

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

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

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

21 MR. KOVACS: May I comment for a moment?

22 MS. PURCELL WHITE: Yes, please.

23 MR. KOVACS: If I could supplement myself and
24 Graciela, because I'm always abstract, and so... What I
25 meant by professional empathy is that I have a question,

1 I describe a story and the other party -- I mean, the
2 provider -- says that in my understanding is this story
3 is about this or this, and then I have to correct, no, I
4 didn't mean exactly this or this, this was something
5 different, and then we are going around in circles like
6 this, and the matter is how many times we have to run
7 those rounds, whether it takes just one or two turns
8 that we understand each other and we speak the same
9 language, or we cannot reach that stage or we can reach
10 that stage only after the sixth or seventh time.

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

17 I don't mean history of the country, of the host
18 country. I mean the history of the U.S. antitrust
19 because in some cases, when I described of the problem
20 and this running -- this rounds -- started after the
21 second or third turn of clarification the other side
22 said, Okay, this is something we had in the '40s or "We
23 had this sort of cases in the '60s", and "we did this,"
24 or "that happened," or "this was not good" or "this was
25 just needed by the circumstances" and "I can look it up

1 actually in history books not in current best practices"
2 or something like this. So it can be also a factor,
3 certainly not in all cases but sometimes.

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

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

16 MR. HUGHES: Well, I think that the two biggest
17 things that I've been involved in where we reached out
18 were in Romania. My predecessor as resident advisor,
19 Russ Damtoft, had really started to work deeply with the
20 Consumer Protection Agency as well, and to try to
21 correct with basically the multinationals who were
22 interested in some kind of a Better Business Bureau or
23 something comparable to the a Better Business Bureau, so
24 in that situation -- and then I picked up on that and
25 continued to work on that.

1 So in that situation we did a lot of work with
2 the Consumer Protection Agency, which was an entirely
3 separate agency, but we were there. We knew consumer
4 protection work. We had both done that work here as
5 well at the FTC, and then the private industry was
6 interested in kind getting in the bandwagon and seeing
7 how we can improve the situation here for everybody,
8 consumers and the corporations that had to do big
9 advertising.

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

17 Half a dozen of them were starting to get really
18 deeply into competition and learn something about it,
19 and both in Indonesia and in Vietnam, every time we had
20 an opportunity with a short-term mission, a one-week
21 long mission, we would tack on an extra day where we had
22 a program where we called it the stakeholders were
23 invited to, and the stakeholders were judges, private
24 attorneys, university professors, industry members and
25 consumer advocates. All those kind of people would

1 come.

2 We would get a large turn out and conduct kind
3 of what the Indonesians called socializing the law,
4 basically getting people used to the concepts and
5 getting feedback from them as to what it was all about.

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

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

25 Same thing with telecommunications intellectual

1 property. Each day -- I guess there were other days
2 like this, but each day had five or six agencies in the
3 government where competition authority explained what
4 they were trying to do, and they discussed the overlap
5 and developed stuff. That was really helpful to the
6 agency and to the other governmental agencies.

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

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

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

1 in that.

2 MS. PURCELL WHITE: Csaba, anything to add?

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

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

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

1 regulator or something.

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

11 MS. PURCELL WHITE: Well, I just wrote a note to
12 Craig on this paper that I really hate to close this
13 session, I feel like we have so many more things that we
14 could address, but thank you all to the panelists.

15 We have now run over ten minutes of our time,
16 and I don't want to intrude too much on the consumer
17 protection panel that ought to be very interesting
18 coming up next.

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

23 Thank you.

24 (Applause.)

25 (Whereupon, a brief recess was taken.)

1 PANEL 2:

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

4 PANELISTS:

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

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

9 DAVID LAFLEUR, CRCM, Senior Examination Specialist, FDIC

10 RICH O'BRIEN, Head of Internatal Programs, CPSC

11 PABLO ZYLBERGLAIT, Counsel for International Consumer
12 Protection, FTC

13

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

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

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

1 ways.

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

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

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

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

24 This panel is looking at the charting the course
25 in this setting, what there is to offer in terms of

1 technical assistance in this area, what kind of
2 mechanisms are effective to deliver that and where we
3 should go from here.

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

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

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

24 MR. ZYLBERGLAIT: Thanks, Hugh, and good morning
25 everyone, and especially a warm buenos dias, gracious,

1 IO NAPOT, Csaba and Virag, just to show you that some
2 Hungarian can in fact be learned, very limited but some
3 of it can be learned.

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

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

24 We tend to pick up where competition leaves off,
25 and as Hugh mentioned, we cover the gamut from truth in

1 lending claims, substantiation analysis, electronic
2 commerce, credit issues, privacy, security, and also the
3 important area of consumer education and business
4 outreach. So, what do we mean by this technical
5 assistance? Well, generally the sharing of knowledge
6 and experiences on consumer protection matters, however
7 you define consumer protection, mainly, but not always,
8 covering topics germane to the FTC authority and areas
9 of expertise.

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

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

25 We get phone calls, emails all the time about

1 something that starts as a small question, and sometimes
2 you know you get that question, and the way the question
3 is phrased you know there's just not a lot of knowledge
4 on the other side, and it's like you rephrase the
5 question for them to give them the right information.

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

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

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

25 MR. STEVENSON: Pablo, one thing that's not on

1 your list there generally is the long-term missions that
2 we just heard a fair amount about in the discussion of
3 competition issues. Maybe you just want to comment on
4 that, and for instance, why isn't it on the list?

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

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

20 What do they get? Hopefully a solid foundation
21 on a particular subject matter or several subject
22 matters. They get stronger contact with U.S.
23 authorities. Improved networking with their own
24 regional partners. I'll never forget the first seminar
25 I did with Tim Hughes in Budapest and how we had brought

1 together countries from the former Eastern Block, and I
2 was amazed and shocked that these people that were
3 within driving distance of each other, a lot of them had
4 never even talked to each other, never even knew each
5 other, so I think we sparked some cooperation in that.

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

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

18 On policy issues, we are constantly undertaking
19 policy initiatives in international fora, and it's
20 always good to be able to build those coalitions too so
21 things go the right way, and on discrete international
22 projects, we have had a couple of spam related projects
23 just to educate business on how to close certain
24 technical loops to prevent spam, like secure your server
25 or spam zombies where we have cooperation from 27, 26

1 countries, and a lot of that was driven by the fact that
2 we had met these people at these seminars. We could
3 send them a letter and say, would you participate in
4 this international initiative, and overwhelmingly the
5 response was yes.

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

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

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

25 Consumer credit, Romania and Germany, had some

1 questions. We do a lot of work on lottery scams for the
2 UK, and questions about specific targets from all over
3 the world all the time. Everyday I get a question:
4 Does the FTC know anything about this company, can you
5 help us out? We consider that a form of technical
6 cooperation.

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

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

21 As was mentioned in the prior panel, we did have
22 in the '90s some resident advisors in some seminars.
23 This is just a sampling of ours: Lithuania, Romania,
24 Hungary again, USAID supported and based programs,
25 mostly Eastern Europe.

1 As we entered the new decade, we tried to kind
2 of streamline what we were doing in the short-term
3 missions, consolidated a lot of the programs for
4 quality, consistency. This is just a smattering of
5 programs that we did sort of earlier in the 2000s. This
6 gives you more of a geographic idea. I'm not going to
7 read you the very small print, but this gives you an
8 idea where we were between 2001 and 2004, and then 2005
9 through 2007.

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

16 So what is the typical mission like when we do
17 these one-week missions? Funded by USAID usually for a
18 region or countries, sometimes they just have funds to
19 do a program in Vietnam and sometimes it will be Eastern
20 Europe. In some cases we are training the trainers, and
21 this is a concept that was alluded to earlier, how
22 Hungary acts sort of as a mentor to the region when we
23 leave, so hopefully some of our gift keeps on giving as
24 far as the people that we've trained do become mentors
25 to other countries in the region.

1 Just because USAID doesn't fund a country
2 doesn't mean that we forego the opportunity to invite
3 others that want to pay their own way. I'll give you an
4 example in a minute, but we try to be as inclusive as we
5 can when we're in the neighborhood and a three-day
6 seminar usually turns into a five-day mission because we
7 do things on the side. We try to be efficient with our
8 time.

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

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

25 What are the typical participants? We mentioned

1 earlier how we can deal with a host of consumer related
2 agencies. Well, we start with competition agencies. A
3 lot of them do consumer protection work. There is some
4 overlap, and it changes in every country. Again going
5 back to Hungary, which seems to be the case study today,
6 the Hungarian Competition Authority does a lot of our
7 advertising review work so we work with them and we
8 invite them: Misleading advertising, financial
9 services, food and product safety agencies like to come
10 to these seminars as well.

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

19 Ministry of economies and trade usually oversee
20 the consumer protection work. Telecomm of course and
21 utilities, which in many countries tends to be the
22 number 1 source of heartburn for consumers: They cut my
23 electricity. We sometimes have the luxury of saying,
24 What kind of security network have you done wirelessly,
25 and some countries say we don't have electricity, okay.

1 We deal with consumer associations quite a bit
2 as well. In some countries there is no such thing as a
3 consumer protection law or agency. Graciela was
4 mentioning how you have the law vetoed in Ecuador.
5 Ecuador doesn't have a consumer protection law as far as
6 I'm aware of yet. And industry groups, which is
7 something we do domestically -- we invite them when
8 appropriate, if we're not talking about investigative
9 analysis, for example.

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

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

23 I'll give you a couple examples. When we did a
24 program in Peru for the Andean community focusing on
25 consumer protection and public utilities, we brought in

1 an expert from the National Association of Regulatory
2 Utility Commissions, and they explained how we do things
3 in the U.S.

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

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

20 We provide everyone with all the materials of
21 the seminar in CD form, so they can copy and pass them
22 along as much as possible, and we give them an
23 interactive menu, and we give them additional materials
24 that go beyond what the subject matter of the conference
25 is.

1 This is just another example. We did one in the
2 former Soviet Republics in Ukraine, and we did the same
3 thing except whenever we can, if we have the budget, we
4 try to be as language-based as possible so we did that
5 in Russian which was the closest thing to a common
6 language. They all did speak, and some of them didn't
7 want to admit they spoke it, but we provided materials
8 electronically to them as well.

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

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

21 MR. LAFLEUR: I had the privilege of traveling
22 to Cairo twice, both with attorneys from the Federal
23 Trade Commission and an economist to work on a really
24 very specific project dealing with the development and
25 implementation of Egypt's first credit bureau, which we

1 tend to take very much for granted in this country.

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

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

22 What we learned when we were there I think ties
23 back to the concepts that were raised earlier this
24 morning is that go with an open mind because there may
25 be a lot of folks there that really don't even have a

1 concept of the system, much less be at the level of
2 building a regulatory program.

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

16 That being said, we were very cooperative with
17 each other as agencies, but also in our mission which
18 was to show that consumer protection and economic
19 development are never mutually exclusive but they need
20 to be done together. As we learned, not only did they
21 not really conceptually understand how a credit bureau
22 system worked, there was a tendency to want to, even at
23 that stage, with a very basic understanding
24 over-regulate it and basically quash any economic
25 development that could come from it.

1 So during our first week, having that
2 understanding the very first day sort of tailored our
3 program to show them the economies of scale, how things
4 could work, and what other types of impact in our
5 economy could be gained from this far beyond just the
6 very finite consumer protections that we were talking
7 about.

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

15 MR. LAFLEUR: The audience was chosen by our
16 Egyptian counterpart, and she actually did a fantastic
17 job of getting a room full of people who probably would
18 never be sitting together. There were actual examiners
19 from the Central Bank of Egypt. There were managers
20 from banks. There were representatives from the credit
21 bureau that was getting ready to open its doors, pretty
22 much every stakeholder in this process so that they
23 could see each other's faces, hear what each other had
24 to say and really talk about their different points of
25 view during this whole development project.

1 So it really, at certain points promoted
2 arguments, but generally a very rich discussion, and my
3 hat's off to them for really understanding what needed
4 to happen because clearly going into it, we weren't
5 aware of sort of where they were at in the life cycle of
6 this.

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

20 Where we left it at the first trip was sort of
21 the two ways to regulate this type of industry and some
22 of the consumer protections that they would need to be
23 aware of so that fraud, potential fraud and other things
24 wouldn't undermine the system as it developed, and also
25 to get buy-in not only from the users of the system,

1 from the banks, but also consumers to understand their
2 safety in this sort of aggregation of information about
3 them without the sort of private investigator interviews
4 in a credit situation. That was in 2006.

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

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

22 So the benefits that I feel they obtained
23 particularly from that second trip where we did a lot of
24 hands on work together is I put in my own notes, we
25 calmed nerves. I think culturally there's an aversion

1 to wanting to let anything about yourself be known
2 really to anybody, much less your creditors, so by
3 showing the system and how a strong system of controls
4 could be placed, it really opened their eyes to I hope
5 consumer protections in the system and how that may work
6 to benefit in getting this thing off the ground.

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

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

22 MR. STEVENSON: Maybe we should compare that to
23 the experience that the CPSC has had. We have here Rich
24 O'Brien who directs the international matters at the
25 Consumer Product Safety Commission, and Rich, maybe you

1 could tell us a little bit about the experience you've
2 had that may be analogous to what was just described.

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

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

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

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

23 Fourth, we do market surveillance and emerging
24 hazards analysis. A new example is we're forming a new
25 import surveillance division. An old example is the

1 periodic public service announcements about not
2 operating emergency generators in your home.

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

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

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

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

24 Many of you have heard that CPSC has a
25 Memorandum of Understanding with the Chinese government

1 and that China has agreed to ensure that Chinese exports
2 will meet certain U.S. standards such as no lead paint
3 on toys. What I thought you might be interested to hear
4 is something about how their system works or is intended
5 to work and how CPSC is trying to leverage the Chinese
6 system through our technical assistance.

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

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

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

1 working at the provincial level.

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

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

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

25 Since then the message from Beijing to

1 inspection officials and industry has been to stop
2 embarrassing the country and make whatever changes need
3 to make to get it right.

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

17 We also know that without major systematic
18 changes, specifically Chinese industry's genuine shift
19 from end to end best practices for compliance assurance,
20 even good intentions are not going to translate into
21 compliance. We know that big sophisticated companies
22 have experienced breakdowns in their compliance
23 assurance systems, and the fact remains that there are
24 thousands of small Chinese suppliers that lack the
25 sophistication to get it right.

1 U.S. importers and the Chinese CIQs are going to
2 have to be vigilant to get them out of the production
3 chain. Without in any way minimizing the primary and
4 statutory responsibility that U.S. importers have to
5 ensure that their products comply with our laws, let me
6 explain how CPSC is working directly with the Chinese
7 government and Chinese industry to try and bring about
8 the needed systemic changes.

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

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

25 We've also tried to get the point across to the

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

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

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

22 Another problem area we identified is Chinese
23 inspectors don't always understand how we do our testing
24 so they can't always replicate it. If we're going to
25 leverage Chinese government policy to inspect their

1 exports, we need to ensure they can get it right.

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

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

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

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

1 protection allows them to meaningfully exercise that
2 choice.

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

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

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

19 The question I asked is: Where can I add value
20 in a way to help promote the idea that consumer choice
21 ought to be at the center piece of a consumer protection
22 strategy? There was a little bit of a challenge there
23 because in many cases, the Consumer Protection Agency
24 without being informed by our body of economics in how
25 consumer choice really should be leading the way, they

1 simply had a law enforcement view that if it's bad, then
2 we should regulate against it, and that was often about
3 as far as the analysis would go.

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

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

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

23 The other area which was actually within the
24 competition agency was looking at competition advocacy
25 as it came up in consumer protection regulation. There

1 was one country I was working in in which an agency that
2 was not the Consumer Protection Agency proposed a set of
3 regulations for the guidance of commerce, and those
4 regulations said there should essentially be no selling
5 of consumer goods below cost under any circumstances,
6 that there were criminal penalties affixed to that, and
7 that sales reducing from the regular price could only
8 happen twice a year.

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

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

23 It does lead to a very difficult question of
24 defining, for the purpose of technical assistance, what
25 do we mean by consumer protection. At some level almost

1 everything that government does is for consumer
2 protection, but you have to draw some boundaries, and
3 where I really tried to draw it effectively was the
4 process by which competition and consumer choice helps
5 make markets work better.

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

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

22 So I had this one hour presentation where we
23 actually did this talk on what's the background, and
24 invariably the reaction from the audience in China was:
25 We didn't know that, wow, you mean it didn't all just

1 start in the summer, and I was reminded while I was
2 sitting in the audience awhile ago that on an upcoming
3 trip to Vietnam, I really need to schedule making the
4 same talk. I was going to do technical work, but I
5 think I need to get the embassy to schedule me for the
6 same talk because it is that useful to set the context
7 for what it is we are doing, why we do our jobs and so
8 forth.

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

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

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

1 protection area.

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

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

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

25 Since then, we've been reading papers. We've

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

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

19 So I think back to your question, I think what
20 Russ said was really important about consumer choice,
21 that that's the thing I think we would look at as the
22 most important part of consumer protection, that
23 consumer choice must be free in order to choose best, in
24 order to be able to choose best, because in this way we
25 have this integrated view -- we would like to have this

1 integration of consumer protection and competition, and
2 we hope with the frequency of choice that automatically
3 comes with free competition, and then the other side
4 too, competition helps to protect consumers.

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

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

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

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

1 the country itself.

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

5 MR. STEVENSON: Okay.

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

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

21 You would really need that cultural
22 understanding to be insightful for a long-term advisor.
23 That's effective, but you really need to be embedded in
24 that if you're going to be effective in consumer
25 protection. Just saying this is our deception policy

1 statement and that's how we apply the principle, it's
2 just not going to carry you very far.

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

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

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

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

22 MR. STEVENSON: To follow-up on that point, I
23 think in the competition area, the economists have been
24 involved quite extensively in the provision of the
25 technical assistance, and is it equally useful to have a

1 role or what is the dynamic of the potential for
2 economics as sort of a basis for technical assistance?
3 Maybe if, Russ, you wanted to comment on it and then
4 Virag.

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

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

18 MR. STEVENSON: Virag, go ahead.

19 MS. BALOGH: I think it's extremely important to
20 have economists on the consumer protection side, and it
21 would be useful as a technical assistance program too.
22 Actually during my three months here, I'm stationed in
23 the Bureau of Economics, so that's exactly what I would
24 like to study here, how the FTC uses economic data and
25 economist's arguments when making cases.

1 I just think that the hard part of this being
2 that -- I mean, competition economics is something that
3 has been well established for a long time, and everybody
4 agrees on the main principles of that, whereas the
5 economics behind consumer protection I feel, and my
6 understanding being very narrow on this, is that it's a
7 lot more fragmented.

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

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

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

24 The economists really are the messengers of that
25 market system. They're the ones that can really explain

1 the underpinnings of why we're doing this, and forget
2 that law, it doesn't really help you, it doesn't help
3 consumers. If you do this, you're going to see prices
4 come down, quality go up, et cetera, et cetera.

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

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

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

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

1 certain leeway there.

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

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

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

22 One analogy is the analogy of people in Vietnam
23 who somebody mentioned on the previous panel you
24 couldn't get a phone for 17 years in some countries.
25 That was the case in Vietnam. They leap frogged the

1 technology, and everything is cellular over there. The
2 same thing with the Internet use. You see how quickly
3 things can develop.

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

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

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

22 In the United States, with the rights of an
23 individual to act in a certain way, it's a very
24 difficult thing to say, therefore; We also have the
25 authority to ensure by whatever means that you cannot

1 order something directly from a foreign supplier and
2 have it delivered to your home because we've decided
3 that it's an unsafe product.

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

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

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

17 MS. BALOGH: I just wanted to point out a notion
18 that maybe is not classically technical assistance but
19 international cooperation related; that the European
20 Union is on their way to unify consumer protection laws
21 in its member states, so it would probably be a good
22 idea to look at the European consumer protection law in
23 comparison to American consumer protection law because
24 what I feel is it's really important to have the same
25 notion on the two sides of the Atlantic because of the

1 importance of global trade and everything. So, yeah,
2 that would be an area.

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

7 (Applause.)

8 (Pause in the proceedings.)

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1 PANEL 3:

2 RUSSELL PITTMAN, Moderator, Director of Technical
3 Assistance and Economic Research, Antitrust Division,
4 DOJ

5 PANELISTS:

6 ALBERTO HEIMLER, Central Director for Research and
7 International Affairs, Italian Competition Authority
8 SHYAM KHEMANI, Advisor, Competition Policy, World Bank
9 ANNE PURCELL WHITE, Assistant Chief, Foreign Commerce
10 Section, Antitrust Division, DOJ
11 EDWARD WHITEHORN, Head of Competition Relations with
12 Non-members, Organization for Economic Cooperation and
13 Development, Paris

14

15 MR. PITTMAN: Welcome to our next session.

16 Sorry we're a little late getting started. We all plead
17 complete innocence and blamelessness for this.

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

24 So we thought this session we would start by
25 having each of our panelists talk about the different

1 work, and then maybe get to some discussions of how we
2 might all coordinate better on some of the common
3 issues.

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

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

18 The training projects, as you know, are just not
19 on competition. Since 1998 there have been more than
20 1,000 projects, on all areas where European regulation
21 has an influence, from agricultural matters, customs,
22 organization, police cooperation and of course
23 competition and state aid. Indeed there have been 13
24 projects on competition in these past ten years. The
25 Italian Authority participated to six of those (three in

1 Romania, one each in Czech Republic, Malta and
2 Bulgaria).

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

16 In general independent competition authorities
17 did not participate to the twinning exercises.
18 Ministries did also in twinings in competition. In
19 particular the German Ministry of finance played a
20 leading role. This was the case because most of these
21 projects has a State Aid component as well, a matter
22 about which competition authorities of the (old) member
23 States did not deal with. The idea of these training
24 projects is to train the administration of a beneficiary
25 country with the help of an administration of a member

1 country of the EC in a long term relations whose aim is
2 to bring the administration in question to the European
3 standard, and this means a lot of things, not just hard
4 law. It means soft law and organizational matters as
5 well.

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

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

22 So in this sense the twinning exercises had a
23 political dimension that is not very common or usual for
24 technical assistance programs. However this does not
25 mean that there was always confidence that the

1 assistance would be beneficial in a substantive way.
2 Demand for technical assistance was driven by a
3 political objective more than by a modernization
4 objective, so there was a risk that the agency would try
5 to comply only formally with the European standards and
6 pursue whatever domestic objective it was considered
7 politically convenient to pursue. Sometimes of course
8 this was the case. In many other, which of course had
9 to do with the person in charge with the authority, with
10 the specific circumstances of the country, there was a
11 genuine desire by the beneficiary country to modernize,
12 not just to comply with EC rules and EC regulations and
13 what we call hard law, but to comply more in general to
14 have an organizational structure that would make the
15 enforcement of competition law more effective and more
16 efficient.

17 It's difficult to know when this happens, but
18 certainly it is related to the management and the
19 leadership of the authority of the time and what type of
20 vision that leadership has at the time. What we always
21 thought was that what matters is the enforcement of
22 competition law, and the enforcement of competition law
23 is not just related to rules and to the substantive
24 rules, but also to procedural matters, such as
25 guaranteeing the rights of defense of companies,

1 ensuring transparency, and also, as Craig suggested this
2 morning, organizational issues, like obtaining and
3 maintaining high quality staff, organizing the
4 authority in a way that would guarantee an efficient
5 decision making process, making sure that there were
6 enough resources for the most serious cases.

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

19 And also in some countries, we heard this
20 morning Ecuador, suggesting how indeed there was a
21 problem of high turn over in the authority staff, which
22 is quite common everywhere and has been quite common
23 everywhere in Eastern Europe. Romania, when we got
24 there in the year 2000, had very young staff, and that
25 staff was revolving quite rapidly, so they did not even

1 have the time to train them and they had already moved
2 away, and the reason certainly was not the fact that the
3 job was not interesting.

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

17 The reputation of the authority had also to do
18 with the leadership of the authority. The higher the
19 standing of that leadership, the higher also of the
20 standing of the authority as such, but also of course
21 the position of employees within the authority, within
22 the public administration of the country is quite
23 important. There were instances in which indeed the
24 Italian experience was followed successfully, and it was
25 quite an important one to follow because the Italian

1 Authority was created in 1990, not so much before the
2 authorities of the countries we were trying to help and
3 the experience we were relating to was quite recent and
4 therefore easy to follow.

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

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

1 sure that the greater transparency is achieved.

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

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

17 This is where a long-term technical assistance
18 matters because issues like the standing of the
19 authority, the reputation, the transparency or
20 organizational matters are very difficult to be achieved
21 with short-term missions. You can only do this with
22 long-term assistance, staying in the country,
23 understanding its culture, its legal system, its
24 political environment. Of course there is a funding
25 problem with long term programs.

1 We were quite lucky in Europe because the
2 European Commission had the political goal of quickly
3 integrating these countries within the European Union
4 and has continued to do so now with countries at the
5 edge of the European Union, like Ukraine and the
6 Mediterranean countries like Morocco and even Russia.
7 Funding was quite substantial.

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

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

20 There is a covenant that starts with objectives
21 that need to be achieved, and then also there's a final
22 report that shows how these objectives have been
23 achieved. Furthermore the final report contains some
24 policy recommendations to the authority and to the
25 country. These recommendations can be used if by the

1 competition authorities to promote change. Because of
2 the reputation of the institution that recommends them
3 (the winning team) and the reputation of the European
4 Commission that approves them, these recommendations can
5 be and have been influential.

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

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

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

21 Now, during the past two decades along with our
22 sister organization, the IMF, we worked with member
23 country governments to promote sound economic
24 management, monetary fiscal exchange rate stability,
25 reduced government deficits, trade investment

1 liberalization, deregulation and the like.

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

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

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

25 At the outset, it may be useful to note that

1 within the World Bank Group there is no single unit,
2 division or directorate responsible for promoting
3 competition, competitive markets or for providing
4 competition law and policy advice.

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

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

20 The doubts partly stem from the fact that many
21 member countries need to address problems of a higher
22 priority, such as providing basic health, education,
23 water, sanitation, roads and other infrastructure
24 services to its population, and also to fight HIV/AIDS.
25 Also due to weak government structures and limited

1 institutional capacities and capabilities in areas such
2 as the civil service and judiciary, the enactment of
3 competition laws and the creation of competition
4 agencies are viewed in some quarters of the World Bank
5 as possible vehicles for unnecessary government
6 interventions and emerging or nascent markets, may be
7 captured by vested interest, corruption and the like.

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

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

23 In other words, one can have competition without
24 having the competition law as many developing countries
25 and indeed many of the fast growing East Asian economies

1 have shown over the past two or three decades, and
2 enacting a competition law does not necessarily ensure
3 competition as we know that there are now about 120
4 jurisdictions, and when one does a survey, one finds
5 that it is very spotty in terms of the success and the
6 implementation of competition law policy.

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

17 Contrary to the popular misconceptions, only on
18 rare occasions have the enactment or strengthening of
19 competition law agencies been a conditionality of World
20 Bank loans and programs. I myself worked in the bank
21 for now about 15 years, and I can only think of about
22 two or three examples, Indonesia, Korea where we
23 insisted on strengthening of their competition
24 provisions of their financial crisis, Argentina and
25 maybe a few others.

1 So the nature and type of technical assistance
2 programs that the World Bank does provide when it
3 receives such demands spans the range of the provision
4 of advice that we have discussed this morning, drafting
5 new and amending existing competition laws to training
6 of staff and institutional capacity building to
7 conducting sector specific competition assessments to
8 funding study tours, internships, resident expert
9 advisors for short and medium time periods and on
10 occasion also arranging for expert advice on case
11 specific matters.

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

17 So given the World Bank itself has limited
18 internal capacity and expertise in competition law
19 policy, much of the technical assistance programs and
20 partnerships with the industrial countries -- much of
21 the technical assistance program is delivered through
22 consultants and where possible in collaboration with and
23 partnership of industrial countries' competition
24 agencies, so we have collaborated with the Department of
25 Justice, the Federal Trade Commission, the Office of

1 Fair Trading, the Canadian Competition Bureau and a
2 number of other agencies around the world including
3 those in developing countries where technical advice
4 from one country that is slightly ahead on the learning
5 curve has gone to countries that are just starting in
6 this program.

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

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

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

25 So for example when David Lewis from South

1 Africa feels that countries should be giving prominence
2 to addressing merger and acquisition transactions and
3 restructuring, as you said in the Fordham Law speech a
4 few years ago doesn't really apply to Tanzania which
5 doesn't have very many listed companies and or a high
6 pace of mergers and acquisition activity.

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

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

25 We also have been through these types of

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

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

17 However, the situation in developing countries
18 is far more challenging. For example, in economies
19 where it takes 175 days just to register the name of a
20 company may be a significant barrier to entry. You say
21 why, it's only 175 days, it's less than a year. But
22 without the name of the registration -- of a company,
23 you cannot borrow. You have no legal entity. You
24 cannot recruit. You cannot hire labor. You are not
25 given a recognition.

1 So it's a bit like Gulliver being tied down by
2 the Lilliputians with a series of little pinpricks and
3 threads because of the lack of a business infrastructure
4 that is very important for facilitating competition and
5 supply responses.

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

15 So let us not assume that markets for land,
16 labor, capital are as fluid and flexible as they were in
17 the United States or in Canada. They are significant
18 gaps in institutions. You don't have credit bureaus.
19 You don't have information. So how do you
20 do competition assessment in an informationally poor
21 country where you can't -- you don't have scanner data,
22 price data, and neither do you have the resources in the
23 competition agencies to send out a slew of survey
24 questionnaires because there's distrust with government
25 and so on?

1 So I personally think the lessons that I've
2 learned from the World Bank experience is that we have
3 to collectively put our minds to some other approaches
4 to handling competition problems that challenge
5 developing countries, and it may mean going back to
6 methods that were applied prior to the computerized
7 techniques and quantitative mathematical and econometric
8 techniques that we are so used to here maybe the kind of
9 techniques that were used in the 1950s and '60s.

10 Thank you with that.

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

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

22 We have regional programs, for example, now in
23 Asia and in Latin America and of course in Eastern and
24 Central Europe. The OECD's particularly fortunate in
25 being able to call upon the expertise of its member

1 countries in delivering a technical assistance program.

2 So, although we have a relatively small
3 secretariat staff in Paris, we are able to put on quite
4 an extensive program, and we use experts from the
5 agencies like the two U.S. agencies who very generously
6 give of their time and their expertise to act as experts
7 or as panel members in events which we organize, and
8 most of the program which we put on is events, training
9 essentially for officials in new competition
10 authorities, and last year, in 2007, we organized 21
11 such events in different parts of the world.

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

19 This is not strictly speaking a technical
20 assistance event. It's more what we call in OECD jargon
21 a policy dialogue occasion, but it is an opportunity for
22 officials from the newer authorities to participate in a
23 discussion with more experienced officials about a range
24 of issues, some cutting edge issues, some rather more
25 pedestrian day-to-day issues.

1 It's in the context of those kinds of meetings
2 that we conduct peer reviews of countries, which Alberto
3 mentioned a moment ago, which is a form of assistance,
4 if you like, which the OECD I think has pioneered where
5 we look in-depth at the competition law and policy of a
6 particular country, produce a report together with
7 recommendations on how things could be improved, and
8 that report is presented and discussed in the meeting
9 with usually one or two examiners posing questions and
10 the country under review responding in the meeting to
11 the points which are raised.

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

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

25 These regional centers are a cooperative joint

1 venture, if you like, between the OECD and the host
2 country, and essentially the OECD provides the
3 professional expertise and input to the center, and the
4 host country provides finance and also administrative
5 support in terms of organizing the program of events.

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

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

23 Another technique which we use quite extensively
24 in these centers, and again I think this is probably an
25 OECD originated scheme, is to ask the participants to

1 each bring one case with them, so they bring details of
2 a case which they're working on at home or have worked
3 on, and this case is then presented in the seminar.

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

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

17 I think this is a very important general point
18 in a seminar such as this, that we should not lose sight
19 of the fact that what we are doing is providing a
20 service of benefits to others, and we should be very
21 aware of the fact that there are specific needs and
22 requirements in each of these countries, and we need to
23 be very aware of what their needs and their requirements
24 are in order to provide an effective technical
25 assistance program.

1 This brings me to an issue which we have been
2 thinking about quite a lot just recently, and that is
3 the sustainability of the efforts which we make in this
4 area. There is a danger it seems to me in doing a lot
5 of ad hoc seminars and workshops which, although no
6 doubt are very useful in themselves, don't lead
7 anywhere, and we have been thinking a lot about how we
8 can try to build on our previous efforts and to have a
9 cumulative effect so that we feel, with some confidence,
10 that the authorities who are benefitting from these
11 programs are actually making progress, are able to use
12 the knowledge and experience which they gain in one
13 event to improve and therefore to have a more effective
14 performance.

15 This is much easier to say than it is to do, and
16 I don't think there are any easy answers, but one
17 project which we have recently launched tries to
18 elaborate this idea, and it's a project to reduce bid
19 rigging, which we have recently launched in Latin
20 America and what we plan to do is to work with
21 individual countries and to follow through over an
22 extended period, so this is not a one off seminar on
23 preventing bid rigging and in procurement but rather a
24 program of work looking at the particular issues in a
25 particular country and saying: What is it that we could

1 help with in order to produce a better environment for
2 reducing bid rigging, for example?

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

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

18 It's also a good idea I think from the
19 recipients' point of view because they probably get
20 rather uncoordinated efforts of help that may not
21 corresponded exactly to their needs, so with that in
22 mind, the OECD has recently produced a calendar which
23 we've called the calendar of global capacity building
24 events, which is now on our web site, and what we did
25 was to contact all the providers of public assistance

1 whom we know about, and we have asked them to provide us
2 with details of events which they have planned over the
3 next six months or a year.

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

11 Thank you.

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

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

20 For those of you who don't know, ICN has a
21 competition policy implementation working group. That
22 working group's mission is to work on issues of
23 importance to new agencies. One of the projects this
24 year that the group is working on is how agencies set
25 priorities, and then more importantly how do they

1 execute those priorities organizationally once they've
2 set them?

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

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

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

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

1 the consultation mechanism.

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

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

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

21 The other line of work for the technical
22 assistance subgroup has been publishing findings on
23 technical assistance. You all should have these
24 findings in your folder you received when you
25 registered. They are ten findings on technical

1 assistance that were based on a very comprehensive and
2 quantitative survey that the working group conducted in
3 2004 and 2005 of 49 recipient agencies of technical
4 assistance.

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

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

20 Surprising at least to me was that knowledge of
21 local conditions was really not considered a very
22 important qualification in terms of evaluating the
23 effectiveness of an advisor, though I suspect there's
24 probably some link between an advisor's adaptability and
25 knowledge of local conditions. I don't think an advisor

1 can be quite that adaptable if it didn't know going in
2 some of the local conditions of the market in which it's
3 working.

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

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

24 MR. PITTMAN: Okay. Do we have any questions or
25 comments from our colleagues in the audience?

1 I was very interested in this calendar that OECD
2 has developed. I think we've for a long time been in a
3 situation where we've done a lot of informal
4 coordinating among all our agencies, and I think the
5 ability to coordinate that would be a big benefit.

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

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

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

22 So I think that is useful, particularly if one
23 can look at a number of events and compare the kind of
24 results you're getting and see whether there's a trend
25 over time, whether things are getting better or worse

1 and how perhaps one regional center maybe compares with
2 some other venue.

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

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

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

20 MR. HEIMLER: Well, as I said these training
21 projects have an objective which is political
22 objectives, and that is integration to Europe so there
23 are objective ways of identifying whether the project
24 led to results, and in fact they're written in the
25 covenant all the time that is the contract that is being

1 made between the recipient authority and the giving
2 authority where indeed all the objectives are being
3 identified.

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

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

19 As for programs, seminars, training events and
20 study visits they are part of the covenant, but they are
21 just the inputs since you cannot force the audience to
22 listen to us. You have your privilege to think of your
23 own things, and this is true also in class or in
24 seminars so there is no way we can -- or make exams.
25 Since we dealt with DG Enlargement and DG Enlargement

1 wanted to make sure that what we said was really learned
2 by the staff of the authority, there have been occasions
3 were they wanted us to make sure that these inputs would
4 indeed translate into better knowledge or better
5 abilities to analyze restrictions of competition. We
6 could not give exams, so these training events remained
7 among the objectives of our programs as such.

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

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

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

18 When it comes to addressing systemic issues on
19 competition policy, for example, broad competition
20 policy, which is, say, the time it takes to register a
21 company, the number of procedures that are involved, the
22 cost of licensing -- we monitor that. And when the
23 number of procedures gets reduced from 12 to 3, the
24 number of days gets reduced from 175 to a hundred, and
25 then the target being Canada, United States -- not

1 United States, Canada, New Zealand where it's two days
2 and in the U.S., it is five days, and then we sort of
3 say, Are the countries moving towards that?

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

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

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

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

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

1 incentives and interests that are opposed to
2 pro-competitive policies?

3 MR. KHEMANI: Is that addressed to me?

4 MR. JOHN HOVEN: Yes.

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

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

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

23 That's where the waters get very muddied, and
24 that's where education and knowledge and pointing out
25 the advantages of competition become critical for

1 institutions like ours.

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

13 MR. PITTMAN: Anne?

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

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

25 I'm very much not in favor of that type of

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

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

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

19 (Applause).

20 (Whereupon, at 1:03 p.m., a lunch recess was
21 taken.)

22

23

24

25

1 AFTERNOON SESSION

2 (1:50 p.m.)

3 PANEL 4:

4 RUSSELL DAMTOFT, Moderator, Associate Director, Office
5 of International Affairs, FTC

6 PANELISTS:

7 STAN ANDERSON, Senior Counsel to the President, U.S.
8 Chamber of Commerce9 ELEANOR M. FOX, Professor, New York University School of
10 Law11 NICHOLAS S. KLISSAS, Senior Commercial Law Reform
12 Advisor, USAID13 ANGEL LOPEZ HOHER, Comision Federal de Competencia,
14 Mexico15 RUSSELL PITTMAN, Director of Technical Assistance and
16 Economic Research, Antitrust Division, DOJ

17 JAMES F. RILL, Partner, Howrey LLP

18
19 MR. DAMTOFT: Good afternoon, and welcome back.
20 This is always a difficult position on the agenda to be
21 right after lunch. So we will do our very best to keep
22 everybody awake.23 This morning we've talked about what the
24 agencies have done in the past. We've looked at
25 consumer protection work and what efforts have been done

1 in technical assistance around the globe. This
2 afternoon, we have to talk about what the needs are
3 because if we're going to talk about technical
4 assistance, we have to think about what needs it is that
5 we are trying to fulfill.

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

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

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

23 Again I'm Russell Damtoft. I'm in the Office of
24 International Affairs at the FTC. Moving from my right
25 is Angel Lopez, who is the Director General for Planning

1 and International Affairs at the Comision Federal de
2 Competencia in Mexico, and Russ Pittman, who you met
3 earlier, with the Department of Justice, director
4 of economic research and director of international
5 technical assistance in their economic analysis group.

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

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

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

25 MR. RILL: Unusual spot. I'm not usually

1 positioned here. I feel like Huckabee at the Reagan
2 Library debates.

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

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

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

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

24 MR. LOPEZ: Thanks, Russ. Thanks for having me
25 here today. I'm not sure 14 years qualifies as a middle

1 aged agency, but I'm not really sure. What I can tell
2 you is that needs evolve as an agency matures.

3 I haven't had the opportunity to actually
4 experience firsthand a very young agency, but I've had
5 some experience advising some very young ones in El
6 Salvador, in Honduras, in the Dominican Republic, which
7 indeed are very young agencies where pretty much
8 everything needs to be done, from the institutional
9 setup, to the way you organize internally, to very basic
10 training on specific techniques and handling of
11 evidence.

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

19 As an agency that matures, then some of it just
20 stays because the Mexican experience is that you have a
21 very high turnover, which is pretty much structural I
22 think. Alberto Heimler was talking a while ago about
23 how badly officials are paid. Some of that is
24 inevitable. The private sector in our countries will
25 always pay more than the public sector, so you'll have

1 to live with a lot of turnover. That means that you'll
2 have to retrain and retrain people as time passes, and
3 that part stays pretty much constant. It increases, I
4 believe, in terms of facilitation and of the degree of
5 detail, but some of it is just cyclical.

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

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

23 So as an agency matures, you have to focus on
24 that more and more, and there's the legitimacy that can
25 be provided by outside voices via technical assistance.

1 That can be very useful in getting that message across,
2 so that's what, with the very limited time available, I
3 would like to say about that issue.

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

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

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

22 I think that something so fundamental and basic
23 as assistance and advice as to the role of competition,
24 not theoretical or too technical, in the context of the
25 national economic and political structure is the first

1 step, and that leads to work on things like framing
2 legislation and some sort of converged notion of sound
3 economic thinking, institutional advice.

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

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

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

23 Even indeed, discussion of possible press
24 relations. I remember when we were involved in the
25 structural competitive talks with the Japanese, that the

1 chairman of the JFTC was always saying, "well, how do
2 you deal with the press?" Well, we said, "very
3 carefully," but the point is that that's a mature agency
4 that's existed since 1947 and that's still struggling
5 with that particular issue.

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

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

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

19 MR. PITTMAN: Well, I only have a couple things
20 I guess to add to the excellent remarks already. Both
21 of my predecessors here have mentioned practical advice,
22 and I think that's one of the first things we noticed
23 was that even in the agencies where the staffs had been
24 price controllers, whatever the staff's background was,
25 it seems like they had had a fair number of lectures on

1 how cost curves are drawn and what's wrong with
2 monopoly, and maybe not enough advice on what you do
3 when you get to your desk in the morning and there's a
4 merger case or an abuse case, and I think that's
5 something we were able pretty early on to successfully
6 get involved in.

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

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

19 Of course it's a temptation we're not immune to,
20 and I think in many of the countries we work in, they're
21 not immune as well to thinking, gee, let's make sure
22 that all these outcomes are right rather than having the
23 confidence that the competitive process will take care
24 of itself. I think that's something that we've tried
25 hard to share.

1 MR. DAMTOFT: We also think about assistance to
2 a competition agency as Shyam alluded to earlier, as
3 being part of the development agenda. What is it that
4 helps bring a development economy into a functioning
5 market economy and that's really part of the purview of
6 the USAID's assistance program, and, Nick, where do the
7 needs tend to be from your perspective?

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

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

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

21 So in terms of the business enabling
22 environment, the things that we look for in our
23 commercial law methodology are four things. One is
24 property rights. That's something that the noted
25 Peruvian economist Hernando de Soto has trumpeted: The

1 idea that if people can only obtain secure title to
2 their property, they can at get better access credit,
3 make them feel more secure in their households, and
4 better enable them to pursue a better livelihood.

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

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

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

23 The fourth thing is dispute resolution. I
24 mentioned that already when I talked about contracts.
25 I'm somewhat saddened to say that competition policy

1 doesn't typically come up in the typical economic growth
2 officer's sort of list of priorities that he or she
3 should be examining when they're out in the field.
4 Unfortunately, many of our USAID counterparts in field
5 missions lack an economic growth background.
6 Fortunately, however, they usually refer questions that
7 arise on these issues back to us in Washington, D.C.

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

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

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

24 I think we'll leave it at that.

25 MR. DAMTOFT: Eleanor, you've written and

1 thought a lot about development issues. Where do you
2 think our competition fits into that?

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

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

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

23 I have just read the book, by Paul Collier, "The
24 Bottom Billion: Why the Poorest Countries are Failing
25 and What Can be Done About It." The book is about 50

1 countries at the economic bottom, which comprise one
2 sixth of the world's population. Some have competition
3 laws. Some ask for technical assistance.

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

17 As to context and attention to beneficiaries
18 needs: I have been stuck by the vision of Hernando de
19 Soto and much of the work of the World Bank (Shyam
20 Khemani, Mark Dutz and others) concentrating on breaking
21 down the huge state barriers that keep the masses of
22 people from participating effectively in the economy.
23 In my article, "Economic Development, Poverty and
24 Antitrust: The Other Path," in the Festschrift Symposium
25 for Lawrence Sullivan, I propose concentrating also on

1 the other side of the coin: Breaking down the barriers
2 placed by commercial market actors (this includes SOEs)
3 that disenable the people from effective market
4 participation.

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

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

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

18 MR. LOPEZ: It's a bit like the old saying that
19 if you have a hammer, that everything starts looking
20 like a nail, but at least for the countries like the
21 states in Mexico, I mean, countries that are past the
22 very basic stuff but still not quite there yet, what I
23 feel and perhaps this is more Latin American than
24 anything else, but there is a certain tiredness with
25 market reforms, people saying: This is just not

1 working.

2 We've been at it for 15, 20 years, and income
3 distribution is the way it is and our competitiveness is
4 dropping and where's my piece of the pie. It's a very
5 valid point, and it's potentially a tragedy in the sense
6 that we have not really had real market economies yet.
7 We've been selling them for 15, 20 years now, but the
8 process of reform hasn't quite reached the stage where
9 it starts to really click in many sectors.

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

21 So my very personal point would be that if you
22 don't have a very vigorous competition policy, if you
23 don't really bring about deregulation competition
24 because those two in this kind of country tend to go
25 very much hand in hand. Many of the obstacles to

1 competition are related to faulty regulation. Then you
2 can't really speak about a market economy. You run the
3 very real risk that you discredit the whole idea of
4 reforms that has been carried out with stops and starts
5 and very much effort for the past 15 years if you don't
6 add to the mix a very vigorous competition policy, at
7 least for countries that are broadly at Mexico's stage
8 of development.

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

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

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

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

22 MR. ANDERSON: I wanted to see maybe if I could
23 take a little different perspective. I don't disagree
24 with anything that's been said, but obviously from the
25 business sector, the need for a strong domestic economy

1 is obviously important in order for us to sell our
2 products and our goods and services, but it seems to me
3 also one of the aspects that need to be -- that needs to
4 be examined in addition to kind of the aspect of
5 competition policy per se is the element of -- and the
6 combination with respect to trade policy and regulatory
7 policy.

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

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

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

21 MR. PITTMAN: Two quick points. Stan mentioned
22 regulatory policy. I think one of the very useful
23 things that competition agencies have been able to do in
24 many countries, in many developing countries is work on
25 the restructuring of the natural monopolies.

1 We have played a big role and the agencies have
2 played a big role in helping governments figure out how
3 these big old state monopolies can be restructured to
4 get greater efficiency and to get competition where
5 possible.

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

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

23 We're just helping -- we're just maybe helping
24 local businesses get more money but we're not helping
25 the citizens.

1 MR. DAMTOFT: Nick?

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

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

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

20 The Washington consensus as a development
21 formula was fine as far as it went. But from my
22 standpoint as a commercial law reform expert it didn't
23 deal with the difficulties of starting a business and
24 all the other regulatory hurdles or costs associated
25 with running a business.

1 They just said lower your tariffs, privatize,
2 stabilize inflation, and presto you have a market
3 economy. Well, we later found out that, no, we don't
4 have a market economy if you only do those things. You
5 have to go the extra mile and look at the business
6 enabling environment, and competition policy is part of
7 that.

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

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

22 But it just seems to me that from what I can
23 see, a lot of these things are very ad hoc in their
24 nature, and we need to have a longer term strategic
25 approach to the kinds of issues.

1 So what does business look for? First I think
2 consistency across jurisdictions with respect to
3 competition law, it seems to me to be extraordinarily
4 important. Businesses, if they know what the rules of
5 the road are and they know how they're going to be
6 applied, they can operate effectively, so it seems to me
7 first of all consistency across jurisdictions.

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

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

20 And so it seems to me that we have to have a
21 broader based approach to what we're talking about to
22 make sure that those who actually make the decisions in
23 any particular country are the ones that are actually
24 benefitting from our technical assistance activities.
25 We can provide all the technical assistance in the world

1 to foreign regulators, but it will not matter if those
2 regulators are trumped by higher ups in government who
3 are looking to push an industrial policy.

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

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

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

20 MR. RILL: First of all, I think Stan made some
21 very excellent points, and I agree with everything he
22 said. In addition, I think that business -- first of
23 all, once the fundamental recognition of the importance
24 of the contract rights, rule of law, private rights of
25 property is underpinning any system. They would hope

1 that there's an acceptance of sound economic principles
2 and the recognition, as someone once said, that really a
3 competition policy is better than the alternative for
4 the growth and development of business.

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

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

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

24 I'm not dreaming that we'll ever have
25 harmonization. That was tried shortly after World War

1 II and came apart very early on in the early GATT days,
2 because there are national differences, but there's a
3 lot of work that still can be done and should be done
4 towards convergence of competition principles.

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

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

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

24 And that's of course a very important goal for
25 us, and that's one of the things that needs to be worked

1 on by an authority where technical assistance of course
2 comes in very handy, but there's also a second way in
3 which you relate to the business community, and that's
4 especially for small and medium enterprises that might
5 be suffering from anticompetitive behavior from
6 suppliers or from clients or whatever.

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

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

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

1 countries.

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

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

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

20 MR. RILL: Not so much from a geographic point
21 of view, but I think certainly there's a certain
22 asymmetry, if you will, between supply and demand in
23 this particular area. I think maybe demand in the terms
24 of need may be somewhat different from where the supply
25 is focused, and the supply being focused in the poorer

1 and underdeveloped countries whereas the need or the
2 demand, if I could call it that, may be greater in more
3 mature jurisdictions.

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

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

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

25 And whether it's increasing activity, I'll be

1 very open and say areas such as Brazil, which is an
2 increasingly active competition agency, certainly Korea,
3 which is very much involved now in unilateral conduct
4 issues that seem to actually have reached out for advice
5 and assistance on a listen and talk, not command and
6 control, if you will, assistance; Korea putting out a
7 request for quotation on how does the European Union
8 handle unilateral conduct issues.

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

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

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

20 One great thing to focus on are countries that
21 are just adopting a new competition law and greeting new
22 institutions. It's great if we can get in on the ground
23 floor in establishing the laws and creating the
24 institutions. One example was when Armenia decided that
25 it would establish a competition policy commission. But

1 what it did was to take the Russian law as a model.
2 And the Russian law had some provision in it where some
3 poor soul within the competition policy agency had to
4 survey the entire economy and figure out which
5 businesses had more than a 30 percent market share.

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

14 Of course there's a divergence between
15 countries that need to enhance their business enabling
16 environment for development purposes and countries where
17 U.S. business, would like to get additional traction for
18 their investments. China, for example, just recently
19 established a new competition policy agency. But
20 China's not a place where USAID is active because
21 they've become a wealthy nation. But many people ask
22 whether we nevertheless be able to provide some kind of
23 technical cooperation with Chinese counterparts? It
24 would not only be good for Chinese consumers, but it
25 will also be good for U.S. investors.

1 No doubt, the economic welfare of the planet
2 would be enhanced if the Chinese adopted a good
3 competition policy regime. But it's not necessarily
4 something the should come out of USAID's budget.

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

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

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

22 We fully support all of the funding that comes
23 through AID, but as Nick pointed out, there are
24 restrictions with respect to where AID funds can and
25 should be used, and so that's why we made an effort last

1 year about following the antitrust modernization
2 commission to go to the Congress and urge them to
3 appropriate additional funds, new funds, funds that can
4 be used for these kinds of purposes to both the
5 department and to the Commission.

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

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

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

23 And finally, certainly from our perspective,
24 again whether or not there's a multiplicity of state
25 owned enterprises and subsidies that global businesses

1 are having to deal with. It seems to me that those are
2 the priorities that should determine what countries that
3 we're focusing on.

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

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

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

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

23 If there's one thing that the government
24 agencies can do better perhaps than anyone else, it is
25 something that Anne Purcell White referred to earlier

1 this morning, and that is the establishment of long-term
2 relationships, the following up on individual events,
3 the development of long-term consultative relationships
4 with agencies.

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

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

21 So I think that's a real strength. We have some
22 other strengths. We bring also the direct focus that we
23 are enforcers and you guys are enforcers, and that's a
24 perspective that we can share, and we certainly have
25 very easy access to a wide range of experts and

1 materials and the hypothetical cases and so forth.

2 MR. DAMTOFT: Okay. Jim, let me go to you on
3 the private side.

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

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

19 And I think the private sector brings a
20 different perspective than that of the enforcement
21 agencies, not more important but certainly important
22 with perhaps a better sense, on line sense of what's
23 actually workable, what actually would be the effect on
24 the frictions within the actual operating business --
25 community business segment of the economy, what would be

1 the more efficient result from the standpoint of the
2 users and how can that be brought about?

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

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

22 There can be internships which is a situation in
23 which somebody from the agency would go into the private
24 sector. We do that here. We've had people in our law
25 firm on internships from developing and more mature but

1 still relatively new agencies. A number of law firms do
2 that, that type of internship and then a return to the
3 government. Working on the confidentiality issues of
4 course can be very challenging.

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

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

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

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

22 MR. LOPEZ: A couple things. One, I have to
23 completely agree with Russ on the great benefit of
24 having a day-to-day, pretty intensive relationship among
25 the government agencies, and that's perhaps the most

1 important long-term outcome of a technical assistance
2 effort, building that kind of personal relationship
3 where you can pick up the phone and just ask questions,
4 provided that the whole waiver thing and so on is
5 handled.

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

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

22 Some of the things like interrelationships and
23 things likes that make a lot of sense to me. We've been
24 trying to get that revolving door working the other way
25 around. It's pretty hard. Somebody who is in a

1 significant position in the private sector has to take
2 such a pay cut in our countries that he would have to be
3 Mother Teresa or something to do that, and there's a
4 short supply of that in law firms.

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

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

24 MR. DAMTOFT: What's the view from the ivory
25 tower, Eleanor?

1 MS. FOX: Thank you. I want to precede that
2 view with a word more on what is it essentially that the
3 recipient needs.

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

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

25 Barry Hawk, I want to claim that you were the

1 first provider of long-term technical assistance to the
2 European community in the early 1980s when you spent a
3 year there. That was a point at which they needed and
4 welcomed collegial assistance, from a wise, sympathetic
5 academic, practitioner. Barry knew our law. He knew
6 their law. He knew their context. He knew how to bring
7 lessons from abroad to the European framework and
8 culture.

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

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

24 This is more personal. It's not institutional
25 at all.

1 MR. DAMTOFT: Nick, USAID has experience with
2 both government providers of assistance and private
3 sector providers. How does this look to you?

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

24 This is a paradigm shift from imposing
25 government will. So we have a challenge before us of

1 how to use the private sector in developing countries in
2 order to further a culture of competition. If we can do
3 it, then that's a great way of moving forward.

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

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

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

21 I agree with everything that Jim had said so I
22 don't want to repeat that. It seems to me that the
23 business community and the private sector, which is what
24 I think it's more important to talk about, so whether
25 it's business community or academia or think tanks or

1 all of the related private sector organizations, all of
2 those need to be, in my view, much more active than they
3 have been in the whole technical assistance.

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

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

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

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

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

17 That's perhaps the most important take away for
18 the receiving agency, and one other thing that has been
19 extremely useful for us specifically in the interaction
20 with the FTC and the DOJ is it's opened doors for us in
21 other institutions, and I'm speaking here specifically
22 of the development bank, and I think that's one of the
23 things to keep in mind going forward; try and not only
24 get accomplished what you set out to do, but provide
25 ideas on further steps for the agency, that might or

1 might not be provided by the same let's call it donor.

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

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

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

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

23 As an economist, I think I would say that I
24 think in my experience we've done a pretty good job in
25 sharing economic tools. Obviously we don't -- we don't

1 expect agencies in developing countries to be estimating
2 demand equations, but the economic way of thinking can
3 be a very important part of competition law enforcement,
4 and I think we've done a pretty good job of sharing the
5 ideas behind things like cross elasticities of the
6 demand and critical loss analysis and tools like that.

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

16 MR. DAMTOFT: What do you think, Eleanor?

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

23 In my view, the most important thing that can be
24 done and we all try to do it is to get our hosts to ask
25 two questions: First, how can this enforcement help the

1 consumers, competition and the market? And second, does
2 this proposed enforcement hurt consumers, competition,
3 and the market? If they can just appreciate those two
4 questions, they're very far ahead, and the details will
5 come.

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

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

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

1 it.

2 MR. DAMTOFT: When I was investigating cases at
3 the Federal Trade Commission, usually the last question
4 I would ask in a witness interview was: What else would
5 you like to tell me that I haven't asked you yet?

6 So in that spirit, I will ask for last words
7 from each of our panelists, and I'll start with Angel.

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

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

25 Second thing is going back to exactly that

1 point. One of the things that -- and Russ Pittman just
2 talked about it in exactly the right words, I think
3 training the trainers. One of the things that I think
4 makes sense is thinking about ways in which to multiply
5 the efforts that goes into it.

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

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

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

23 One of the things that are needed for that and I
24 think some thought could probably go into that is to
25 generate more permanent materials that stay on when the

1 technical assistance goes away. It has to do with the
2 benefit for the agency itself.

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

14 Thank you very much.

15 MR. DAMTOFT: Last words, Russ?

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

1 exactly you go about approaching all that.

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

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

14 MR. DAMTOFT: Nick?

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

18 Our agency is heavily involved with providing
19 technical assistance to developing countries conducting
20 trade liberalization. Considering some things that
21 Eleanor and the other panelists around the table were
22 saying, I've seen a typical pattern of our visiting
23 countries and finding that there's a state-owned
24 telephone monopoly, or a state-owned insurance monopoly,
25 or even a state owned monopoly in banking. And we

1 encounter extreme bureaucratic and even popular
2 resistance to privatize these monopolies. Oftentimes,
3 the cry is that the state (or the people) are reluctant
4 to do so because these entities, these monopolies, are
5 like the crown jewels. Control of these assets is a
6 matter of national security or of losing public pride.
7 Sometimes, like in one country with a revolutionary
8 history, the reason mentioned is that the monopoly
9 should not be given up "because the people sacrificed so
10 much" to acquire these things.

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

16 I'll leave it at that.

17 MR. DAMTOFT: Eleanor?

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

24 MR. DAMTOFT: Stan?

25 MR. ANDERSON: Well, I do agree with everything

1 that's just been said, but let me just make two final
2 points if I might.

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

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

20 Thank you, Jim.

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

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

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

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

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

12 (Applause).

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

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1 PANEL 5:

2 WILLIAM E. KOVACIC, Moderator, Commissioner, FTC

3 PANELISTS:

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

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

7 GEORGES KORSUN, Deloitte Financial Advisory Services,
8 LLP

9 ANDREAS REINDL, Executive Director, Fordham Competition
10 Law Institute

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

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

15

16 COMMISSIONER KOVACIC: My thanks to Jim Hamill,
17 to Anne Purcell, to Randy, to the DOJ and FTC teams who
18 put this session together. As you can imagine,
19 something done well doesn't happen by accident alone and
20 indeed requires a great deal of help, and my thanks to
21 my colleagues for making this -- making this a
22 possibility and making it come together so well.

23 I've always wanted a session where we would
24 provide panaceas and one size fits all solutions because
25 they're so often said not to be attainable, but we're of

1 course going to tell you that they are actually not. I
2 think in many ways we're going to be drawing together
3 and perhaps expanding on themes that have been
4 identified throughout the day today.

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

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

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

24 We have academics who spent time reflecting on
25 these experiences as well as doing firsthand work, so if

1 I were -- there's a scene in Citizen Cain where Cain
2 gets all the reporters from the other newspapers and
3 takes a picture and says: This is the kind of newspaper
4 staff I always wanted to put together. This is the kind
5 of panel I've always wanted to have to address these
6 topics.

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

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

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

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

25 First of all, I'll limit it to what we know in

1 an agency setting of what has been effective. Primarily
2 I am basing my comments on my empirical analysis of the
3 survey that Anne Purcell had mentioned earlier today,
4 the ICN survey, and the results we got from that, plus
5 another 50 or so discussions with recipients and
6 providers of technical assistance as some qualitative
7 follow-up work to the quantitative studies.

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

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

21 Third is an interesting finding, that perceived
22 donor over-involvement by the recipients actually
23 eventually leads to more effective technical assistance,
24 which suggests that sometimes the people at DOJ and FTC,
25 among others, know what they're talking about.

1 Fifth, we see a U-shaped curve which goes to
2 some of these larger political economy issues that
3 Eleanor, Shyam and Angel and others raised earlier,
4 which is that our technical assistance seems to be most
5 effective in one of two cases; either just as an agency
6 is moving from a centralized economy to more of a market
7 based economy, or in cases where essentially you are
8 further along in economic development. You have more
9 market freedoms.

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

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

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

25 COMMISSIONER KOVACIC: Thanks, Danny. I would

1 like to turn to Andrea who you know from OECD, from
2 Skadden, and most recently and happily you know from
3 Fordham. Andreas?

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

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

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

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

22 The first is that events ought to be very well
23 targeted and well organized, and that's certainly true
24 for short-term events. The amount of preparation that
25 goes into them is disproportionate compared to longer

1 events because it just requires much more time compared
2 to the actual time of the events to get everyone on
3 board.

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

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

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

23 COMMISSIONER KOVACIC: Extraordinary.

24 MR. REINDL: Extraordinarily good speakers and,
25 to be honest, we had speakers from some authorities who

1 were not the greatest success, and we had very big names
2 from academia, who were very, very good, and we had
3 speakers from academia that were not a great success.

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

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

23 It's very easy to say we want good materials,
24 but if you want a short-term or long-term event with
25 some impact, we ought to think much, much harder about

1 what kind of materials we can use that both help during
2 an event but also remain useful for the time after the
3 event is over.

4 COMMISSIONER KOVACIC: Great. Thanks, Andreas.
5 Next we have Mark Whitener from General Electric. We
6 probably claim Mark as one of our alumni. Welcome home,
7 Mark.

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

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

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

1 of these jurisdictions.

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

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

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

25 I think you have effectively built

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

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

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

19 But on the broad policy side, just in recent
20 months, looking at what happened with the Chinese from
21 start to finish, looking at isolated issues that pop up
22 like the new law in India with some of the issues around
23 merger process. The ability of the agencies and the
24 international groups that they have helped put together
25 to quickly respond to those points and to bring

1 constructive input to bear on them has been very
2 effective, and that's more on the non-technical side of
3 technical assistance.

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

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

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

16 MR. COOPER: Pitch right, run left.

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

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

1 is what everybody then works toward.

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

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

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

22 At the same time it's sort of a bottom up kind
23 of organization sponsored by 300,000 local businesses.
24 They were requested by businesses in Romania to work
25 with them to set up a trust mark. This was something

1 where they were induced to help the businesses of
2 Romania. Why should Romania care?

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

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

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

25 That's something where again it was a small

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

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

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

23 One of the things that a group like ANSI can do
24 is we can come up with contractual obligations that we
25 can set as a standard, so everybody who agrees to that

1 contractual obligation, such as Mattel or whomever, can
2 force that obligation down the supply chain to that
3 sub-sub-subcontractor, so that everybody knows that
4 those are the rules of the road.

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

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

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

21 COMMISSIONER KOVACIC: Some of them, some of
22 them.

23 MR. COOPER: The benefit of the doubt. Those
24 who do work in these arenas and have a credibility that
25 they want to hold on to, but also a credibility that is

1 fungible and others know about, if there's a way to
2 bring those groups in, I think that they would really
3 help at least again in consumer protection and in
4 expanding opportunities in the global marketplace.

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

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

16 So before I elaborate the specific suggestions
17 that I want to make, let me offer you the following
18 typology, which I will use throughout my comments and I
19 think might be helpful organizing a lot of things that
20 we've heard about today. I suggest that the suggestions
21 can be grouped into three categories: Those that refer
22 to subject matters; those that refer to human resource
23 allocation, both in the donor and in the receiving
24 jurisdictions; and those that relate to wider macro
25 issues.

1 So let me start and make a few points about
2 subject matters. I would like to echo many of today's
3 speakers in emphasizing the importance of long-term
4 involvement, where such involvement is possible, and I
5 would add to the discussion that was raised earlier,
6 that long-term and short-term projects are not
7 necessarily either/or.

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

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

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

23 Of course a lot depends on the specifics of the
24 relevant jurisdiction. The stronger the ability of the
25 agency for self help, the better its own economists, and

1 the better its human resources, the less the need for
2 walking it through the steps of a case and vice versa.
3 Yet when you're talking about a very young agency and
4 inexperienced, I think it's important to choose a few
5 cases and go the length with the agency.

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

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

23 For advocacy, what I think has worked well is
24 building upon and pointing to the successful examples of
25 antitrust regimes in countries which are regarded by the

1 relevant country as facing relatively similar problems.

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

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

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

23 And one result of that or one suggestion is that
24 it may be beneficial to designate the specific person
25 that has provided the TA as the contact person, in the

1 agency, should that be possible.

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

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

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

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

23 I turn now to Georges Korsun, who is an
24 economist with Deloitte, and Georges is really the
25 person who taught me most of what I know that's good

1 about doing technical assistance. Georges started doing
2 this in a serious way when many of us were just reading
3 about it, including spending several times in Mongolia
4 in the early 1990s when Mongolia was not steered towards
5 its destination, much less a place to do work.

6 Georges, thank you.

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

11 COMMISSIONER KOVACIC: But first in our hearts.

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

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

24 I realize that's contrary to budget realities.
25 The aid may come in small bites, but I think good design

1 begins with a plan for the agency that's comprehensive,
2 and I think it starts with a comprehensive needs
3 assessment, and that's a fairly obvious statement but
4 it's kind of surprising.

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

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

19 I think more importantly though the program has
20 to be put in context, and that means in the context of
21 the kind of structure, the kind of economic structure
22 that the country effectively possesses. We've heard a
23 lot about the problems of state ownership, and that's
24 clearly -- ownership in general is an issue because it
25 goes beyond state ownership. It also goes to economies

1 that are organized around sort of multiple boards that
2 control vast combinations of enterprises.

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

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

18 COMMISSIONER KOVACIC: I remember, Georges, one
19 place we worked where the monarch owned roughly 25
20 percent of the entire economy, speaking with one
21 government official who was looking at the monarch's
22 photograph and we said: What significance is there, the
23 monarch -- and how do you apply competition law where he
24 does have 25 percent? And we were assured I think on
25 that occasion that the monarch was just a passive

1 investor and not to be concerned, just probably looking
2 at the statements every month seeing how they turned
3 out.

4 I would like to just put --

5 MR. KORSUN: Passive and benevolent.

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

16 And long-term, I mean not to be six months but
17 more like a decade or more if you accept the idea that
18 the development of the institutional framework and the
19 supporting institutions will take a long time, and it's
20 a slow growth in many countries. It is the expectation
21 that things will take a long period of time and that
22 there will be a commitment in year one, year two, year
23 three or year five. Why does that make a difference?

24 First, it builds trust. I think when you
25 scratch beneath the surface of many of our

1 relationships, there is a natural weariness on the part
2 of the recipient. When you have the pros come in from
3 Brussels, from Washington, from Ottawa, from all of the
4 well established jurisdictions, several doubts: Do they
5 really know what they're talking about with respect to
6 my jurisdiction?

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

13 George and I remember one consultant who gave
14 the advice, always buy your souvenirs on the first trip.
15 Are these people really interested in the long-term? If
16 you have a continuing interaction over period of years,
17 a decade, that kind of trust develops.

18 Second, in the course of that, you begin to
19 actually have a much better feel for what local needs
20 are, and it can start with a needs assessment that
21 Georges discussed, but you actually acquire some
22 knowledge about local conditions and through the
23 conversation that takes place with the agency, you can
24 develop a far more refined idea of what ought to be
25 done.

1 And over a course of discussions over time, and
2 many people in this room have had this experience, the
3 moment that takes place -- the moment that you know your
4 counterparts trust you for your advice, see you as being
5 a neutral provider of options and an analyst rather than
6 just an advocate, when that light bulb goes on, you know
7 that's what we call in academia the teachable moment.

8 Those I think are very, very fruitful, extremely
9 fruitful relationships. So when I think about the
10 long-term engagement, it's completely compatible with
11 what Andreas was talking about, about the benefits of
12 individual short-term interventions, but it's the
13 expectation that there will be a continuing process of
14 discussion and engagement overtime, and I mention it
15 with a certain amount of sorrow because that is not our
16 strong suit in this country.

17 It's because the building, the great dome up the
18 street likes to dole things out in short increments.
19 It's that the institutions that we work for are partly a
20 consequence of that tendency to look fiscal year to
21 fiscal year to fiscal year for a variety of
22 circumstances because their institutions are captured by
23 fads, hobbies, individual interests and obsessions that
24 come and go, new management.

25 Now, do I hold my breath in the face of a

1 Presidential election on this because in 1993 and again
2 in 2001, I saw incoming administrations basically say,
3 the presumption of idiocy that we attached to our
4 predecessors naturally forces us to rethink everything
5 we're doing, and it means that long-term sustained
6 projects that had the promise of success were terminated
7 or cut back sharply?

8 It's not our strength I think institutionally to
9 do this, but that's exactly the kind of engagement that
10 I think makes a difference over time.

11 On this point, and I think of how it is
12 difficult to look in one place, and it's possibly
13 something we can extract from this program, if we search
14 through the different sessions and just take the advice
15 that our panelists have given now. You can come up with
16 a pretty good guide to the sorts of things that work
17 well.

18 I was wondering if I could ask all of you on the
19 spot, in some ways Scott's given us a terrific example,
20 with working with NGOs and Better Business Bureaus. Can
21 you think of a specific illustration or example, perhaps
22 a country experience or a course you've done or a
23 program you've put together that you walk away from
24 saying that worked, that was a good event?

25 Maybe something you're working on now, something

1 you've done, an instance where you start to think
2 about -- in my own experience I have -- when I work on
3 projects I have two columns. One column says how soon
4 can I leave. The other one says how long can I stay,
5 and in the typical project, it is a manic depressive
6 roller coaster through these. The two columns are
7 relatively evenly matched for the most part, but I do
8 have in my mind events where I think these were the good
9 days.

10 Which projects, illustrations, examples, when
11 you think that's an example of something that's worked
12 well? And Scott in some ways has already given us one.
13 Any that come to mind, that stand out? Well, that
14 worked.

15 MR. REINDL: At the risk that I'm saying
16 something completely wrong now by your own definition,
17 there is no project that really did work, and it's not
18 so much a country specific experience, but I can say
19 that for whatever reason, our attempt to gather a highly
20 specialized group of experienced enforcers from a large
21 range of jurisdictions that makes more experience
22 considered and less experienced jurisdictions but the
23 common denominator is that these people have a great
24 deal of experience of competition enforcement over
25 several years and put them together for an entire week,

1 including from breakfast to the night essentially with
2 work in between, that really created an atmosphere where
3 everyone walked away with the impression that people
4 really benefitted and the feedback was very good.

5 Now, the question that you raised, which we
6 talked about I think towards the end of the day, but
7 what do we define as work, so I don't have data that can
8 conclusively prove that we had an impact on the
9 economies of all 20 participating countries, but in
10 terms of what people said about the program and what
11 they experienced, I think that that seemed to be quite
12 successful.

13 MR. WHITENER: Bill, I'll offer sort of an
14 anecdote. One of my first projects when I was at the
15 FTC was a short-term mission done with Poca Potencia
16 (phonetic) in Venezuela, which at that time was a hotbed
17 of very energetic, young economics trained folks who
18 were really trying to do the right thing.

19 COMMISSIONER KOVACIC: None better.

20 MR. WHITENER: And they had a resident FTC
21 advisor from the Bureau of Economics who had already
22 been there for three months, and so I'll give you sort
23 of the good and the bad. The good was he had very
24 effectively gotten sort of a fundamental understanding
25 of merger analysis imparted, and they were looking at a

1 local beer merger I think, and they were looking at it
2 very much as the U.S. agency staffs would have done.

3 The other thing that the U.S. economist had done
4 by the way is he had hooked them up to something called
5 the Internet, and that was the first time I had ever
6 used the word, and he hooked them up so they could get
7 documents from the FTC Bureau of Economics to do their
8 work so it was a great, early example of technology.

9 Here's the other side of things. They were
10 working on what to do in terms of pre-merger
11 notification, and the ideas they were getting, and I
12 have to admit I didn't body block this, were very much
13 sort of U.S. concepts of what you do when you want to
14 have a pre-merger notification review, but they didn't
15 get all the --

16 COMMISSIONER KOVACIC: You mean just ask for a
17 couple cartons of documents, small steer document
18 requests.

19 MR. WHITENER: Well, there was that, but I'm
20 talking about just the thresholds, but once you
21 translated the complex U.S. process to their mindset,
22 and actually I don't recall where they went in the early
23 '90s, but where those concepts sort of not really
24 adequate explained were heading were toward the kinds of
25 fairly egregious examples we see now globally of pre-

1 merger review and thresholds that really don't serve the
2 interests of the local countries.

3 So maybe that's a good and a bad. The good was
4 the long term advisor from BE was tremendously
5 effective. The bad was the technical pre merger advice
6 I think was totally ineffective.

7 COMMISSIONER KOVACIC: Thanks. Michal?

8 PROF. GAL: The example I would like to use is
9 not a long-term technical assistance, just a few days
10 program that I put together with a Supreme Court Justice
11 in Israel voluntarily, in which Judges from all the
12 courts in Israel came in for a four days seminar, and we
13 provided the basics of antitrust.

14 We went through hypotheticals and real-world
15 examples and we got all the leading economists and
16 academics in Israel to do that, and I think it has
17 increased the quality of some of the decisions.

18 I think what was extremely helpful is that we
19 later spent a few days with the Judges' research
20 assistants. Sometimes not going directly to the
21 decision maker but going to the one who assists in
22 writing the first draft of the decision might be
23 helpful.

24 COMMISSIONER KOVACIC: Scott?

25 MR. COOPER: Very briefly, Janet Steiger in the

1 early '90s, undertook technical assistance programs on
2 her own to central Europe, just when things were
3 breaking loose. I wish we had sent her further East to
4 Russia where things might then have been different. She
5 got a tremendous amount of push back on that, 'what's
6 the FTC doing internationally?' 'They have no
7 jurisdiction,' a lot of huffing and puffing.

8 And she went I think at least on three trips, it
9 might have been more. I think that you could make a
10 case that made a difference with how Eastern Europe was
11 receptive to a lot of our philosophical constructs. I
12 am a big fan of hers, and that's one reason.

13 COMMISSIONER KOVACIC: I think the score card by
14 which enforcement officials are judged, the report card
15 says cases, and then how many cases, and then how many
16 cases, and can you tell us about the cases. This
17 doesn't show up in the box score at all, but it's I
18 think in many ways Janet and Jim Rill's finest moment.

19 Danny.

20 MR. SOKOL: Overall I would say there are two
21 things that have made it "work." One is where
22 expectations are low so you could -- what I always tell
23 myself is if you have low expectations, you could never
24 be disappointed.

25 What it also means is that you can actually

1 attain your goal, and that I think is the first step in
2 building the kind of trust relationship, Bill, that
3 you're talking about. Sometimes it's just as simple as
4 making those initial connections between two people, but
5 I would say where it's worked the best is where we've
6 actually seen an overlap of technical assistance and
7 capacity building on the one hand with our existing
8 international organizations on the other.

9 And I think if we take a very broad view of what
10 technical assistance capacity building is, I think the
11 ICN is ultimately that part of capacity building that
12 has worked and has been a success.

13 COMMISSIONER KOVACIC: I will offer three quick
14 items of my own, and one deals with the larger spillover
15 effects to the economy of building good microeconomic
16 and legal training and analysis that in many instances
17 don't stay just inside the competition policy system,
18 but spillover into other areas, and I'll give one
19 example that does involve Georges.

20 When I think, Georges, of the seminars and work
21 that you did in Mongolia to pick one example, I think of
22 the young kids who sat in the rooms for the
23 microeconomic policy workshops. The people or the young
24 kids in many instances became the government officials,
25 the ministers, and there's a note in a bottle quality to

1 that. That is, you don't know who will pick up the
2 bottle. You don't know if they'll read the note. You
3 don't know if they'll follow the instructions.

4 When I think in a number of instances how as
5 part of the training and the courses and the projects
6 what was transferred and what continues to be
7 transferred was some valuable intellectual capital, and
8 I realize that's not directly tied to a specific
9 technical assistance result, but to the extent that the
10 effectiveness of market oriented reforms depends on
11 that, I do see that as having been successful.

12 The second I think of is related and really tied
13 many ways to Andreas' comment about good faculty
14 preparation and good course materials. I think of the
15 program that Shyam and Mark put together that we've
16 talked about several times, that the bank conceived in
17 the late 1990s to be in effect the universal course
18 materials, the modules on competition policy, and Mark
19 and Shyam spent an enormous amount of time trying to do
20 what Andreas said: Pick the right materials, adapt them
21 to the environment in which they were most likely to be
22 used.

23 They vetted people who would teach. They
24 basically insisted on auditions; that is, let me see
25 what you're going to do, and I remember that the people

1 who auditioned were not invariably the people that got
2 the parts, and this was a way of testing their
3 seriousness about doing the work.

4 The materials were assembled. There was one
5 full prototype run in Washington, a local adaptation
6 developed in Singapore, and sadly the bank didn't
7 continue to pursue it. That is, there it was. Here was
8 the golden path I think laid out, but I think back to
9 the people who sat in those classrooms and attended the
10 programs and went, and we now see lots of those people
11 again and again.

12 It's the core of the group. I remember seeing
13 at one table David Lewis and his colleagues who have
14 been so instrumental in the development of South
15 Africa's program; officials throughout Southeast Asia
16 who began to work in the field in short, lots of
17 positive results from that effort to formulate good
18 materials.

19 And last I think about the experience of Csaba
20 and his colleagues at the Hungarian Authority where
21 there was a long-term engagement. Jim Hamill and I were
22 fortunate enough to attend the program that was sort of
23 the close of the continued efforts that USAID had
24 sponsored.

25 Not only, I think, was the interaction good for

1 ourselves and for our Hungarian counterparts, but the
2 fact of having the seminars brought people from the
3 region into Budapest, into the other capital so that now
4 Csaba and his colleagues really play that leading role
5 throughout the region. On a rainy day I like to think
6 of examples like that to show how it can be done.

7 Well, part two of our session is to focus, and
8 we've touched on it already, on what's gone badly, and
9 in the way of growth and self development, we're going
10 to turn to things that might have been done better.

11 Danny, can you lead us off?

12 MR. SOKOL: One fundamental issue and one that I
13 don't think we've spent enough time on in today's
14 sessions discussing is that sometimes staff needs are
15 very different from agency leadership needs, and the
16 kinds of technical assistance that we provide and
17 capacity building has to of course make sure that we
18 meet both of those types of needs.

19 Second, I would suggest that sometimes we've
20 provided very good technical assistance but very bad
21 capacity building, which is to say that sometimes either
22 a short-term intervention or a long-term advisor comes
23 in, and we get the result that we want to see, but it's
24 the outsider that's done most of the work or most of the
25 important work and has not really spread that knowledge

1 of how to undertake a certain type of conduct in terms
2 of a case or the right type of competition advocacy and
3 really imparted that knowledge on the recipient
4 agencies.

5 I think that where we've seen significant
6 failure is where the donors, the providers and the
7 recipients don't actually communicate well with each
8 other, and it's not merely the donors and recipients. I
9 don't think we've spent enough time really parsing out
10 that sometimes donors and providers are different. Each
11 of them has their own agenda, and we have to make sure
12 that everyone is on the same page.

13 The third major point that strikes me is that
14 legitimacy matters, building off of what Michal said.
15 It's not just bringing on a good case that you can win.
16 It's bringing on the kind of case that can create
17 legitimacy for the antitrust agency to pursue its non
18 enforcement goals.

19 I don't think we've spent enough time today
20 talking about the competition advocacy work of antitrust
21 agencies, and you really can't be effective with your
22 advocacy work if nobody takes you seriously, and the
23 best way for someone to take you seriously is to bust
24 your bread cartel, your rice cartel, because those are
25 the things that are going to create the very populace

1 ground swell that you need to create a pro-competitive
2 mindset in a country.

3 Another factor I think that's gone wrong is
4 sometimes we have the wrong kind of advisors. Bill
5 talked about the people who are looking for the exotic
6 vacations, and I think that anecdotally I've gotten many
7 stories of this from recipients, that they say that
8 sometimes it's been the providers of aid that have
9 learned as much as the recipients about technical
10 assistance because the providers have been learning
11 on-the-job.

12 Part of that problem strikes me is because
13 you're getting people with the wrong kind of background
14 in terms of the selection process. Another problem we
15 see is how short-term advisors come in. I agree with
16 Andreas that there's an important role for short-term
17 advisors.

18 I think the reason that we've seen it less
19 effective in the long-term in terms of the survey data
20 and in terms of the anecdotal qualitative work that
21 people share with me afterwards is because there's too
22 much red tape when it comes to our short-term advisors.
23 From the time you recognize say that there's an issue
24 that you want to bring until the time that the person
25 actually sets foot in the country may be six months, and

1 in that time, the situation on the ground may have
2 changed significantly, where they may no longer need to
3 be there for that issue but there's something else
4 that's come up that's more important, and so the wrong
5 person again is on the ground or the timing just didn't
6 work out well.

7 So the take-aways are: That there is too much
8 red tape, there needs to be more technical assistance
9 and capacity building that is done in-country, fewer
10 fancy vacations for agencies heads and their staff in
11 exotic locations where it's Bali, Paris, New York and to
12 the extent that agency staff used to travel for a
13 conference, make sure people are going for the right
14 reason -- to learn. For example, more conferences
15 should be held in industrial towns where it's easy to
16 get to air service, so when people are coming, say to
17 Bratislava, when they're coming, they're really coming
18 to learn and increase their capacity, not because
19 there's a nice beach.

20 And I'm sure there isn't one in Bratislava, so
21 it seems to me that those are significant take aways,
22 and all too often finally, we focus on the success
23 stories and not enough on our failures, and we have to
24 be spending more time thinking about what goes wrong and
25 not what goes right.

1 COMMISSIONER KOVACIC: Andreas?

2 MR. REINDL: A couple points. If you want a
3 specific example of something that hasn't worked, I
4 remember my trip to Cairo to speak before the Arab
5 League of Nations, and I had a wonderful presentation
6 about cartels. Of course half of the audience were OPEC
7 members. When I came back to Paris and I had to fill up
8 my car the next time at the gas station, I noticed that
9 my presentation was certainly very good but not very
10 effective.

11 I think this summarizes what can go wrong. You
12 speak to an audience that's not well selected. You
13 speak to an audience or to participants who just are not
14 ready to take on what you want to tell them, and you
15 have an overly broad agenda that is not targeted to what
16 their needs are.

17 Now, I think an interesting question is then:
18 Would it be better to just stop talking about
19 competition law before members of the Arab League, and
20 probably the answer is, no. To some extent, in some
21 contexts it makes sense. We should just not expect that
22 we have effects like we've seen, say, in Hungary, that
23 you find a competition authority that's actually
24 following what you say. In the long-term building-up
25 recognition of comprehensive law may be something useful

1 -- maybe it helps in 10 or 15 years.

2 So I think broad and untargeted agendas and
3 countries are not ready to implement a market economy
4 are the biggest obstacles in these programs. All the
5 reverse things that I said before; unprepared
6 presentations, unprepared presenters, obviously that's
7 all the same thing as I mentioned before.

8 COMMISSIONER KOVACIC: I doubt there's anyone in
9 this room who does not know the difference in these
10 settings between a ghastly talk and a good talk, and how
11 many people here have been to a program, as I certainly
12 have, where the speaker in going from one exotic
13 destination to another, did not take the time to change
14 the location of the talk so it was the right day, right
15 topic, but it was Bali instead of Rio, and the audience
16 said, is this the right venue?

17 Mark?

18 MR. WHITENER: Okay. Well, first of all,
19 Andreas, I don't think you should feel too bad about not
20 single-handedly taking down OPEC, okay? It would have
21 been great.

22 Two or three comments. I guess I'll start with
23 some technical things and then bigger picture and then
24 it's always about money.

25 On the technical side, I get the sense from

1 those of you who know more about this area than I do
2 that there is still more to be done in terms of
3 measurement and sort of quantitative and objective
4 assessment of effectiveness. Eleanor talked about this
5 in terms of self assessment, which seems like a very
6 good way to approach it; obviously, assessments that go
7 out into the field and try to get information from the
8 recipients.

9 I'm not sure how the regulated parties like my
10 company could help. We can certainly point out which
11 countries have raised problems, but I'm not sure that
12 gives you a lot of insight into effectiveness of
13 technical assistance, but measuring -- if we're going to
14 have a discussion about failures, obviously we need to
15 know more than just anecdotes. We need to know what's
16 actually working based on some sort of objective
17 criteria.

18 A different technical issue, and I referred to
19 it before, is merger process. For most global
20 companies, except for a few that are always in the
21 headlines -- for most of us, our most frequent
22 interaction with global regulators are in merger
23 reviews.

24 For the most part that's a technical process and
25 does not end up being a significant substantive process.

1 That is a part of the global competition law picture
2 that is not particularly effective.

3 I don't know how much the agencies could have
4 done or can do now through technical assistance, but I
5 think it's always been an important part of what you do.
6 I suspect it was not as effective early on before people
7 sort of realized what was happening, that all these
8 jurisdictions were putting in place merger review
9 thresholds that captured a lot of deals that really
10 didn't have much impact on their country, so I think
11 that's sort of a problem that got formed possibly in
12 part because of assistance that wasn't as focused, and
13 now it's something we all have to deal with.

14 On the substantive side, my main comment here
15 because again I'm not expert in effectiveness of
16 particular types of assistance, is just to look at the
17 consequences of some things that government agencies in
18 the so-called sophisticated or major jurisdictions do
19 have control over, and that's their own policies.

20 I think from the business perspective, when we
21 see enforcement decisions or policies articulated in the
22 U.S. or the EU that may or may not be as well explained
23 as they could be, that may be less rigorous as they
24 might be, and that's not been a particular problem in
25 recent years, but you will still see enforcement

1 decisions from the EU certainly, from the U.S., that
2 lend themselves to misunderstanding or even abuse when
3 they're interpreted by non U.S. authorities.

4 I can think of examples from the EU obviously in
5 the merger area, conglomerate mergers. Obviously when
6 you go down that road, one thing you have to understand
7 is even if the analysis that you're applying, you feel
8 at the end of the day perhaps approximates your sense of
9 consumer welfare, those theories when applied by others
10 might go completely off the rails.

11 The U.S. isn't exempt, and I will just mention
12 the recent case. This commissioner dissented but the
13 End Data case, which I'm not intimately familiar with
14 the facts, but I do know when I see an action like that,
15 that has perhaps an absence of some limiting principles.
16 If you just read what's public, you can imagine ways
17 that those kinds of actions could have unforeseen and
18 adverse consequences when they are endorsed by other
19 authorities.

20 So I think that is more of a failure to fully
21 account for the consequences of one's own policies as
22 opposed to failure in technical assistance. The third
23 point I would make and others have made is simply the
24 U.S. government's collective failure to adequately fund
25 this area, something that I hope is being addressed.

1 Then a fourth related point, which I'll talk
2 more about when we come to recommendations, is I think
3 more can be done in cooperation, and others have made
4 this point, among U.S. government, non U.S. government,
5 antitrust and non antitrust agencies, academic
6 institutions, Bar groups and private industry to figure
7 out how to bring resources to bear in the most effective
8 way.

9 I think government to government technical
10 assistance is still something that has a unique role.
11 It's vitally important and needs to be funded, but there
12 are other constituencies represented by various
13 panelists today who have an interest in this, and I
14 think if there was some greater effort to coordinate
15 those efforts, we might be able to do more.

16 COMMISSIONER KOVACIC: Thanks, Mark. Scott, I
17 cut you off before, and I think you had a success story
18 in mind when you were in the queue and if you like, if
19 you want to, start with the happy example before going
20 to the sad, you're most welcome to take a minute or so
21 to summon that one back up.

22 MR. COOPER: Thanks, Bill. Actually I'm going
23 to go straight to the sad one because that's in front of
24 me right now, and I'm weeping inside and I want to share
25 this sad experience.

1 COMMISSIONER KOVACIC: I agree, too much
2 happiness is definitely a bad thing.

3 MR. COOPER: This is your last panel. Back in
4 the late '90s, there was a group called the Global
5 Business Dialogue. Some of you may have heard of it.
6 It was a CEO driven organization. It was
7 Bertlesmann, Vivendi, Nokia, Deutsche Bank, Fujitsu,
8 NAC, HP, IBM, Disney, AOL, Time Warner. In fact, the
9 kabuki dance or the mating dance between Time Warner and
10 AOL started really at the GBD, back then the CEOs were
11 very larger than life.

12 You may remember late '90s, they were on top of
13 their game, and what they perceived with the global
14 marketplace was that is the writ of law did not run from
15 sovereign nations. They were going to fill that void,
16 and they made I think a pretty good effort at doing so
17 before they all got fired because they were in Davos too
18 many times.

19 But this was a high powered group. There were
20 about 70 CEOs of all the largest multinationals who were
21 really full of themselves from about '97 to 2002 or so.
22 One of the issues they picked -- and my old boss was
23 leading the effort with cross border trade because they
24 were looking at economic commerce as really kind of the
25 cross cutting issue here, where really the writ of law

1 did not run.

2 What do you do with the cross border trade where
3 you have in a sense two jurisdictions? You have the
4 jurisdiction of the consumer. You have the jurisdiction
5 of the business, and you have multiple laws out there.
6 Just in Europe alone, you have the Treaty of Rome that
7 says, no, it's the jurisdiction of the consumer that
8 trumps here. And then you had that followed up with the
9 Brussels Convention that said: Well, except in some
10 cases it's the business jurisdiction when it's
11 electronic commerce.

12 It really can be neither. You cannot have an
13 either/or in a situation like this, and this is one of
14 the problems I think we are going to see over and over
15 again with the global marketplace. Unless you have not
16 just bilateral rules, but multilateral rules that are
17 truly effective across all boundaries, you're going to
18 have to come up with some sort of third-party resolution
19 to this thing, and this is what the GBD tried to do.

20 What we did about mediating disputes was through
21 an alternative dispute resolution mechanism that won't
22 take the place of the jurisdictions, but hopefully it
23 will be successful enough so that people won't even
24 think about going to their local jurisdictions because
25 it won't be cost effective. If they feel they've gotten

1 basically their day of court through this.

2 And so what we did was we went to Consumers
3 International, which is the umbrella group for all
4 consumer groups around the world, and it took us three
5 years, but we sat down in a series of meetings, endless
6 Emails, 17 drafts in all. At the end of three years we
7 had a document, which was an agreement between this very
8 large business group and this umbrella consumer group on
9 the rules of the road for dispute resolution on cross
10 border trade.

11 This was not business to business. This was
12 strictly consumer to businesses, but what a wonderful
13 life we were living in back in the late '90s for lots of
14 reasons, and this seemed to be one of them. We actually
15 had resolved a problem and got it off the plate of the
16 FTC, the EU, Industry Canada and they all came back and
17 patted us on the back and said, this is great, we now
18 have a document.

19 Well, then how do you do implementation on
20 something like this? And this was something that was
21 the next step. This was rev 2. Unfortunately, Davos
22 intervened. The dot comm bust intervened. All the
23 supporters of this effort basically went on to other
24 things, and we sat there with a document and no
25 implementation.

1 And so the two points I would like to make here
2 that I think have been made already, are: One, you need
3 long-term engagement, and somehow we've got to get
4 businesses as well as consumer groups involved in that
5 long-term engagement, and how we do that, I think, it
6 has to be tri-party. We have to have all groups
7 working toward that same goal.

8 We can't just say, business, you go fund this
9 and we'll pat you on the back when you're done, or
10 consumers, we will pay for your way to these meetings,
11 aren't we nice, but you're going to have to sign off on
12 all this. And second, for government, for all reasons
13 that Bill just raised, we've got to have this kind of
14 long-term commensurate commitment from government
15 towards solutions that may not come directly from the
16 government in the first place.

17 Here we had something that all sides agreed on,
18 but how do we ratify something that does not come from
19 the government? How does the government actually give
20 its imprimatur on something that was not invented there?

21 So these are issues I think that for going
22 forward for the global marketplace, where again we're
23 beyond sovereign nations being able to call all the
24 shots, how do we find a tri-party consensus where we
25 have business, we have government and we have what I'll

1 call civil society, which is basically academics, it's
2 NGOs, consumer groups, whatever, all participants
3 because that's the only way we're going to get
4 credibility on public policy solution sets going
5 forward.

6 It can't be just government saying, 'here it
7 is.' And businesses can't do it either. They shouldn't
8 and they won't. Consumer groups don't have the gravitas
9 to be able to pull -- they have the gravitas, but don't
10 have the authority to pull it off.

11 The three together, if you can get all three to
12 agree to something, I suspect that's probably the right
13 solution. So, I would just like to throw that out as a
14 going forward issue.

15 COMMISSIONER KOVACIC: Thank you, Scott.
16 Michal?

17 MS. GAL: Okay. Where have technical assistance
18 efforts failed and what has accounted for the failures?
19 Again, let me separate my remarks into the three
20 different groups. Let me start with two remarks about
21 subject matter issues. First, problems are created when
22 the whole antitrust toolbox and agenda is imposed on a
23 newly created agency. As our panel's chairman, Bill,
24 has so clearly elaborated in his extensive research on
25 transition economies, sometimes if you try to eat the

1 whole cake or make somebody else eat the whole cake, you
2 might simply choke. So that the solution which was
3 championed by Bill and others, which I would also like
4 to echo, is of course to teach and coach gradually.

5 Second point: Technical assistance will not be
6 effective where the one providing the assistance does
7 the work rather than the coaching. I think of technical
8 assistance as a bit like teaching a young child to walk.
9 You cannot do it for him. You cannot carry him around
10 all the time. He has to learn to do it on his own.

11 A point about human resources issues. I think
12 that programs might fail where the receiving agency has
13 not been able to hold on to those people who have taken
14 part and enjoyed the TA programs in order to build upon
15 what they have gained from them. We've heard about this
16 problem this morning from Ms. Ortiz from Peru, and I've
17 heard it also in the Caribbean, where they say that
18 people enjoy the programs, and then they leave to the
19 private market, which pays them much higher salaries.

20 In fact, this situation might even strengthen
21 the problem of the agency as now it has these wonderful
22 trained people on the other side of the cases that it
23 brings.

24 Two micro issues: First one, even the best
25 technical assistance program may fail where political

1 economy issues are not identified and dealt with
2 properly. Let me use a metaphor that I used in another
3 context, which compares the antitrust laws to a flower.
4 In order to bloom it needs water, sun, minerals and
5 pesticides. It's important to develop or, let me be
6 more precise, assist the agency in developing
7 "pesticides" that would deal with those forces leading
8 the decision makers to deviate from socially beneficial
9 policies due to their capture by interest groups.

10 Such capture might be especially strong where
11 the competition culture is not yet established.
12 Political capture issues might have to be dealt with
13 before providing all the other types of assistance.

14 And finally the most wonderful technical
15 assistance program may fail where the law is
16 incompatible with general legal principles and
17 constitutional values. Here we have an example from
18 Jamaica that had the very unfortunate experience of
19 having a fundamental error in its competition law in
20 that the investigative and adjudicative arms of the Fair
21 Trading Commission were not separated. The court then
22 found that this was a breach of natural justice.

23 COMMISSIONER KOVACIC: That can't be right.
24 That just can't be right, obvious judicial error.

25 MS. GAL: Well, obviously they have a bit

1 different laws than those in the U.S.

2 This problem has stifled their ability to bring
3 cases for many years now, and I think that this example
4 exemplifies the importance of understanding what each
5 country's needs are, what are the basic legal
6 principles, and not just suggesting that they copy
7 something from another agency where it has worked well,
8 because their constitutional values might be different.

9 COMMISSIONER KOVACIC: Georges?

10 MR. KORSUN: Sure, some reasons why technical
11 assistance does not always work: I think competition is
12 not always beneficial. I can think of one instance
13 where it's not beneficial for consumers, and that's when
14 it's going on among the technical assistance providers.

15 I've actually been involved in a number of
16 instances where technical assistance was being provided
17 to the same agency by countries with very, very
18 different philosophies about how to do competition law,
19 and in the extreme, I've sat in meetings with the head
20 of the agency at one end of the table and the U.S. side
21 on one side and then the other side -- I won't mention
22 the other country, but the other country on the other
23 side and literally going down a number of provisions and
24 having to debate in front of the head of the agency and
25 the head of the agency picking left and right, I'll take

1 this one and I'll take that one, and you can imagine
2 what the end product looks like in terms of coherence
3 and internal consistency.

4 I think it's a real issue. I think perhaps it's
5 mitigating, but with all the work on convergence, but I
6 think that's an issue.

7 Second, I think that a lot of the technical
8 assistance narrowly targets agencies to the detriment of
9 the wider population of affected parties, particularly
10 the judiciary, the private bar and so on, and that's
11 sort of a fundamental design flaw I think.

12 Other factors we've talked a lot about: The
13 quality of the technical assistance advisors. I think
14 perhaps this is an issue. I think there may be a supply
15 problem on this question. There's so much material out
16 now from multinational organizations that sort of
17 establish the standards that advisors ought to be
18 somewhat familiar with local conditions, despite what
19 the ICN survey results also say, and certainly with what
20 the multinational organizations are putting together in
21 terms of best practices and standards, and I understand
22 that's not always the case.

23 Then finally, I also hear, although I can't
24 testify to this myself -- but I also hear that sometimes
25 agency material is not quite appropriate for the

1 situation in which it's used, so hypotheticals and so on
2 aren't quite tailored to the instance that they're
3 applied in.

4 The last point I think on budgeting and donor
5 funding, you know, there's sort of this three legged
6 stool between the funders, the technical assistance
7 providers and the recipients, and that really confuses
8 the relationship between the client and the provider.

9 And I understand that relationship when the
10 technical assistance provider is a private sector
11 consulting firm. It's less clear to me why it has to be
12 there when there's another government agency involved.
13 I understand that there's a move to shift budgeting away
14 from donor agencies and directly to the FTC or directly
15 to the DOJ or to the provider, and I think that makes a
16 lot of sense because that sort of three legged, three
17 party communication about what the objectives are, I
18 mean, all parties have different incentives, and I think
19 it makes it much more difficult to have clear
20 objectives, and if you don't have that, then it's very
21 difficult to design an appropriate program.

22 COMMISSIONER KOVACIC: Yeah. Let me echo
23 several of these comments and elaborate on them a bit,
24 and then ask for reactions to what each of you have
25 heard from each other.

1 One on my list is the first that Georges
2 mentioned, and that's provider rivalry is out of
3 control, not the fact of some rivalry, but the out of
4 control nature. We may be thinking of the same example
5 in a specific country where the voice in the room, as we
6 were speaking, after everything we said, almost as a
7 litany in the religious tradition I'm raised in, a
8 litany where the response to each of our comments was:
9 You have now just heard the Anglo-Saxon point of view.

10 And it was spat out as though it were a
11 vulgarity, that is, you've now heard the Anglo-Saxon
12 point of view about where we should have lunch and now
13 you've heard the Anglo-Saxon view about how we should
14 get from --well, we wouldn't want to identify the
15 country, but it was an echo in the room after everything
16 we said about the most unremarkable propositions about
17 competition law.

18 I can think along those lines working in
19 Indonesia where at one time for the then emerging KPPU,
20 there were ten donor supported technical assistance
21 projects, four of them from USAID, one from the bank,
22 one from Australia, one from Canada. It was easier to
23 come up with a list of countries that were not providing
24 technical assistance to the KPPU than it is to come up
25 with a list of those who were.

1 And I recall still one of Shyam's and Mark's
2 colleagues at the bank, Louis Tamayo was sent -- almost
3 like Martin Sheen going after Marlon Brando in
4 Apocalypse Now, was sent up the river to try to find all
5 these people and get them to talk to each other with
6 just about the same result too.

7 He brought them together in a room and the
8 question was: Let's start by just describing what we're
9 all doing. You would have thought that you had walked
10 in the embassy of North Korea and asked for a current
11 breakdown on the production of electricity with nuclear
12 power.

13 One to another, we're here for technical
14 assistance. What type? With the KPPU. Right. To do
15 what? The implementation of the competition law. It
16 was like a deposition: Only answer the question. Don't
17 guess. Don't say anything else, and Louis came in with
18 the idea that he would at least be able to walk out of
19 that meeting with a chart that said: Here are the 20
20 things you might want to do with a KPPU. Here's what
21 people are actually doing, much less to get to the more
22 difficult and problematic question of where are the gaps
23 and where might we reconcile that.

24 And Louis' hope was that the bank might be the
25 hub for at least an information clearinghouse, and that

1 died that day because the providers were guarding all
2 their projects and what they were doing as precious
3 know-how, attorney/client work product, only to be
4 coughed up in the face of dire oppressive demands and
5 weren't willing to cooperate.

6 I think more generally I'm struck in our city
7 here about how of all the people who do work, how often
8 do each of us who do work here sit down and talk about
9 what we do? How often do we gather regularly just
10 within our own agency where we have people coming and
11 going on a trip and sit down and say, You just got back
12 from? What happened?

13 We do a little of it, but we don't do it
14 systematically among those who do work. There's a lot
15 of know how packed in there, much less to cross the
16 chasm between 7th and Pennsylvania and 10th and
17 Constitution Avenue.

18 Where is the regular program there to say, You
19 went on a trip, I find out about this because I work
20 with some of these people from time to time, much less
21 to go to 19th and Pennsylvania, to go to the IADB, to
22 walk through the collection of providers and even have a
23 process for sitting down saying, In academia, we would
24 call this the technical assistance workshop.

25 It would be the process by which we talk with

1 other competing universities in the area of friendly
2 competition. What are you doing, what are you working
3 on, what are the results of that process? We do not
4 even have a simple basic process to share know-how on
5 that score, and yet here we are gathered once, maybe
6 we'll come back in a few years to talk about this again,
7 an astonishing lack of cooperation simply on the way in
8 which we do work.

9 The other item I wanted to mention is related to
10 the question of needs assessment that George mentioned
11 before, and that is if you do a careful examination of
12 needs, that really is a good step in going along, much
13 like it benefits commercial airliners to plug into the
14 mission control computer the coordinates for where
15 you're going rather than simply flying to Los Angeles,
16 to know where LAX is, the difference between landing in
17 the Pacific Ocean and landing on the runway, a good
18 preliminary process, as well as to have a process on the
19 back end to actually assess and examine needs not simply
20 in substance but in infrastructure.

21 To me, a book I have on my book shelf, and it's
22 falling a part because I look at it so much, is what I
23 think is still the best single diagnosis of the building
24 of an institution and how an institution's working, and
25 that's Eleanor's coauthored text with John Fingleton,

1 Damian Neven, Paul Seabright, that's a hall of fame team
2 for you, that looked at the development of the systems
3 in Central and Eastern Europe, Csaba's agency and
4 others, a careful internal diagnosis of how things were
5 going, the framework and profile of cases being brought,
6 the development of the management team and the
7 infrastructure, the key insight that the choices of
8 institutional design shape substantive outcomes, along
9 with the framing consideration of political economy
10 concerns, why the agency was getting all of what looked
11 like contract cases when in many instances because,
12 well, the contract courts didn't work, people reframed
13 their allegations in competition policy terms and came
14 to them, just a wonderful assessment of how things were
15 going, in many ways to add more of that to the mix would
16 be extremely useful.

17 Last, perhaps too little honesty in our
18 interaction with our counterparts with the political
19 realities we deal with, that is to talk about how you
20 cope with the political pressure when the minister
21 calls, how you cope with the demands on the larger
22 society for effective redistribution policies, how do
23 you cope with the urgency pressed upon you to deal with
24 transitional inequities that aren't necessarily within
25 the immediate frame of reference of the competition

1 agency, but have everything to do with the acceptability
2 of the implementation of the competition policy program?

3 Just on the politics point, I've gone to so many
4 sessions now where the U.S. agencies sit in the big room
5 with others, along with Brussels, this isn't just our
6 disease, and the question comes up: What do you do with
7 political pressure? The tendency for the adults at the
8 table is to say political pressure.

9 It's not whether or not it exists. It's
10 ubiquitous. It's relentless. The real question is how
11 you deflect it, that is how you keep it from getting in
12 the way of doing good technical assistance day in and
13 day out, and this seeps in I think to the provision of
14 advice to individual countries because they think, Oh,
15 my God, I'm never going to get to where you are, how
16 could I possibly get to an environment where there's no
17 pressure?

18 The pressure is relentless. The real candid
19 discussion is: Yes, it exists, here's how you cope,
20 here's how you start to build fortifications that
21 deflect it away from doing good work, so I think for
22 advisors and their donors, to be more candid in talking
23 directly about the political economy questions that
24 really count would be quite informative.

25 Danny, Andreas, did you have -- maybe if we

1 could go down -- comments on the other discussion about
2 shortcomings, and then we'll turn to our last segment?

3 MR. SOKOL: From what we can tell from the ICN
4 data, political economy does play a huge role in terms
5 of the outcomes, and it's something that shouldn't be
6 lost in all the follow-up studies in talking to agency
7 people what they suggested.

8 What didn't work well is in spite of how we read
9 some of the data, all the qualitative comments
10 afterwards, all the interviews, literally every single
11 one suggested when there was a malfunction with the
12 technical assistance, it's because they didn't
13 understand the broader politics of the agency, how the
14 agency interacts with other parts of governments, and
15 within a larger sort of cultural understanding as well.

16 And one area that we haven't talked about is how
17 agencies react and respond to sector regulators, and
18 that was -- particularly as agencies, we're doing
19 technical assistance or receiving technical assistance,
20 that was an issue that came up time and time again of:
21 How do we deal with these agencies oftentimes that have
22 preceded us but oftentimes who do not have the same
23 market orientation that we do, who are more prone to
24 capture than we are and that somewhere have much more
25 power than we do?

1 COMMISSIONER KOVACIC: Andreas?

2 MR. REINDL: One puzzle that Michal raised that
3 I wanted to highlight is that programs need to be
4 targeted to the absorption capacity of the recipient;
5 start with easy things, go after the bread cartel before
6 you move on to the next cartel and on to difficult
7 things.

8 That may well be the right approach in some
9 countries. The problem is that some of the recipients
10 of technical assistance live in a different environment.
11 To give you one example, we just started to work with
12 Barbados on a technical assistance program that we put
13 together, and one of the major competition concerns is
14 how to control the telecoms monopoly. Essentially, all
15 antitrust cases emerge in that industry.

16 That's just a very, very difficult thing, and
17 helping to go after the bread cartel will not
18 necessarily help them in a more complex area where
19 there's enormous political pressure on them to show
20 results. The second example that I remember is
21 antitrust/IP; one of the most difficult areas of
22 antitrust law and policy.

23 Our inclination would be to say, Well, start
24 with all other things before you get to this difficult
25 things. But I remember David Lewis, of the South

1 African Competition Council as he sometimes would
2 explain that they were under political pressure to
3 tackle, for example, problems in the pharmaceutical
4 industries so practice in the pharmaceutical that raise
5 IP and antitrust issues.

6 Again, you can't just tell them, Okay, go after
7 the bread cartel and wait for a couple years and then do
8 the difficult stuff.

9 I agree with Michal; obviously, you don't want
10 to start there and you want to start at the easy part,
11 but the problem is that in reality this is not
12 necessarily what the recipients of technical assistance
13 expect or need.

14 COMMISSIONER KOVACIC: Comments between the
15 discussion here? Anyone else want to pitch in? Mark?

16 MR. WHITENER: Well, a point I thought about
17 making earlier, there was a discussion in the last panel
18 about state owned enterprises, and I guess the general
19 point that brings to mind is not only perhaps at times
20 the failure of leading agencies, leading jurisdictions
21 to think about how their own policies get translated in
22 other jurisdictions, but how the general principles we
23 espouse get translated into actual cases.

24 And one thing that I'm thinking of here that I
25 did mean to mention was beyond mergers, where a lot of

1 companies deal day-to-day with the process, the area
2 that I think creates the greatest risk for over
3 deterrence or interference for official planning is
4 single firm conduct. So when we think about, for
5 example, state owned enterprises which is obviously a
6 major characteristic of a lot of these jurisdictions, a
7 lot of the less rational single firm rules that I have
8 seen emerge from some of these jurisdictions that apply
9 equally in some cases to state owned and to private or
10 foreign enterprises -- when you look at them and you see
11 how heavily regulatory they are and you go and explore
12 the origins of them, you find they often stem from a
13 legitimate goal of bringing in, to reigning in those
14 state owned enterprises.

15 But when those principles are applied to private
16 firms operating in global competitive markets you get
17 over-regulation. So, I'm not sure how it fits into the
18 discussion, but it's a point I wanted to make earlier in
19 terms of the specific concern that I think businesses
20 bring to this, and one of the areas where I think it
21 would be useful to focus technical assistance going
22 forward.

23 COMMISSIONER KOVACIC: Michal?

24 PROF. GAL: Just a short sentence relating to
25 Andreas' remarks. I agree with you. I agree that you

1 have to relate to the situation at hand, so that gradual
2 enforcement has to be geared to the problems of the
3 specific country, even if it might require in some
4 instances a different set of gradual enforcement then
5 you would normally suggest.

6 But at the same time, I want to go back to a
7 point I made before, which was that it is really
8 important to emphasize the limitations of competition
9 policy. You might have a severe problem that could not
10 be solved through competition policy, or at least not
11 with the tools that you currently have. I think that
12 pointing to this limitation and saying, Well, let's
13 start with the basics and let's go up, and eventually we
14 might get there, might be important and even a better
15 policy than trying to deal with the highly complicated
16 cases straight on.

17 COMMISSIONER KOVACIC: I see the hardest case,
18 and Russ Pittman and I last week were working with a
19 relatively new agency that has one that looks just like
20 this. The sector in question is a just privatized
21 sector. It is a recently formerly state owned
22 enterprise that continues to enjoy obviously advantages
23 from its connection to the state.

24 It's not completely disconnected from the drive
25 train of the political process, which means it has a

1 thumb on the scale with respect to import and trade
2 policy. You have very tricky distribution downstream
3 mechanisms that are reminiscent of the era of state
4 owned ownership.

5 So it is a -- it's clearly going to have a lot
6 of residual market power that's a consequence of these
7 circumstances, with the state I suspect at different
8 points quietly and formally, maybe not so quietly,
9 tossing benefits in the direction of the firm.

10 So there's a real series of abusive dominance
11 issues that are real and genuine, and if you're the
12 advisor and you say: Don't worry, they'll give you a
13 cold cup of coffee, get the car ready for you and you'll
14 be on your way to the airport in a hurry, plus the
15 related questions of: What happens with employment
16 dislocation if you go ahead with this process?

17 What about in some instances the extent to which
18 the firm provides the housing in which the employees
19 live, supplies -- organizes medical care and education.
20 It's been expected to provide the larger safety net, and
21 the question that's posed to the competition agency:
22 What do you do about all these transitional problems?

23 And an answer would be: You enact transfer
24 programs, you have wealth redistribution programs, you
25 don't use the state owned enterprise or the monopoly as

1 the vehicle for providing all the social services. You
2 have a social services apparatus that does these things,
3 and they say fine.

4 And where you certainly have in your magic bag
5 the tools that put those in place right away, and
6 there's a concern because they're not coming along, that
7 the competition agency is going to be pressed to provide
8 the interim solution, and at that point they turn to you
9 and say, Okay, great advisor, what's your next move, and
10 that's where you say, it's time for a tea break.

11 In the academic setting, you get to say: We'll
12 get to that later, or you get to say: What do you
13 think. But those ultimately don't work very well in
14 that setting, and I'm not sure they're particularly good
15 answers for dealing with that in that instance.

16 For a tour through the home stretch: What can
17 we do better? Scott, please.

18 MR. COOPER: I should go with unrehearsed
19 remarks here. I'm going to pick up on something that
20 Hugh Stevenson brought up in his panel, which is the
21 global supply chain issue. The perfect storm this
22 summer, toys, toothpaste, tires, you name it, really
23 raised the issue. I think that agencies that have the
24 monitoring obligations can't do it when the
25 manufacturing is no longer within the 200 mile limit of

1 the United States.

2 What do you do? So we have all these MOUs with
3 foreign nations, a lot of technical assistance of which
4 ANSI is doing, and one of the agencies represented here
5 are doing. Does anybody feel more comfortable that
6 we're on top of this situation?

7 One of the things I think that needs to go
8 forward on this is we had a very good paper and
9 recommendations coming out of the interagency working
10 group on import safety back in November and followed up
11 with the FDA on their import safety working group plan.

12 So I think the consensus is out there about how
13 to move forward. It's got to be consensual. It has to
14 be working with the private sector, all the right
15 things. Who is going to build it, what's the next step
16 for implementation? And ANSI is doing something with
17 the toy industry and we brought in consumer groups. We
18 brought in National Consumer Leagues and Consumers Union
19 because the toy industry was truly motivated. They were
20 ready to accept any kind of regulation; just make the
21 pain, stop, especially before Christmas.

22 What about all those industries that are out
23 there that we know are going to have the same kind of
24 problem where it's not a question of sins of commission.
25 It's sins of omission. It's somewhere along that supply

1 chain where things happen. When you have a situation
2 where the manufacturer is telling the subcontractor,
3 Just lower your cost, I don't care how you do it, just
4 lower your cost because we have to sell to Wal-Mart or
5 whatever. So it turns out that things like lead paint,
6 not only are they cheaper, they dry faster, they're more
7 brilliant colors. They have all the advantages except
8 one, which is they're toxic.

9 What do you do to get back in control of these
10 things? Well, it can't be just a private sector. We're
11 doing a lot now again with contractual obligations, but
12 there's got to be, again, we think this tri-party
13 approach. It's got to be consumer groups who give it
14 the gravitas. It's got to be business that agrees to
15 these things, but there's got to be a role for
16 government in a sense to participate, to ratify whatever
17 it may be, and then to monitor whatever; these programs
18 are still works in progress.

19 There are meetings going on all over in town.
20 I'm sure people in this room are part of those things.
21 How do we get that thing from the nice idea to
22 implementation? And everybody is waiting for somebody
23 else to make the first move, and this is a classic
24 example where everybody recognizes the problem.

25 We know we have to do something. It's only

1 going to get worse. If we don't solve it by next year,
2 next Christmas season, the worst of all solutions will
3 probably come out of somewhere, mainly just down the
4 way. So how do we get everybody -- not just in this
5 room, but everybody who should be participating in that
6 kind of decision process, to come out of their silos and
7 actually work together?

8 One of the problems we have I think with
9 government is if it's not invented by government, if it
10 again was like the dispute resolution issue with the
11 consumers with the business groups, they were happy with
12 it, but they weren't going to ratify it because it
13 wasn't their program.

14 What do you do to get all these groups together
15 in a global marketplace? You can't do it alone. It's
16 got to be somewhere where we all participate. I don't
17 know, but I would love to throw the idea out.

18 COMMISSIONER KOVACIC: Maybe to anticipate the
19 last part of our discussion, I think that one element of
20 providing the assistance and specific projects, but
21 linking it to the work of multinational bodies, forums
22 such as ICN, is to offer for their consideration models
23 that show that the broader collaboration can work, and I
24 think, Scott, of your example of the BBBs, and the
25 national advertising division on the consumer protection

1 site.

2 That experience began over three decades ago as
3 an effort to find creative ways to supplement public
4 enforcement of national advertising standards with
5 private initiatives, has proven enormously successful,
6 and with all the weariness about providing solutions
7 that come off the shelf.

8 From western experience, I think one useful
9 thing that can be done is to show by demonstration for
10 different audience models that have been successful to
11 indicate how they succeeded in the context of
12 international bodies so that if the intellectual vision
13 behind them and practical experience seem persuasive,
14 different jurisdictions will opt into them, but I think
15 in thinking about larger solutions for perceived
16 problems to think not simply the public sector, the
17 collateral supporting institutions, the role of public
18 and private enterprises, and to find convincing examples
19 that show that where the incentives are aligned, as they
20 are quite often in the case of keeping advertising to be
21 perceived as truthful and honest and thus reliable for
22 consumers, the focus of attention could easily be
23 expanded to these more elaborative, cooperative
24 strategies and perhaps brought to the attention of
25 others through international networks in which we

1 participate.

2 Danny, can I turn back to you for the final lap,
3 where we think -- what would we do differently?

4 MR. SOKOL: Here's where I offend everybody, but
5 I'm allowed to because I'm an academic. So first, I
6 would just say we're still in the dark. We don't really
7 have a good sense of what works because we don't have
8 much data. The ICN survey was based on a very limited
9 sample of data.

10 Agencies don't share what they're doing as Bill
11 said. Donors don't share what they're doing, so this is
12 a great opportunity for us to get together and really
13 think hard about technical assistance because what quite
14 possibly could happen is in another five years time, we
15 can have exactly the same kind of meeting with exactly
16 the same kinds of points being raised and not much being
17 accomplished because the will really isn't there.

18 We're happy to vent our frustration, but in fact
19 we're not willing to take the really necessary steps
20 that we need to, and all of us are to blame for that,
21 and I'll go through our list of who we blame.

22 First, let's start with the donors. Are the
23 donors actually identifying the right kinds of projects?
24 And here I am of two minds. On the one hand, a number
25 of our international donors and our bilateral donors

1 have a very good sense of what a country needs. But
2 what a country needs generally is not specifically what
3 is needed in competition policy; so we have a
4 disconnect.

5 Second, we have the other problem that Bill
6 raised, which is that we have fighting among donors. As
7 it turns out, we do have some data from the ICN survey
8 that suggests that technical assistance and capacity
9 building seems to be different from certain donors than
10 other donors. What I would like to conclude is that
11 maybe some people should get out of this business.

12 Unfortunately, that's not going to happen, and
13 since everybody is going to be giving money and
14 everybody is going to be fighting these turf battles,
15 the question is how do we take a very small pie and
16 maximize its potential? And that's where I think that
17 we all have to do a better job.

18 So now I'll attack our U.S. agencies. So for
19 FTC, we heard lots of talk about enforcement. With the
20 exception of I think Tim Hughes in the very first panel,
21 we heard very little about competition advocacy and how
22 to train people how to interact with other institutions.
23 This seems to me to be just as critical as any kind of
24 enforcement that we talk about, and we shouldn't think
25 of our technical assistance as enforcement.

1 We should look at it more holistically. It
2 strikes me similarly that for the DOJ, we heard in our
3 opening session about cartels once again being the
4 supreme evil of antitrust or something like that. It
5 seems to me after hearing all the presenters talk about
6 the power of the state and state owned enterprises and
7 privatized former state owned entities, but yet somehow
8 still in the bed with the state, we need to think that
9 maybe cartels are not our sole priority but maybe the
10 state is the problem.

11 And it was actually Jim Rill that I think really
12 put his finger on it saying, You know the enemy of
13 antitrust is not monopoly, the enemy of antitrust seems
14 to be the state because in fact I think we have seen,
15 those of us in this room, a lot of state intervention in
16 the economy being the real source of anticompetitive
17 conduct.

18 Moving to our academics, let me focus on where
19 we've been failing. First of all, I think we don't
20 follow-up as much as we need to. Some of the best
21 technical assistance, I think we have to think again
22 more holistically, comes from people coming to do LLM
23 programs in the United States, and so the question that
24 I have -- or Ph.D.s in economics, so part of it is on
25 our end, How often do we keep in touch with our former

1 students, particularly those that are working in this
2 field?

3 How often do we ask them the kinds of cases that
4 they're working on? How often when they're in an agency
5 are we making sure that the teaching process and the
6 cooperative process continues beyond the classroom so
7 that it's a long term relationship? Because part of the
8 issue is it isn't just for the agencies to do this.
9 It's not just for the private sector. We in the academy
10 I think have not been doing the kind of job that we need
11 to do.

12 But there is something else that we haven't
13 talked enough about, which is the Bar Associations. I
14 think one of the biggest providers of technical
15 assistance in a certain way in terms of how knowledge
16 gets diffused: The ABA spring meeting. The number of
17 non-U.S. lawyers and increasingly non-U.S. economists
18 that show up to the spring meeting is vast.

19 Someone told me when they were trying to get the
20 spring meeting together in the early '80s, they
21 desperately tried to get it to a smaller hotel. Now it
22 seems like we can't get a hotel big enough for the
23 spring meeting, and when I speak to people in a number
24 of agencies, they talk about say, Bill, giving the
25 introductory session about the basics of antitrust law

1 and how to think about these issues, that's really
2 critical.

3 I think again if we're acknowledging Barry Hawk,
4 I think that the Fordham fall meeting, since the mid
5 '70s, has been really critical in helping to bring
6 people together and teach them, and we don't pay enough
7 attention to that and how our bars and our conferences
8 really play into each other and are a part of this much
9 longer term technical assistance.

10 Part of it is about how we work together. I
11 don't have easy answers for you. What I suspect is that
12 we're always going to have problems. We're not moving
13 to convergence, particularly not in unilateral conduct
14 as Mark and Andreas mentioned.

15 So it's about how do we mitigate the problems,
16 and here I think we have to be honest with one another
17 about our goals, and we also have to do better with
18 talking to recipients of aid so that they tell us if
19 somebody else is involved so that at least we know we
20 can get on the phone and talk to each other and then
21 hopefully have a way to clear the air about what people
22 are doing.

23 It strikes me also, therefore, we need to ask,
24 What about the business community? We hear business'
25 concerns. I would say where business has dropped the

1 ball is that if business is really concerned that not
2 enough money is being spent on technical assistance.
3 One option of course is to try to lobby members of
4 Congress, but I think another option, an additional
5 option is to actually put your money where your mouth is
6 and fund some of this yourself through various programs,
7 through training sessions, perhaps through scholarship
8 programs for people from agencies to come to the U.S. to
9 get advanced degrees.

10 So that you're creating over a much longer term
11 an intellectual community that understands the
12 importance of rule of law, that understands the
13 importance and linkage of competition law and economics
14 within a larger setting and things that are appropriate
15 to the country, but somehow are still good for business.

16 And I think also we don't do a good enough job
17 in bringing the message home that this is ultimately
18 about consumers, and once we stop -- once we stop sort
19 bringing that message home, it's very easy, therefore,
20 for some populist elements to say: Well, how are
21 consumers benefitting, and we don't do an effective job
22 in transmitting that message.

23 Now that I've offended everybody in the room,
24 now is probably a good time for me to go and catch my
25 flight. Thank you.

1 COMMISSIONER KOVACIC: Danny actually does have
2 to go early.

3 MR. WHITENER: Sure.

4 COMMISSIONER KOVACIC: Thanks very much, Danny.
5 Thanks. That was hugely helpful.

6 (Applause).

7 COMMISSIONER KOVACIC: Andreas?

8 MR. REINDL: First, I think is recognizing and
9 talking about the fact that not every program, not every
10 event can be a success, and that applies also to
11 long-term technical assistance. I remember -- I won't
12 give names -- but I talked to someone a few years ago
13 who then was general counsel at one of the U.S.
14 agencies. He told me very critical things about a
15 long-term assistance program where the materials
16 essentially gathered dust in the basement. Staff was
17 unwilling to talk about their cases with the long-term
18 advisor, and the agency leadership was, what I remember,
19 more or less, in his terms, dysfunctional.

20 Now, it would be interesting to learn from that
21 experience, but that would mean that we actually have to
22 accept that happened. Or it might be interesting to
23 compare very successful programs, and there were lots of
24 them, and perhaps then mildly successful programs.

25 I think it's no coincidence that today we have

1 Csaba here from the Hungarian authority and not someone
2 from, say, Poland. We have the OECD regional center in
3 Budapest and not say, in Bratislava and lots of the U.S.
4 agencies' efforts focused on Budapest and not Bruno.

5 And you sent your people to all these countries,
6 that's clear, but something happened in the process and
7 some programs were more successful than others. Again,
8 it would be interesting to compare and see whether there
9 were other -- not just external factors but something in
10 the program that could have been adjusted for local
11 needs. That's the first point; accepting that the
12 things sometimes work better and sometimes work less
13 good.

14 The second point is that we need to work harder
15 to develop evaluation tools, to come up with some
16 assessment of what has been successful or not. There I
17 think that's a task not just for one agency or not just
18 for two agencies, but that's something that should be
19 done on an international scale among all the donor
20 agencies.

21 We all support the ICN. We all support the
22 OECD. But just to give you one example; you, Bill, were
23 at our workshop for heads of agencies a few months ago
24 at Fordham, which I think was extremely successful. One
25 reason it worked so well is that they met not at the

1 OECD and not at the ICN, and they did not have to hide
2 behind a country flag and they didn't have to represent
3 specific agencies, but they sat around a table in a
4 neutral place, and for a day talked about what heads of
5 agencies want to talk about.

6 Maybe something similar would make sense in the
7 area of technical assistance, too. You have a forum
8 among the leading providers of technical assistance, and
9 you have a day long assessment of what worked and a
10 frank discussion of what hasn't worked.

11 The third point, just an idea, because we talked
12 so much about long term programs that should ideally
13 also target a broader set of stake holders, including
14 academics and judges. One question is, whether in the
15 context of a long-term assistance program, the agencies
16 are always the best institutions to reach out to judges
17 or academics.

18 Judges may not necessarily like to hear from the
19 competition authority. They may be more comfortable
20 hearing from fellow judges or from academics. Reaching
21 out to academics may be a good thing to do for a
22 government agency, but perhaps it would be better or
23 more effective to cooperate with another academic
24 institution and have them come with you to the recipient
25 country and help expand contacts that the U.S. agencies

1 could establish initially.

2 COMMISSIONER KOVACIC: Thank you, Andreas.
3 Mark?

4 MR. WHITENER: Well, some of this is repeating
5 things that I've said before, but let me just sort of
6 sum up two or three things that I think would be useful
7 to think about going forward.

8 Competition law discussions can get highly
9 theoretical, and I think it's always useful to have a
10 sense not only of what our concepts are, but what they
11 actually do in practice. This applies equally to the
12 agencies' enforcement efforts here in the U.S., and Mr.
13 Kovacic and others have called for more assessment
14 retrospective, if you will, of the effects of what the
15 agencies do domestically.

16 And so I think just agreeing with what others
17 have said, some greater measure to measure and assess
18 the effectiveness of these programs would be useful, and
19 I think the agencies get great credit for having this
20 program today, which I think is essentially a step in
21 that assessment process.

22 Second, and this is directed actually at people
23 who may or may not be in the room, but those who are the
24 leaders of the future, leaders of the U.S. agencies of
25 the future. I think we're extremely fortunate to have

1 leaders of the agencies today who play such a high
2 priority on, not only technical assistance as such, but
3 the broader competition advocacy agenda, following on
4 predecessors who have done the same.

5 I don't take for granted that that will be a
6 priority for future administrations, so whether the
7 future leaders of the DOJ Antitrust Division or the FTC
8 or other agencies are in this room or not, many of us
9 will probably know some of those people who come into
10 leadership positions, and so I think we need to be sure
11 that there is not the apex of these kinds of efforts,
12 that we're really at the point where there's more to be
13 done and the future leaders will recognize that, and
14 each of us in our own small way perhaps may be able to
15 whisper that in the ears of those who follow.

16 Then the third point, and this is a comment
17 directed at current agency leaders, how to follow on
18 what you've done today and how to build on the resources
19 that I think as several people have said, and too bad
20 Danny is not here because I agree with everything he
21 said about what various constituencies can do -- how can
22 you and the agencies sort of coordinate and build on
23 that?

24 The ABA can do more here. Private companies
25 like GE and other companies with a stake in this can do

1 more. We do have various programs in other areas of law
2 where we have essentially done outreach and what would
3 essentially be called technical assistance in various
4 areas relating to the rule of law. Whether it's through
5 the U.S. chamber through other groups other individual
6 companies taking the initiative, there is more that we
7 can do, and I can't think of anyone better to try to
8 help coordinate that than the FTC and the DOJ because
9 you guys know what you're doing as well as anybody.

10 And so I encourage you to think about how to
11 pull us all together. I hesitate to say another
12 workshop or a roundtable, but maybe it's just a meeting
13 to get people in the room to say, okay, what resources
14 can you bring to bear to this problem and how can we
15 lawfully, transparently put those resources together for
16 the maximum impact.

17 COMMISSIONER KOVACIC: Thank you, Mark. Scott?

18 MR. COOPER: Very briefly. I worry with Angel
19 about the tiredness of marketplace reform. I think the
20 case is clearly there. In the long run it works, but as
21 Lord Keynes said: In the long run, we're all dead.

22 I think we need to find things that are
23 short-term solutions that give people hope and
24 inspiration and enthusiasm. An example I think was the
25 BBB in Romania where the businesses in Romania knew that

1 they needed a trust mark, knew they needed some kind of
2 help to be able to sell into the global marketplace.
3 They would do a lot in return to be able to do that. If
4 it was talked down, from government, they would probably
5 be very reluctant. But coming from their own general
6 needs, they could participate as well. That's exactly
7 what I think we need to look at.

8 That's bringing in different players, more
9 players. I think re-igniting some ideas that are out
10 there, and I think it all comes back to the fact that
11 it's a global marketplace. I think bilaterals just
12 don't work as well as they used to.

13 COMMISSIONER KOVACIC: Michal? Thank you,
14 Scott.

15 PROF. GAL: Okay. Subject matter issues, one
16 point here. I want to emphasize that there's no one
17 size fits all solutions to the issues of different
18 countries, and so the technical assistance people have
19 to assist the country in recognizing and setting
20 priorities based on realistic expectations.

21 And here I refer to things that I have said
22 before. Let me just group them. For example,
23 recognizing unique challenges of enforcement resulting
24 from the availability of resources, public and
25 intergovernmental support, the ability to keep applying

1 remedies in practice, the availability of relevant
2 information, recognizing legal limitations such as those
3 confronted by Jamaica, and realistic cost-benefit
4 analysis of activities based on complexity, cost and
5 efficacy. Only if these are put together do I think
6 that the programs could be successful.

7 Three points on human resource issues. The
8 first is I think it's important to ensure that those who
9 are trained in a technical assistance program have a
10 long-term commitment to the agency.

11 One way to do that is to require them to sign a
12 long-term contract with an agency, with a penalty for
13 leaving and moving to the private market unless their
14 reasons are very good ones. This has been suggested by
15 some countries. I don't know if it has been implemented
16 but I have heard it suggested.

17 Another supplementary tool involves ensuring
18 that the agency has what might be called an
19 institutional memory, so that future enforcement does
20 not rely on knowledge held by specific persons.

21 One more point: It is helpful to involve in the
22 TA Program people from agencies that have successfully
23 created an antitrust regime and have tackled similar
24 issues.

25 Last one, a question was raised by Anne Purcell

1 earlier this day about what makes the perfect advisor,
2 and a lot of interesting and important qualifications
3 were raised. One such qualification that I want to
4 emphasize is enthusiasm towards the subject matter. You
5 might have an incredibly knowledgeable person, but he is
6 dull.

7 What we really need is to clone Bill, but if we
8 can't clone Bill, then we need some other way of getting
9 highly enthusiastic people to do that job because I
10 think that then they transfer this enthusiasm to other
11 people.

12 Macro issues, two very short points: The first
13 one is I think it's important to assist countries in the
14 creation and the sustainment of regional agreements.
15 They haven't been mentioned up until this point today,
16 but I think that if we're looking at macro issues and we
17 want to assist developing countries, a lot of them are
18 also small.

19 If we want to assist them in solving some of
20 their resource problems, one way to go forward with this
21 is to assist them in creating regional agreements which
22 enable them to pool their resources. To give an
23 example, the CARICOM agreement has just been put in
24 place. Yet they have no resources. They put the
25 commission in a country in which nobody wants to live so

1 they didn't get the good people to be on the commission,
2 but apart from these issues, if they can be dealt with,
3 I think that's one way that donors can suggest to
4 countries to go forward.

5 Finally, I would like to recommend more
6 conferences just like this one, which try to build upon
7 vast experiences. I think the idea to organize such
8 conferences is a wonderful one, and I hope it will
9 continue.

10 COMMISSIONER KOVACIC: Thank you, Michal.
11 George?

12 MR. KORSUN: So what's left to be said at this
13 point after a content -- full day? Have we talked about
14 the need for monitoring and evaluation? I think so.

15 That's one of my critical points I think, and I
16 don't really understand why this isn't going on. I
17 understand the disincentives of doing it, but after
18 awhile there is such a consensus in the community to do
19 this that we really ought to be focusing on it, and I
20 think there are simple mechanisms that ought to be
21 attached on every single project, on every single
22 technical assistance project, and people shouldn't get
23 paid until they complete that initial step of the
24 project, which is to design what the outcome measures
25 are going to be.

1 It will force people to think about what the
2 desired outcomes are, and I think eventually over time,
3 we would evolve towards a kind of consistent methodology
4 for evaluation.

5 It's a very tough question because it's
6 occurring at the micro level, when we're talking about
7 does having a left-handed advisor work better than
8 having a right-handed advisor versus what's the real
9 impact of this on the economy, what's it doing in terms
10 of competition policy, what is that doing in terms of
11 generating more economic growth? So it's a tough
12 question.

13 I think it can be addressed. It's not an
14 insurmountable problem. It strikes me that this is sort
15 of an ICN topic in the sense that that survey exists.
16 That survey asks lots of questions. I think people have
17 learned a lot about which questions worked, which
18 measures didn't work, and that ought to be, that could
19 be a foundation for going forward and sort of seeing how
20 one could systematically assess the benefits of
21 different kinds of technical assistance.

22 My second point is that in that long list of
23 guilty parties, I didn't hear anything about the
24 recipient agencies, and we shouldn't necessarily let
25 anyone off the hook, so I come to this from the

1 perspective of somebody who is in private practice, has
2 looked at the decisions of certain agencies, and
3 sometimes when I look at the decision of agencies in
4 single firm conduct cases and so on, the logic and the
5 level of economic analysis and the decisions are not
6 always commensurate with the amount of technical
7 assistance that the country has received.

8 So I think it's reasonable to think about this
9 question, and really the reason it's reasonable to think
10 about it is that that's the single most important
11 outcome measure. When we think about monitoring and
12 evaluation, the single most -- the dependent variable,
13 the Holy Grail of dependent variables is whether the
14 agency is functioning well with the quality of decisions
15 and so on.

16 So let's devote some attention to thinking about
17 how to measure that. I know there are lots of indices
18 out on agency quality. There are the OECD peer reviews,
19 but I'm not sure that anything really gets at the
20 quality of decisions or other quality measures on the
21 effectiveness of the agency. Again, I don't want to
22 minimize the scope of the problem, but we ought to be
23 addressing it as a group, perhaps again through the ICN,
24 although I can see why that would be a difficult sale.

25 I think that's probably all. We've covered so

1 many important things today. The last point is that we
2 need to keep a perspective. There's a lot of commercial
3 law reform going on. There's a lot of market
4 liberalization going on, and this is just but one small
5 piece of it, and we're better off if we understand the
6 broader context.

7 COMMISSIONER KOVACIC: Yeah. Thanks, George.

8 I think one of the great contributions that the
9 international networks can make is focusing attention on
10 precisely the concerns you just mentioned; that is,
11 making a commitment to a sustained process for
12 monitoring and evaluation, and asking the larger
13 question that you mentioned, which is: How do we
14 measure agency quality?

15 What are the benchmarks of good competition
16 policy performance? And by the way, for the adults in
17 this business, that's a useful question to ask too, and
18 I don't see general agreement in the areas in which we
19 work about how you fill out the agency report card:
20 Case counts, investigations opened, what kinds of cases?
21 Are we going to measure outcomes? Where does advocacy
22 fit into the mix? What about investments and
23 institution building? That is, do you look at current
24 leadership and say, I want to know what your capital
25 budget is every year, namely and in particular?

1 I want you to identify the investments that will
2 pay off when you're long gone, for which you will not be
3 there for the ribbon cutting ceremony, and contrary
4 again to the wonderful Washington aphorism, pick the low
5 hanging fruit. I want to know how many trees you've
6 planted so that when you're long gone, then we see how
7 you today made investments that made your agency better
8 later on.

9 And that is so contrary to the sick culture of
10 this city that it is very hard to get people to take
11 that, to take that seriously, but I think there would be
12 enormous benefits to the well established agencies to be
13 thinking about that question and to bring the focus on
14 to the critical question of how you monitor and evaluate
15 outcomes.

16 I think if you looked at it, if you began
17 developing models, for example, of the life cycle of an
18 agency: What kinds of benchmarks do you use to identify
19 success over time? By what indications of activity do
20 you measure performance?

21 And indeed to put responsibility on the
22 shoulders of recipient bodies as well as the providers,
23 because I think we can think of instances in which vast
24 sums have been spent for lack of effort, that is: What
25 is it that ultimately distinguishes the ventures that

1 have succeeded from those who don't?

2 I once again want to thank my colleagues for
3 putting this program together because what it does
4 involve in many ways I think is a willingness to ask
5 questions about one's own performance and to think about
6 doing it better over time, and I know there is a natural
7 institutional reluctance to ask questions about how one
8 does better, much less to discuss areas in which one has
9 failed.

10 But the person who brought me here several years
11 ago said: If you are afraid to subject your ideas to
12 that kind of scrutiny, maybe it's time to get some
13 better ideas.

14 Thanks very much for contributing to a useful
15 and, I think, going ahead productive day. Thank you.
16 And thanks to this panel.

17 (Applause.)

18 (Whereupon, at 5:35 p.m., the workshop was
19 concluded.)

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CERTIFICATE OF REPORTER

CASE TITLE: TECHNICAL ASSISTANCE WORKSHOP
MATTER NO: P29601
DATE: FEBRUARY 6, 2008

I HEREBY CERTIFY that the transcript contained herein is a full and accurate transcript of the steno notes transcribed by me on the above cause before the FEDERAL TRADE COMMISSION to the best of my knowledge and belief.

DATED: FEBRUARY 11, 2008

DEBRA L. MAHEUX

CERTIFICATION OF PROOFREADER

I HEREBY CERTIFY that I proofread the transcript for accuracy in spelling, hyphenation, punctuation and format.

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