



International Competition Network

**CAPACITY BUILDING AND COMPETITION
POLICY IMPLEMENTATION WORKING GROUP (CBCPI WG)**

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REPORT

prepared by CBCPI WG Subgroup No. 2

***Workshop on Capacity Building
“Strengthening Co-operation with Donor Bodies”***

Paris, 11 February 2004

I. Introduction

“What can agencies do, and what can the ICN do, to strengthen communication and cooperation with donor bodies?”

This was the theme discussed at a Workshop on Capacity Building held under the auspices of the ICN Working Group on Capacity Building and Competition Policy Implementation (“CBCPI WG”) and organised by the European Commission in Paris on 11 February 2004.

The Workshop was a direct follow-up to the report on capacity building that the CBCPI WG presented to the ICN’s Merida Annual Conference in June 2003. That report resulted out of a survey carried out in 2003, and was based on a total of 45 replies, mainly from ICN member agencies.

One of the main conclusions that came out of the report was a wide-spread sentiment among competition agencies that there might be a case for enhancing the effectiveness of technical assistance, and the efficiency in how it is delivered.

However, these are two notoriously complex and challenging tasks, and not one single remedy will in itself be sufficient. How should one hence go about this in practical terms?

Introducing into the Workshop, *Mr Philip Lowe*, Director-General of the European Commission’s Competition DG, recalled that the CBCPI WG is currently pursuing two main strands in parallel.

For one thing, the question needs to be addressed which kinds of assistance have worked particularly well in different regions, and what may have worked not so well. Such an undertaking would require a systematic methodology of how to measure the effectiveness of technical assistance. It is the remit of CBCPI WG Subgroup No. 1 to elaborate such a research instrument.

Meanwhile, this Subgroup is tasked with a complementary project: to come to terms with one of the key bottlenecks for the efficient delivery of technical assistance identified in the Merida report, namely competition agencies’ communication and cooperation with the community of institutions responsible for the administration of funds earmarked for technical assistance in the competition field (hereinafter: ‘donor bodies’,¹).

The Paris Workshop was organised as a forum to launch the dialogue with this community. The event brought together 65 participants (see *Annex 1*) representing enforcement agencies and, as a novelty, also representatives from the multiplicity of national², regional³ and international⁴ bodies engaged in assistance in this field.

¹ For the sake of clarity, it should be pointed out that most of these bodies are not, strictly speaking, ‘donors’ of the assistance funds themselves. In the vast majority of cases, these bodies are only tasked or contracted by their respective ministries to implement developmental programs on the basis of funds made available by these ministries. The use of the term ‘donor body’ has however in the meantime become entrenched in the jargon, and will be used hereinafter as shorthand for these intermediary institutions.

² Namely Canada’s *CIDA International Development Agency* and *IRDC International Research and Development Centre*; Germany’s *GTZ Gesellschaft für technische Zusammenarbeit* and *InWEnt*

Such a dialogue was felt to be particularly timely since, at this stage, hardly any of the competition agencies in donor jurisdictions command themselves the funds required to support projects elsewhere. The financial – and usually also administrative - intervention of the donor bodies is thus vital for almost all assistance projects.

Competition agencies may know a thing or two about markets, but have for the most part precious little experience with the peculiar world of development assistance. And possibly, to some extent also the reverse is true, since assistance for competition projects - as more generally for “trade-related” assistance⁵ - is a rather recent phenomenon.

The program of the Paris Workshop set out to launch this debate from three perspectives: first of all, as part of a stock taking exercise, the main needs of assistance had to be identified from the point of view of the “clients” of assistance, i.e. the recipients (II.). Secondly, the experiences with technical assistance were evaluated from the perspectives of the three constituencies, i.e. recipient agencies, donor bodies, and mature competition agencies (III.). Finally, the Workshop collected suggestions for the way forward with a view to enhancing the efficiency in the delivery of more effective assistance, focusing in particular on the agency-donor interface (IV).

II. Recipients’ typical needs for assistance

It is universally acknowledged that any viable assistance project has to start with a proper analysis of the needs that it is intended to address. In this vein, several speakers from the recipient agencies set out what they considered to be the main needs of their respective jurisdictions. Arguably, different assistance measures are called for depending on whether the assistance seeks to support the initial creation of a new competition regime and authority, or to help an existing authority to improve its enforcement capabilities (II.1.). In addition, a distinct set of needs arises in regional competition agencies (II.2.).

II.1. Assistance needs during the various phases of capacity building

If a decision to introduce a competition regime has been made by the partner government (i.e., the recipient government), the question arises how to build the national capacity to enforce a competition law, and to advocate a competition policy. What are partner countries’ typical needs in this respect?

The discussion in the Workshop led to the striking conclusion that despite the many variations due to differing local circumstances, a fairly uniform set of initial needs can be

Internationale Weiterbildung und Entwicklung gGmbH; Japan’s JICA International Cooperation Agency; the United Kingdom’s DfID Department for International Development; and the United States’ USAID Agency for International Development.

³ Namely various departments of the *European Commission* dealing with development aid.

⁴ Namely the *OECD, UNCTAD, and the World Bank.*

⁵ Views differ as to the degree to which assistance in favour of competition projects can adequately be subsumed under the heading of “trade-related assistance”. There are good reasons to believe that there are distinct, and at best partially overlapping concepts underpinning the respective policies of trade and competition. However, in the realm of capacity building, it is probably fair to say that the term “trade-related assistance” is increasingly used to depict, *pars pro toto*, generally the more recent type of assistance that focuses on facilitating the integration of partner countries in global economic institutions, rather than on brick-and-mortar projects.

identified which typically have to be addressed in the early capacity building stage. These typical needs include (i) the identification of the future enforcement institution; (ii) the drafting of the law; (iii) the promotion of competition policy to society at large, including the education of political decision-makers; and last but certainly not least, (iv) securing the financial resources to pay officials' salaries, to acquire the equipment necessary for operating the agency, and, not to be underestimated, to facilitate the participation of agency staff in key international events.

As the emerging authority is then taking shape, the needs tend to shift to 'second generation requirements'. Several speakers identified the following as key elements among these:

First of all, a priority task is the formation of officers in practical case-handling, including the investigative skills that are part and parcel of this activity. But how to achieve this? A tried and tested element in this respect is to either second officials from the recipient authority to mature agencies, or, inversely, to send long or short term advisors to the recipient (for more details, see *infra*, sub III.5.b).

Secondly, many young competition authorities find a substantial number of their decisions overturned on legal appeal, and more often than not on rather formalistic grounds. There may thus be merit in raising awareness about key concepts of competition policy among the judiciary as well. However, when making such a recommendation, it is important to address it to the appropriate national institution. By way of example, *Ms Vesselka Kosserska* of the Bulgarian Commission on Protection of Competition pointed out, it is unhelpful if trainers recommend to the agency to change the structure of the national judiciary system.

Thirdly, a working relationship with the jurisdiction's sectoral regulators needs to be developed. This may well include legal and institutional issues, but more generally is part of a competition agency's advocacy mission.

Fourthly, it is critical that work with civil society is undertaken in order to foster a domestic base of support. Such advocacy work should in particular address the domestic business community and its trade associations, the professions, and the media. In addition, many speakers recalled in this context that competition policy is designed to pursue the interest of consumers, but that only a continuous investment in awareness campaigns will significantly improve public awareness of this policy among this constituency.

And, last but not least, speakers in the Workshop argued that the domestic educational infrastructure ought to be developed, notably by including competition issues in universities' curricula.

II.2. Needs of regional competition frameworks

During the Workshop, the link between assistance to competition projects and regional and economic integration frameworks was frequently underlined. *Mr Frank Tibitz* from Germany's GTZ noted that whilst GTZ had so far undertaken only one stand-alone competition project (in Indonesia), a series of competition projects were undertaken in the framework of regional integration frameworks, not least in the contexts of EU accession and stabilisation processes. Some GTZ programs also aim at helping a partner country prepare for accession to the WTO.

As for the Americas, also *Mr Nicholas Klissas* from USAID noted a growing interest in competition policy arising from the negotiations of the regional trade agreements in that hemisphere. *Mr James Musonda* of the Secretariat of the Common Market for Eastern and Southern Africa (COMESA) noted that in the case of COMESA, the reason that led to the introduction of a competition regime was that a mere policy statement on competition contained in the Treaty was found to be ineffectual. Therefore, an effective regulation at regional level was deemed to be necessary, and one that would ideally be operational before the launch of the regional free trade area.

Regional competition regimes typically face an additional set of challenges. As *Ms Graciela Ortiz* of the Secretariat of the Andean Community pointed out, governments in the member states may offer varying degrees of political support for the introduction of a regional competition regime. Advocacy initiative may thus need to be calibrated for the audience in each country. This may partially have to do with the fact that the competition regimes in a regional framework's constituent countries often find themselves at different levels of development. In a similar vein, *Mr Musonda* reminded the audience that so far only 5 out of the 20 COMESA member states have a competition regime at all, and that across these countries, the number of officials with expertise in competition policy was far too small.

III. The status quo: experiences with assistance

It seems fair to say that a lot has already been done over the last couple of years in terms of technical assistance generally. *Mr Simon Mizrahi* of the OECD's Development Directorate estimated that some 50,000 development projects are currently underway worldwide. However, only a tiny fraction of the assistance available overall is dedicated for projects relating to competition policy. By way of illustration, *Mr Toni Ihlau* mentioned that his InWEnt agency in Germany spends about EUR 1.2 million on competition, out of an assistance budget of some EUR 113 million. Anecdotal evidence suggests that for many donors, the ratio of money spent on competition is well below the 1% mark.

However, are these financial resources, scarce as they are, used efficiently in view of building effective enforcement and advocacy capacities? What exactly are the experiences of recipient agencies with how assistance is projected, administered and delivered?

The Workshop revealed four key challenges that need to be considered: the challenge to ensure the sustainability of the assistance received (III.2.); the challenge to enhance the ownership of the assistance programs (III.3.); the challenge to reduce the transaction costs associated with receiving assistance (III.4.); and the challenge to ensure that the assistance delivered is of a satisfactory qualitative standard (III.5.). However, any assistance crucially relies on one pre-condition: the case for competition policy must first be made to those responsible for allocating funds for competition projects (III.1.).

III.1. Establishing competition policy as developmental priority

The most fundamental need for any assistance project in the competition field, before any operational measures can be formulated, is to establish competition policy as a priority on the agenda of both the recipient government that will request the assistance, and the donor community providing the necessary funding.

Mr Klissas noted, however, that competition tends to be low on their lists of priorities, and thus the inclusion of competition cannot be taken for granted. This is especially so since, as was acknowledged by *Mr Ihlau*, the case for competition policy is a notoriously difficult one to make. *Mr Klissas* therefore raised the pertinent question “how to persuade people to spend money on competition”.

One strategy to achieve this, he concluded, may be by stressing the links between competition policy and economic growth, as well as related issues such as the fight against corruption. Similarly, *Mr Walter Kennes* of the European Commission’s Development DG highlighted that in making this case, special regard must be had to the different priorities of the development community, and namely to the expected contribution of competition policy to the developmental interests of the recipient.

However, UNCTAD’s *Mr Hassan Qaqaya* warned that when making this case, calibrated advocacy measures may be necessary in order to keep expectations of a quick reduction of poverty levels resulting from the introduction of a competition at bay.

In addition, he added, concerns need to be dispelled that competition policy would just add another layer of “red tape” to a partner countries’ often overly restrictive regulatory environment.

A potentially formidable ally on the domestic scene when making this case can be the competition agency of the recipient jurisdiction. However, conversely, as *Mr Shyam Khemani* from the World Bank observed, it will prove particularly difficult to put competition policy on the political agenda in those jurisdictions where a national competition agency has not yet been established. In those conditions, the potential benefits expected to arise from a competition regime may sometimes have to be promoted externally. In this respect, the World Bank has occasionally found it rewarding to directly reach out to the civil society in the recipient country, in order to garner right from the start a supportive home constituency.

Such advocacy must however be carried in a manner respectful of local sensitivities. If competition policy is perceived largely as a tool of foreign meddling in internal affairs, this could seriously undermine the case for competition. As *Mr Takashi Wada* of the Japan Fair Trade Commission and *Mr Hideo Morimoto* of the Japan International Cooperation Agency underlined, it is essential that the autonomy of the recipient jurisdiction in its relations with its domestic stakeholders is respected. Making the case externally will thus require a careful balancing act.

One of the key oppositions to the introduction of a competition regime can arise out of entrenched - and possibly misguided - views as to the real objective of competition policy. As an example in this respect, *Mr Vinod Dhall* of the new Indian Competition Authority referred to the former Indian anti-monopoly legislation. Many observers regarded the former rules principally as a tool to prevent certain undertakings from growing beyond a certain size, and not as a means to protect the interest of consumers on the basis of competitive markets.

Professor Paul Cook of Manchester University cautioned against a too narrow focus when explaining the case for building a competition capacity. In particular, key issues such as (i) why market failures abound in developing countries, and (ii) the role of innovation in competition and development needed to be fully explained – a point also emphasised by *Mr John Preston* of the United Kingdom’s DfID.

A similar point was advanced by *Mr Adham Kuchkarov*, Director of the Antimonopoly Policy Improvement Centre at the State Committee on Demonopolization and Competition Development (Uzbekistan). He argued that integrating a competition component into a wider program of economic development could lead to two distinct benefits: on a structural level, various strands of economic policy could be developed in a more coherent fashion. On a political level, decision-makers may principally be interested in other components of a bundle of reform measures, and thus include competition policy among their priorities only as part of that package.

Echoing this view, *Mr Klissas* noted a growing interest in competition policy as part of wider reflections on how to achieve economic growth. In this vein, *Ms Ingrid Schwaiger* of the European Commission's EuropeAid Office observed a gradual move in the donor community away from isolated initiatives and towards more comprehensive or sector-wide initiatives.

On a more practical level, many competition officials showed particular interest during the Workshop in a 'flow chart' setting out how donor bodies establish their programs. In conclusion, *Mr William E. Kovacic* from the US Federal Trade Commission noted, agencies searching for funding for a particular project may want to focus more locally on the recipient partner country. In this process, the national competition agency has a key role to play in promoting competition policy to national decision-makers. At the same time, a mature competition agency may take direct contact with the local representation of their domestic donor body. Such a more decentralised approach may be particularly pertinent in the case of the European Commission which is currently shifting responsibilities for the management of aid to its delegations in the partner countries.

III.2. Sustainability

Many recipients expressed concerns about the sustainability of the assistance received, as welcome as it was as such. As *Mr Musonda* noted, his agency had greatly appreciated the targeted and well-defined "project-type assistance" that COMESA had received for drafting the competition law. However, when the project came to an end, there was no provision made for follow-up initiatives. More generally speaking, panellists stressed the limits of implanting on a lasting basis the skills imparted by one-off activities such as seminars and the like. This being said, the value of seminars was nonetheless acknowledged by *Mr Kuchkarov* as instrumental for addressing well-defined specific needs, and for building personal contacts.

In a policy area such as competition that relies heavily on the expertise of the officials enforcing this policy, one of the main challenges to achieving sustainability lies with the human resources. As *Mr Musonda* highlighted, the problem of sustainability was aggravated by the fact that low salaries in many agencies in developing countries led to high levels of staff fluctuation. Across the COMESA member states, for example, the number of qualified professionals with expertise in competition policy was so low that the departure of one or two key staff could have a critical impact on the agency's capabilities to enforce and advocate.

Arguably, the only way open for donors to address the problem of sustainability is to focus more on longer, and more integrated assistance programs, especially during the initial stage of setting up a new agency. The indications available to date suggest that such integrated programs are more likely to make a lasting impact than isolated projects.

The experience of the Indonesian competition agency KPPU – a recipient of a host of assistance projects⁶ during the last 5 years or so - is a case in point in this respect. KPPU Chairman *Dr Sutrisno Iwantono* explained how his agency had established a strategic development plan built around 4 objectives⁷, and then sought to fit each assistance project as one element into this integrated overall strategy. He argued convincingly that the effectiveness of assistance is likely to increase when it is consistent with the overall strategic planning of the recipient. Ideally, various projects can then complement one another and the risk of an inefficient duplication of incongruous donor interventions is minimized.

Another example of such a comprehensive approach – facilitated by a grant of the World Bank - was presented by *Mr Kuchkarov*. The assistance provided to the Uzbek authority allowed some 50 staff members to benefit from training, and facilitated study visits abroad for 19 staff. Such a broad commitment was deemed essential to build up a core pool of competencies that would not immediately evaporate with the departure of a few staff.

It should however not go unnoticed that donor institutions, realizing that for societal projects only integrated projects promise to deliver better results, have already begun to take steps in the direction of more integrated programs. As *Mr Tibitanzl* explained, GTZ was increasingly focusing on more comprehensive ‘priority areas’ rather than isolated projects. One among these priority areas was “economic reform and the development of a market economy”, currently implemented in a number of countries. These programs were not only designed to operate for a longer period (7 years); they also exemplified a more integrated approach by addressing economic reform both at the macro and the micro level. And according to *Mr Andreas Moggi* of the European Commission’s External Relations DG, a similar approach is taken by the Commission whose new batch of ‘Country Strategy Papers’ advocate more integrated and comprehensive partnerships.

But ultimately, *Mr Tibitanzl* stressed, the composition of these programs depended on the negotiations with the partner country. In this sense, many speakers insisted that it was critical that partner governments must show a similar level of commitment. As the recipient governments change, so do their priorities, and in-coming ministers may need to be convinced anew of the potential benefits of competition policy.

III.3. Ownership

Another challenge that was identified by many speakers in the Workshop was to ensure a higher level of ownership of the program by the recipient jurisdiction generally, and the competition agency in particular.

Empirically, the desire for better ownership was expressed in unequivocal terms by the majority of some 400 practitioners in 11 partner countries canvassed for the OECD DAC Development Assistance Committee’s ‘Needs Assessment Survey’ in 2002. When asked about donor practices that placed the highest burden on them in terms of ownership and transaction cost, respondents mentioned “donor-driven agendas and systems” as the most burdensome aspect, explained *Mr Mizrahi*.

⁶ Since 1999, KPPU has benefited from major technical assistance provided by GTZ, by the World Bank, by JICA in cooperation with the JFTC, from a USAID “ELIPS” program, and from a US FTC “Pasa” program. The JICA and US FTC programs were centred on resident advisors stationed with the KPPU.

⁷ Namely: (1) institution building; (2) fair and transparent law enforcement; (3) competition policy development; and (4) public support (multi stakeholders).

The phenomenon of ‘donor-driven agendas’ is one of both cumbersome implementation procedures, and of substance, although these two issues will in practice be intimately linked. As for the substantive aspects, *Professor Cook* of Manchester University argued that the recipes propagated by donors are sometimes too prescriptive. He stressed that donors need to factor in local conditions when making recommendations: what may be a “best practice” for a developed competition authority may be too demanding for a young competition authority operating in a developing or transition economy. The mere implementation of simply “good practices” would often be more adequate for an environment where a number of critical auxiliary institutions – such as a competent judiciary – are not yet available. In a similar vein, also *Ms Vesselka Kosserska* had cautioned against “too perfect” recommendations.

Undoubtedly, the key to enhancing ownership is to leave partner countries more responsibility for the identification, coordination and implementation of the assistance⁸. This is clearly primarily a task that donors need to set themselves. But how to achieve this?

As *Mr Mizrahi* argued, one possibility for them to remedy a lack of ownership and concerns about donor-driven agendas is to streamline and simplify their approval procedures. This would be more in line with the limited administrative capacities of partner countries. Another, parallel path out of this dilemma may be to focus more on building the local expertise in partner countries in the management of aid.

However, ultimately the desire to maintain ownership, coupled with sensitivities about foreign influences over sovereign matters, impose clear limits to what outside help can achieve. By the same token, this invisible line indicates where local responsibilities irrevocably begin, i.e. where institutions in partner countries need to live up to their responsibilities. Or, to use a phrase coined by *Mr Lowe*, sometimes donors struggle to find the pilot when discussing developmental priorities with partner countries. Or, describing this dilemma in other words: on the one hand, recipient countries rightly wish to assume more responsibility for the assistance that they receive. On the other, this would require a clear identification and formulation of their priorities on the part of the recipient, which may not always be forthcoming.

III.4. Minimize transaction costs associated with assistance

In the OECD DAC Survey referred to above, high transaction costs associated with assistance projects were identified as a second aspect of donor practices that would place a high burden on partner countries. In this context *Mr Mizrahi* cited the example of an African country whose administration had to cope with more than 800 assistance projects in parallel. The tasks associated with implementing all these programs invariably absorb a disproportionate part of the recipient’s administrative resources. Ultimately, he argued, partner governments would end up with less ownership over their development process, which in turn would lead to poor performance of assistance.

To make matters worse, partner countries are faced with a multiplicity of donor procedures. The need to familiarize themselves with distinct procedures for each new

⁸ See in this sense the *Rome Declaration on Harmonization* endorsed by Ministers, Heads of Agencies and other Senior Officials representing 28 aid recipient countries and more than 40 multilateral and bilateral development institutions, in February 2003.

assistance project is therefore mentioned by partner governments as the third most burdensome donor practice in the OECD DAC survey referred to earlier.

Do similar concerns of disproportionate costs also apply to assistance granted in the competition field? A first indication in this direction was offered by *Ms Ortiz*: out the 12 staff working in her agency, at least one had to be set aside full-time to administer the assistance that the Secretariat of the Andean Community was receiving. Such a ratio was estimated unsustainable by several speakers in the Workshop.

In this context, *Mr Lewis* (Chairperson of the South African Competition Tribunal) recalled that most assistance projects in the competition field require financial interventions of a much smaller scale than the large, infrastructure-type projects that traditionally had been the main focus of donors. Smaller initiatives can already do well with amounts below 6-digit figures in EUR or USD terms. And medium-sized projects do not necessarily go much beyond that.

However, the approval and implementation procedures that donors invariably require partner countries to comply with have not been trimmed correspondingly. Bureaucratic procedures coupled with frequent delays are already difficult to justify when spending large amounts of money. They are however totally disproportionate for the comparatively small fry that are most competition projects. As a result, the transaction costs for a project are often excessive in comparison to the volume of assistance received. And excessive transaction costs will, at best, distort the performance of the assistance, and, at worst, deter potential applicants from submitting a request for assistance in the first place.

Mr Mizrahi indicated that the donor community is increasingly aware of these problems. But, he acknowledged, having identified the problem, the real challenge was then to move from principle to practice.

In practical terms, several means of how to achieve an increase in the performance of assistance could arguably be envisaged by donors. First of all, he suggested, a systematic spread of best practices, a more systematic donor follow-up, and possibly peer reviews may be helpful in this respect.

A second approach was presented by *Ms Maria Fernandez*, based on the European Commission's experiences with the pre-accession preparations for the EU candidate countries: the Commission's Enlargement DG had established 'policy coordinators' for all policy areas in which candidate countries were to receive assistance. These coordinators assumed a highly-valued intermediary role in bringing together the policy departments (such as DG Competition) on the one hand, and, on the other, the expertise in aid programming held by the services dealing with external aid. This particular combination of expertise allowed the coordinators to take the lead in, first, identifying needs, and then in responding to these needs with tailor-made assistance programs.

A third proposal, more specifically geared towards the situation in the competition field, was however put forward by *Mr Lewis*: he suggested involving the recipient agencies' counterparts in the donor jurisdictions more directly with the administration of the assistance.

Although this proposal met with some interest, *Ms Hillary Jennings* reminded the Workshop that many medium-sized competition agencies such as the OFT in the United Kingdom do not have a dedicated section familiar with capacity building issues. In the present

circumstances, these agencies were thus ill-equipped in terms of resources and expertise to take on such administrative tasks. And as *Mr François Souty* of the French Conseil de la Concurrence added, since agencies do not specialise in assistance, they tend to find it as difficult as recipients to keep track of donor's changing agendas and procedures.

III.5 Enhancing the quality of assistance delivered

Turning from the delivery of assistance to its content, it is universally recognized that the effectiveness of assistance crucially depends on its relevance and quality. The discussion in the Workshop highlighted three aspects that are of particular importance in this respect: first of all, the initial needs assessment (a); secondly, the selection of the experts delivering the assistance (b); and thirdly, the quality of the teaching material used by the experts (c).

(a) Initial needs assessment

There is consensus that a proper assessment of a recipient's needs is paramount to any assistance program worth its salt. *Mr Qaqaya* reminded the Workshop that the relevance or otherwise of all subsequent steps in the implementation of a project was pre-determined by the quality and accuracy of the initial assessment. Depending on the scope and the shape of the envisaged support, such a needs assessment may take a more or less intensive form. In this context he described UNCTAD's well-established practice of drawing up a detailed report assessing the needs of the recipient jurisdiction.

Another example of a comprehensive needs assessment was presented by *Mr Klissas*. He highlighted the "Seldon project" sometimes used by the US agencies in assessing the economic conditions prevailing in a particular partner country. This method essentially considers the situation for 11 areas of corporate law, competition being one of them. The data thus gained would be summarised in a "score card" which then forms the basis for drawing up a cluster of assistance initiatives. Such a cluster would frequently include a competition component.

(b) The selection of the experts delivering the assistance

In the course of the Workshop, representatives of recipients, donor bodies and competition agencies alike expressed a preference to rely on staff from enforcement agencies more than anybody else to deliver the assistance "on the ground".

For example, *Mr Klissas* explained why USAID often turns to officials from the Department of Justice or the Federal Trade Commission. He noted that they had often encountered difficulties in locating the specific skills required for effective competition enforcement outside the seasoned enforcement agencies. And independent evaluations had confirmed the good quality of the training offered by the US agencies. Along similar lines, *Mr James Hamill* of the US Federal Trade Commission argued that government-to-government training may offer added value where core governmental tasks such as competition enforcement were at stake.

This experience is fully matched by those made by the European Commission in the context of the pre-accession preparations. As *Ms Fernandez* explained, pre-accession assistance was originally delivered by private consultants. However, after some dissatisfaction with the effectiveness of that assistance, a new type of assistance called "Twinning Program"

⁹ was created. This program relied on officials from EU Member States sharing their expertise with the colleagues in the future member states, and became a success. Also *Messrs Tibitanzl* and *Ihlau* confirmed their good experiences with choosing officials as experts for the assistance, in the latter's view ideally to be combined with academics.

Ms Ortiz, arguing from the point of view of a recipient, fully subscribed to the view that experts with hands-on expertise in case-handling will often be preferable. Moreover, she insisted, it was crucial for these experts to be able to communicate the values underpinning solid competition work. She noted however that the myriad of formalities that those implementing an assistance project need to comply with may offer little incentive to concentrate on the quality of the assistance.

Mr Souty, whilst agreeing with this position generally, however indicated that the French authorities had made good experiences with asking the national French school of magistrates to deliver a part of the training. This could indeed be an approach that other jurisdictions may find interesting to reflect upon as well.

Ideally, experts would not only spend a few days (for a seminar etc.) with the recipient, but stay there as resident advisors. As *Mr Kuchkarov* observed, resident advisors were particularly valued because they could give advice on a daily basis, being fully integrated into the workings of the host authority.

In terms of the appropriate duration that the experts should spend with the host agency, many speakers agreed with *Mr Qaqaya's* view that long term resident advisors often prove to be the most effective. In this respect, *Ms Kosserska* and others argued that short term experts would typically need a good deal of time to acquaint themselves with local conditions, and would thus lose valuable time. This was particularly so when the experts had no prior knowledge of the situation of the recipient agency in particular, or the host country in general.

The other side of the medal was however highlighted by *Ms Jennings*. She recalled that qualified enforcement officials are not in endless supply, and underlined the drain on the OFT's own enforcement mission when staff is asked to train visiting colleagues. These constraints of staff resources are also the main motivation that led the OFT to offer such training preferably on its own premises, rather than in the recipient country where training would reach more staff directly.

These concerns were shared by *Mr Souty*. He noted that with some 200 officials active in the French competition agencies, there were limits to the training that these agencies could deliver themselves, short of neglecting their own enforcement priorities. Also, it may not be obvious to find staff in experienced competition authorities familiar with the conditions in specific recipient countries.

Finally, even where resource or other constraints do not allow a mature agency to deliver the assistance itself, there is a compelling case to involve the mature agency in all assistance granted by the jurisdiction's donor body, throughout the various stages of an assistance program. This will help to ensure the coherence and the quality of the assistance.

(c) The appropriate teaching material

⁹ On which, see the case study in *Box 4* of the Merida report.

Indications in the Workshop were that there is, by and large, a consensus as to what an appropriate teaching material should ideally look like. To begin with, *Mr George Lipimile* of the Zambian Competition Commission underlined the importance of pitching the level of the assistance in line with a country's overall economic situation. He also insisted that assistance, in order to be effective, needs to be customized to the specific circumstances of the recipient agency.

One possible way of achieving this may be by collaborating closely with the local community of professionals since the early stages of the training, or to draw otherwise on locally available expertise. An interesting example in this respect was presented by *Mr Lewis*. The South African agencies had taken the unusual step of inviting specialists in police and criminal investigations to discuss how to investigate a case, hear witnesses and collect reliable evidence.

Mr Tibitanzl, for his part, cast light on a second aspect which may be critical for the effectiveness of a training initiative: the training material should, wherever feasible, be made available in the language spoken in the recipient country. Otherwise, the training may fall short of reaching out to the public at large. The case for translating the material is particularly compelling, *Mr Qaqaya* argued, where a "training the trainer" component is incorporated in the wider assistance program. This would allow the prospective trainers to work directly with the material used for their own training.

An illustration of a highly regarded teaching instrument was presented by *Mr Hamill*. He explained that among the most successful training material developed by US agencies' staff was a 'hypothetical interactive case'. The hypothetical case resembled as much as possible 'real-life' cases handled in the past. Discussions on hypothetical cases would allow for a particularly direct and relevant transfer of skills between enforcement agencies.

Anecdotal evidence suggests that there is a fair amount of teaching material available throughout the entities that are regularly asked to provide some training in this field. It is anybody's guess how many times the wheel has been re-invented by the trainers in putting together this material. And as far as one can see, no attempt has yet been made to pull the various fragments together in order to create some kind of "model set of teaching material", for the inspiration of trainers, and, of course, for adaptation to local circumstances.

Finally, an interesting training initiative was mentioned by *Mr Qaqaya*: he explained that UNCTAD had already developed a training course consisting of two parts. A first part was an internet-based distant learning course, including a chat-room to exchange views. The second part of the course was organised as a residential course on campus.

IV. The way forward: reflections for improvements

In trying to come to terms with the challenges to capacity building in the competition field, the Workshop concluded that the complexity of the issues at stake precluded any single recipe from remedying all shortcomings. The various actors involved in the design and implementation of assistance will have to live up to their respective responsibilities. The success or failure of technical assistance will often hinge on how persistent and successful the recipient competition agency is in selling the benefits of competition policy to decision-makers at home.

In this context, several speakers noted the important role of international cooperation generally, and the ICN in particular, in supporting the agencies in this task. There was some agreement with the view in the Workshop that such a supportive task should be a priority mission for a body like the ICN, composed to a significant extent of young agencies. For the majority of ICN members, such a support would, more than anything else, make the ICN a particularly relevant initiative.

In terms of follow-up, what could then be done in the future, and how could the ICN contribute to these initiatives? In the course of the Workshop, several speakers already hinted at a number of issues which may merit further exploration. These relate to a better analysis of the gains of installing a competition policy in developing countries (IV.1.); to drawing up a suitable set of teaching materials for use when delivering assistance (IV.2); and to transparency of assistance (IV.3).

IV.1. Studying the contribution of competition policy to developmental goals

A number of participants in the Workshop called for a more convincing demonstration of the developmental gains of installing a competition policy. This applies in particular to the complicated link between competition policy and poverty reduction. Having a better understanding of the contribution of competition and competition policy to the developmental process would be instrumental in building a compelling case, and would facilitate the task of the recipient agencies in convincing their domestic governments to include competition among their development priorities.

Although some research has already been done in this respect, it may be useful to summarise the main findings of these studies, and to undertake further research where necessary. In doing so, appropriate account should be taken of the regional dimension. The experiences being made at COMESA or the UEMOA already provide a starting point.

However, it is far from certain that this is a role that the ICN should assume. As much expertise as the ICN (composed of enforcement agencies) can muster when it comes to the implementation of competition law and policy, as little is it equipped to undertake academic / empirical research on issues of development policy. At this stage, such research will thus essentially remain a task for other bodies to undertake.

IV.2. Teaching material

As mentioned earlier, many entities have already drawn up some material that they use for their own competition teaching. Would there be merit in condensing these fragments into a model set of teaching material? *Mr Khemani* invited the ICN to consider putting together a harmonised “core competition course”, based on the ‘best teaching practices’ available in ICN member agencies. This would avoid the current situation of plentiful duplication and lead to more efficiency on the part of the mature competition agencies in delivering assistance.

Arguably, the more a global consensus on the right approaches and standards to be used in competition law and policy is emerging, the stronger the case for such an undertaking. The ICN recommendations adopted so far¹⁰ offer already some fertile ground in this respect. In addition, *Mr Qaqaya* suggested, such a course could also build on UNCTAD’s Model

¹⁰ Namely the ‘Guiding Principles’ and the ‘Recommended Practices’ for the control of multi-jurisdictional mergers.

Competition Law¹¹ which is constantly being revised. In fact, in this context it should be noted that the CBCPI WG work envisaged¹² in view of the 2005 ICN Annual Conference may already provide some key contributions to such a future core course.¹³

On the other hand, there is however a trade-off to be considered. As COMESA's *Mr Musonda* noted, his agency had greatly benefited from having experts from various agencies present the concepts and approaches most familiar in their respective home jurisdictions. This creates, in the eyes of the recipient, a competition for the most coherent approach or theory. This healthy rivalry of concepts would be reduced if a more harmonised approach to competition teaching were to be suggested.

IV.3 Transparency of assistance projects in the competition field

Another issue that was frequently mentioned during the Workshop was that there may be a case for enhancing the awareness across the communities of projects under way in the competition field. This will inevitably require some degree of coordination between donors.

Such donor coordination would certainly be welcome to the extent that it would avoid a duplication of efforts. However, *Mr Kovacic* warned that such coordination may in practice be a mixed blessing. He argued that the need for such coordination could, realistically speaking, further complicate and lengthen donors' approval procedures.

Whilst the case for full-blown donor cooperation procedures may thus be mitigated, there is an emerging consensus that steps should be taken to improve on the current situation. In particular, if all actors were aware of which agency is already receiving which kind of assistance, this may already be a significant step forward. As *Mr Lowe* pointed out, the network of the ICN could play a central coordinating role in this respect.

In fact, a first step in this direction is already being made by CBCPI WG Subgroup No. 1. As *Mr Kovacic* noted, that Subgroup is currently undertaking a stock taking exercise by compiling an overview of the assistance granted in recent years by major donors. A revised and updated list could be made available on the ICN web site. This would allow the ICN site to become a focal point for the planning of future assistance initiatives.

¹¹ Available at: <http://r0.unctad.org/en/subsites/cpolicy/>

¹² This applies both to the important work currently under way in the CBCPI WG's other Subgroups, and more specifically to the recommended "Checklist of issues for technical assistance" that the WG is contemplate to elaborate in time for the 2005 Annual Conference.

¹³ Indeed, the CBCPI WG Workplan 2003-04 already envisages a 'Manual of technical assistance'; in idea that seems to resemble closely the core course proposed during the Workshop.

Annex 1: list of Participants

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