

INTERNATIONAL COMPETITION NETWORK

Findings Related to
Technical Assistance for
Newer Competition Agencies

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A successfully functioning market economy requires functioning commercial laws. These include, among others, securities, bankruptcy, contract, corporate governance, foreign investment, trade, and competition laws. Competition laws prohibit a variety of practices that restrain trade, such as cartels, anticompetitive mergers, and exclusionary acts by firms with monopoly power/dominance, and in many cases permit competition agencies to address anticompetitive government regulatory behavior. Competition laws protect the competitive process, ultimately benefiting consumers through lower prices and better quality goods.

Once a competition law is passed and a competition authority is established, the question becomes how to establish the capacity to detect, investigate, and remedy anticompetitive conduct. Unlike most areas of law enforcement, some aspects of competition law enforcement (e.g., merger review) involve prediction of future economic behavior, not simply the assessment of past conduct. A competition authority must learn to detect the likely effect on consumers and the competitive process, identify the real competition issues, conduct effective investigations, and develop remedies that solve the problem.

Successful enforcement of a competition law requires not only technical knowledge, but experience and judgment. In developed countries, this comes from on-the-job experience and institutional knowledge of the process of trial and error that led to past failures and successes. Technical assistance is the process by which a newer competition agency can take advantage of the experience of others as it develops that experience and judgment on its own.

Against this background, the International Competition Network has undertaken a detailed study of technical assistance provided to newer competition agencies to identify how the technical assistance needs of newer competition agencies can best be assessed, and which models of technical

assistance work best at the various stages of a competition agency's development. The Working Group on Competition Policy Implementation conducted an empirical survey of recent technical assistance projects and has issued several studies analyzing the results. The following summary, while far from exhaustive, contains the main findings and learnings emerging from that effort. It builds on the reports and studies submitted to the 2005 and 2006 ICN conferences, and aims to complement the 2003 ICN report on capacity building and technical assistance, in particular by attempting to address some of the issues identified in the "checklist" on pages 68 and 69 of that document (see bibliography for references to these items).



1. Design of a successful program of technical assistance requires a process of flexible and active collaboration between the recipient, the donor, and the provider of the assistance.

Technical assistance is more effective when the recipient agency has a major role in its design. The recipient agency knows the local economic, legal, and political environment within which it must function better than the donor or provider will. However, to be effective, the donor of assistance and/or the actual provider of assistance should also be actively involved with its design. Entities with the expertise to provide technical assistance have a greater understanding of the challenges and consequences of competition law and policy, and should not hesitate to share that understanding in the design phase. An effective program will fuse the recipient's knowledge of local conditions and the donor's understanding and experience with competition law. A single model does not fit all circumstances, and successful technical assistance

programs must be designed flexibly around the needs and circumstances of each recipient.



2. An assessment of the needs of a new competition agency and the environment within which it will operate is an important preliminary step in the design of an effective technical assistance program.

A needs assessment is a vehicle for making a preliminary evaluation of the absorptive capacity of a jurisdiction, ascertaining its perceived needs, examining the strength of existing institutions upon which successful competition policy implementation will depend (such as the judiciary, regulatory institutions, and educational institutions) and assessing the degree of policy support that exists in a country.

The assessment also creates a vehicle for a dialogue between the donor and recipient in order to ensure that the goals of the program are mutually understood and to maximize the likelihood that the program will meet them.



3. Activities selected as part of a technical assistance project should be clearly linked to the goals and objectives of the program.

Technical assistance can encompass a range of possible activities. Among those studies are short-term missions; national, regional, and international seminars; legislative drafting help; long-term advisors; study tours with experienced agencies; procurement and budgetary support; and academic studies. The first three of these tend to be more useful with newer agencies, the next two with more experienced agencies. Procurement and budgetary support can be useful for agencies at any level of development, especially when local resources

are particularly strained. However, expenditure of scarce funds on procurement should not take priority over activities that rely on the donor's accumulated experience in applying a competition law, which is the unique contribution of technical assistance that cannot be procured locally even in the absence of budgetary pressures. The one activity that was found not to be especially useful is academic studies of economic conditions in a country. Whatever inputs are selected, they should be appropriately tailored to the goals of the program and not simply selected because they are readily available or easy to implement.



4. Providers of technical assistance should be knowledgeable and experienced in the application of competition law. Current or prior employment in a competition agency is valued highly.

In addition to knowing and understanding the subject matter, an advisor needs to be able to interact amicably with the recipient agency's staff. The advisor needs to be able to provide advice in a way that has applicability to local conditions, therefore if the advisor is not familiar with these conditions beforehand, it is helpful if he/she gets to know them rapidly when on the ground. Adaptability is a critical attribute of a successful advisor.

Competition agency staff members are valued as advisors not only for the practical experience possessed by such officials, but because it facilitates ongoing contact with fellow enforcement professionals after the program concludes.



5. The mix of technical assistance programs should reflect the present capacity of the agency to absorb such assistance, and should evolve in line with changes in the agency's absorptive capacity.

An agency at the formative stage of its existence has very different needs than a more mature agency does. It is important that the activities selected for the program be appropriate for the agency's age and capacity, and take local conditions into account. Activities that may be appropriate for a newer agency may be of less value to a more experienced one. Conversely, more sophisticated activities that have proven successful with a more experienced agency may be too complex for a new agency that is still trying to absorb basic principles and organizational issues. Mismatches between an agency's absorptive capacity and the technical assistance devised for it should be avoided.



6. Long-term advisors and internships or study missions abroad can be very effective components of a technical assistance program for a more mature agency. In general, these types of assistance have higher impact in agencies that have developed a higher capacity to absorb technical assistance than elsewhere, and can even be counterproductive if introduced too soon.

Competition agencies with longer track records, more professional staff, and an established senior leadership tend to benefit more from long-term advisors (i.e., those who remain in place for three to six months or more) and study missions to more experienced agencies.

Otherwise, if introduced to newer agencies, such interventions could create information overload and, in the case of study missions abroad, remove key staff from the essential tasks necessary to developing the agency.



7. Shorter-term interventions such as short-term advisors and attendance at national, regional, or international workshops can be a useful form of technical assistance for agencies with a limited degree of absorptive capacity and in countries with modest levels of socio-economic development. As the latter conditions improve, however, the benefits from such interventions decline and consideration should be given to eventually phasing them out.

Short term interventions of up to a few weeks duration can be useful tools for introducing newer agencies to the fundamentals of competition law enforcement. For example, short term seminars and workshops typically introduce basic principles that vary little from country to country. However, advanced topics may require greater understanding of the particular complexities of the local economy or law that are better addressed through a longer term intervention. There is also some evidence that short-term seminars and workshops may actually be more of a distraction to agencies with higher degrees of absorptive capacity, reflecting perhaps the opportunity costs of staff time.



8. Assistance with legislative drafting can be an especially useful form of technical assistance for countries with young competition authorities, authorities with inexperienced staff and those experiencing turnover in senior leadership, or for countries experiencing modest levels of socio-economic development.

Effective competition legislation requires substantive and procedural provisions that permit the application of economic principles to reach a legal conclusion about what types of conduct are likely to impair competition and hence the function of markets.

In countries with limited experience with market economics or where policy fluctuates because of unstable political, economic or social environments, local policy makers, government officials, and academics may not have sufficient experience with the operation of an effective competition system to make decisions that will work in the context of that country's legal and economic environment. Outside assistance, when paired with decision-makers who understand that environment, can help make a new competition system more effective and credible. Among other things, they can help a newer jurisdiction avoid the mistakes made by others in the past.



9. Technical assistance is more likely to be successful in jurisdictions with a higher degree of market freedom, and less likely to be successful in a more controlled economy.

In using their scarce resources agencies should bear in mind that technical assistance is likely to succeed most where there is support for economic reform. If a government is committed to opening its economy to market forces, technical assistance is likely to be an effective tool in helping it to reach that goal. At the same time there may be a valid cause for donors to support newer competition agencies in their efforts to initiate a change in government policy, and advocate for more open and transparent market structures. Depending on the particularities of the country, targeted support can be used to strengthen the reform minded agencies and prevent protectionist backlashes.



10. Technical assistance can help improve the standing of the competition authorities, in relation to the government, the judiciary, civil society, the community of competition ‘professionals,’ and the business community.

Competition policy does not exist in a vacuum. In order to succeed, it relies on other actors playing their roles, including the judiciary, lawyers, economists, businesses, and other governmental entities. Where the capacity of those elements to fulfill their functions is limited, technical assistance in the competition policy area should be coordinated with a larger effort to promote economic reforms on a wider scale.

In light of the challenges described in the Subgroup’s reports, new approaches to technical assistance appear with some regularity.

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