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**CENTRE FOR CO-OPERATION WITH NON-MEMBERS  
DIRECTORATE FOR FINANCIAL, FISCAL AND ENTERPRISE AFFAIRS**

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## **OECD Global Forum on Competition**

### **CONTRIBUTION FROM AUSTRALIA**

-- Session II --

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## **AUSTRALIA'S EXPERIENCE AS TECHNICAL ASSISTANCE PROVIDER**

Australia has an active program of technical co-operation and policy dialogue with developing countries. Australia's competition regulator, the Australian Competition and Consumer Commission (ACCC) has been involved in numerous technical assistance programs under which it makes available its resources and expertise in competition law enforcement, consumer protection and utility regulation. The programs aim to strengthen capacity to engage in global and regional trading arrangements and to encourage the exploitation of trade opportunities.

Australia recognises that the provision of technical assistance is important for developing countries, many of which have had difficulty in securing anticipated gains from international trade liberalisation.

### **Australia's international aid program**

Australia's technical assistance in the field of competition law is undertaken primarily by the ACCC. Funding for substantive technical assistance derives from the Australian Government's overseas aid program, managed through the Australian Agency for International Development (AusAID).

The aim of the overseas aid program is to assist developing countries to achieve sustainable development, economic growth and the reduction of poverty. The underlying principles include openness to innovation and new ideas and the provision of responsive, practical and well targeted assistance.

Australian aid programs prioritise effective partnerships. Many individual programs are designed, delivered and assessed jointly with recipient governments and ordinary citizens.

Programs focus on meeting the most pressing developmental needs and aim to identify and assist in the management of the economic and social impacts of trade and investment liberalisation. The identification of market opportunities, new sources of revenue and the provision of guidance with institutional and regulatory requirements of the global trading system are also addressed.

Almost eighty per cent of Australian aid work is undertaken in the Asia Pacific region. Papua New Guinea is the largest beneficiary followed by Indonesia, Vietnam, the Philippines and China. The program also responds selectively to developmental needs in other South Asian countries, Africa and the Middle East.

Effective competition policies and regulatory mechanisms are an important part of the governance framework of nation states. In recognition of this, in 1997 governance was made a specific focus for Australia's aid program. Good governance means competent management of a country's resources and affairs in a manner that is open, transparent, accountable, equitable and responsive to people's needs.

Australian aid helps developing countries in four main interdependent areas of governance:

- improving economic and financial management;
- strengthening law and justice;

- increasing public sector effectiveness;
- developing civil society.

Recent aid activities directed at governance include the provision of assistance to the competition authorities of South Africa and Indonesia and a workshop on competition issues for ASEAN countries.

### **Budgetary issues**

In its 2001-02 Budget, the Australian Federal Government allocated A\$1.725 billion of public funds to overseas aid (or 0.25 per cent of GNP). This sum is discrete of independent departmental or agency spending. The projected breakdown of budgetary funding by geographic region is as follows: Multilateral and other (26 per cent), East Asia (31 per cent), Papua New Guinea (20 per cent), Pacific (10 per cent), Africa and other (8 per cent) and South Asia (5 per cent).

Support for good governance is a priority of the Australian aid program and approximately fifteen per cent of Australian aid is devoted to it. Of this expenditure, nearly one quarter is specifically targeted at economic policy issues, including competition law. In 2000-01, governance overtook education as the largest sector of aid expenditure, accounting for around 21 per cent of direct aid flows (over A\$360 million). One third of this was spent in East Asia while a further 42 per cent was spent in Papua New Guinea and the Pacific.

### **The relationship between the ACCC and AusAID**

Requests for assistance are assessed on a case by case basis by AusAID working with the ACCC. Applicant countries contact the ACCC and through discussions the needs of the developing country are identified. A suitable assistance program is then devised in general form by the ACCC and submitted to AusAID, which assesses the proposed program against Australian aid policy for the applicant country and may recommend amendments to the draft. The final proposal must then be submitted to the relevant overseas AusAID office by the recipient agency. It should be noted that the ability of Australia to make a valuable contribution according to its skills and expertise is taken into account in the selection of aid projects. AusAID recognises the ACCC as the primary source of expertise in Australia on competition law and consults with it in determining its priorities and forms of support.

As a result of this process the ACCC is able to obtain information regarding AusAID's current funding priorities and whether the proposal is likely to receive a positive response, its viability and whether it is worth pursuing. It also ensures that AusAID is aware of the types of requests for assistance being received in the area of competition law, should there be a change in priorities in the future.

The delivery of technical assistance

### **The ACCC**

The ACCC's experience suggests that the effectiveness of co-operation activities strongly correlate with the stage of development of the country's competition regime. For instance, in-country training appears most effective where competition legislation exists. Where it does not, it is seen as more effective to train persons in Australia where they can examine legislative and regulatory structures and ACCC operations first-hand.

In relation to training in Australia, the ACCC has deduced from experience that smaller delegations are most effective in facilitating interactive learning. In addition, where the composition of inbound delegations is mixed, there is more effective exchange of information and experiences. The open discussion of issues with ACCC staff is also welcomed.

In-country consultancies and staff exchanges are most appropriate for countries that have established competition laws and require specific technical assistance. The ACCC regularly engages in short and long term staff exchanges and consultancies aimed at sharing its experience. These arrangements are effective in providing practical skills based training.

The ACCC's International Internship Program began in 2000. This program enables officers from developing economies to work as interns at the ACCC for a period of approximately one year. Participants are expected to develop sound knowledge and understanding of the Trade Practices Act 1974 and related legislation, and gain an awareness of the political, commercial and social environments and the management framework in which the ACCC and its counterparts operate. To date officials from Samoa, Zambia and Papua New Guinea have participated in the program. The 2002 program involves interns from Zambia and Zimbabwe.

The ACCC also runs on a regular basis a five day basic Investigation Course and where possible endeavours to accommodate participation by international officials, on a cost recovery basis. The course exposes participants to aspects of the ACCC's enforcement work and attendees participate in exercises designed to develop skills in areas such as interviewing potential defendants and obtaining witness statements, as examples.

The ACCC employs six full time officers to manage its international activities. This work involves the organisation and hosting of conferences and workshops in Australia and overseas; organising and receiving delegation visits to Australia; organising international staff exchange programs; negotiating and developing co-operation agreements with international counterparts and responding to their requests for information and assistance. Staff also participate in workshops, conferences and international training programs.

### **The ACCC using private consultants**

The ACCC engages consultants with practical expertise in competition law policies and administration to deliver technical assistance programs. Consultants may be former staff members, and in order to develop an entire 'culture of competition' the ACCC will often also engage members of the judiciary, academia, business and consumer organisations in its capacity building teams.

Consultants must be experienced in the development, implementation and administration of a competition regime. Ideally the experience should be extensive across a range of competition issues, including aspects of policy, enforcement, merger analysis, adjudication functions, investigation techniques and market definition.

The ACCC also considers it vitally important for consultants and competition policy experts to have an awareness and appreciation of cultural, political and social differences. These factors have an enormous impact on business practices. What may be considered the traditional approach to addressing competition issues in developed countries may not work in developing economies. Consultants often therefore need to adopt broader, more flexible and creative strategies and approaches to competition policy than might normally be the case.

**By private contractors**

Some AusAID projects in the competition policy field are open to public tender processes. These projects are often for longer term consultancies or are research based. The ACCC focuses more on practical, results-oriented assistance to its counterpart agencies and hence does not always apply for such tenders.

The ACCC is occasionally approached by AusAID to discuss the framework of certain projects. It is also sometimes asked to offer suggestions or recommendations on appropriate consultants for an activity and to provide briefing to the consultant prior to the commencement of an activity. However, the ACCC generally does not play a large role in projects undertaken by private contractors.

The main advantage of engaging consultants is the ability to tap into the skills and expertise of consultants in other fields, such as regulatory, academic, or legal.

One disadvantage is that the ACCC does not always receive feedback on the effectiveness or achievements of outsourced technical assistance activities. In addition, the details of useful contacts that may be made by the consultant are not automatically provided to the ACCC. However, the ACCC is aware of this, and it is continuing to develop stronger links with AusAID as a countermeasure.

**Conclusion**

The ACCC believes that the shift to a second generation of technical assistance activities has begun, particularly in the field of competition law and policy in the Asia-Pacific region. The first generation involved discussion of the theory, rationale and models for competition law and policy. The ACCC is of the opinion that the second generation involves the giving of assistance in moving beyond this theoretical level, to assistance in the implementation of competition laws, the conduct of investigations, market definition, the institution of compliance mechanisms, identifying and setting priorities and designing an effective media strategy.

The ACCC considers it can be of greatest practical assistance to its international counterparts by sharing its experiences and expertise with countries that may be facing these types of problems for the first time.

In order to ensure that concrete and sustainable development occurs in emerging economies, it is essential that competition policy remains an integral part of technical assistance programs.

Competition agencies should endeavour to educate and work with their Government colleagues responsible for funding and aid priority setting to ensure that they are aware of, and committed to, the goals of competition policy.