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THE UNITED STATES EXPERIENCE IN COMPETITION LAW TECHNICAL ASSISTANCE: A TEN YEAR PERSPECTIVE

**-- Note by the US Federal Trade Commission and the US Department
of Justice, Antitrust Division, Session II--**

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A TEN YEAR PERSPECTIVE**

**U. S. Federal Trade Commission
U.S. Department of Justice, Antitrust Division**

Introduction and Summary

1. For the past ten years the U.S. antitrust agencies have conducted a program of international technical assistance, funded principally by the U.S. Agency for International Development (USAID) for the benefit of developing competition agencies. The program has reached developing nations or nations in transition in Central and Eastern Europe, the former Soviet Union, South America and the Caribbean, and South Africa. There have been four main features of the program: resident advisors, short-term missions (one-two weeks), regional conferences, and internships in the United States for foreign personnel. Depending on the state of development of competition law in individual countries, the program has assisted in the development of framework laws, advised in the creation of enforcement agencies, promoted the education of supporting institutions (other government agencies, academia, business groups, consumer associations and the press) both in and outside government, and provided training of personnel in the substantive legal principles, analytical framework, and investigative techniques needed for the success of a competition law enforcement regime.

2. Over time and with the accumulation of experience, the U.S. agencies have learned a great deal about how to operate an effective technical assistance program at relatively low cost. Several conclusions flow from that learning:

1. The comparative advantage of a program operated by the U.S. government agencies is that it can draw on its own long-term expertise in the investigation, prosecution, and, in some cases, adjudication of competition matters. The career legal and economic experts of the agencies are expert in the practical and analytic skills that are most likely to be lacking in newly formed competition agencies. The strength of the U.S. program is its ability to provide human resources to strengthen the ability of new competition agencies to investigate and resolve competition cases in a way that supports the development of functioning market economies.
2. The most effective form of assistance is to place long-term resident advisors (*i.e.*, those who spend over one month) in foreign postings to directly advise competition agency staffs over a period of time. Over the course of time, resident advisors earn the respect, trust, and confidence of foreign agency staff, who are then more likely to solicit, listen to, and implement their advice. By contrast, an expert who spends only a few weeks does not gain a close understanding of the country, the culture, the institution, the law, and the problems of the host country. Instead, our resident advisors remain in place long enough to follow and advise on actual host-country investigations. They can then advise based on a thorough understanding of the facts and can guide the gathering of additional facts. By contrast, short-

term advisors can only advise based on the situation presented to them that can be, given a natural reluctance to present a less than optimal picture to strangers, somewhat distorted. Resident missions are best positioned to understand the true assistance needs of a new competition authority and through the development of personal and professional relationships, to offer advice that is at once candid and useful. Finally, and most significantly, it places the advisor in the right place and the right time when the “teachable moment” arises -- that point when foreign agency staff realises that it has a complex problem and can benefit from the experience of others as it tries to solve that problem.

3. The second most effective form of assistance is to formulate short-term missions that either teach investigative skills in an interactive hypothetical case exercise, or address particular targeted technical issues. This can either be done for an individual country, or for several countries in a region, in a seminar or workshop format. Short-term missions can also bring specialised expertise to bear in support of a long-term advisor. Ideally, long-term and short-term missions can be combined, so that the short-term mission work complements deeper first hand experience and serves to broaden and deepen the kind of assistance being offered.
4. We encourage regional programs when that is feasible because they facilitate transparency between similarly situated neighbouring countries and encourage the application of the same analytic principles to similar conduct. Regional programs can also spawn regional networking and, eventually, co-operation. To facilitate these goals, we have begun a program of mentoring at regional conferences, where more advanced nations that have already benefited from U.S. assistance co-host events with the U.S. and offer approaches that are indigenous to conditions within a region.
5. The U.S. agencies are discriminating in their participation in most conferences or seminars addressed to general themes, partly because of scarce resources, but also because of the limited utility we see in a straight lecture format. One kind of conference, however, that is well suited for U.S. participation is represented by OECD case analysis seminars, where actual foreign cases are dissected and analysed in an international setting.
6. The agencies have also developed considerable expertise in legislative drafting, particularly with respect to formulations on competitive effects or injury, agency structure and powers, and remedies, and in advising on the technicalities of creation of antitrust agencies, where the U.S. affords two differing models of successful operations. While there are numerous sources of expertise available to help with the drafting of substantive provisions of law, competition agencies have practical experience in how the law is applied which may not be readily available elsewhere. Moreover, the U.S. agency experience has resulted in a cumulative knowledge of comparative law that serves over time to enhance the quality of the advice being offered.
7. Least effective in our experience, although not in concept, have been internships by foreign personnel in Washington. U.S. confidentiality laws prohibit foreign access to ongoing investigative files, so that effective U.S. activities are limited to lectures and discussions that take, at most, a week or two.
8. The comparatively long experience of the U.S. agencies has given them the ability to effectively manage a competition assistance program for three reasons. First, a body of internal expertise and experience in international work has resulted from repeated contact with foreign counterparts. Second, program management at both agencies has been steady over time, so that administration of programs and interagency co-ordination is optimal.

Third, high quality control has been achieved through ongoing routine review of program activities.

3. This paper addresses the United States' experience in providing technical assistance in competition law enforcement. We do not attempt to address the question from the point of view of the literature, which has included several thoughtful and useful discussions of international technical assistance¹. Our own experience, however, has generally been consistent with the findings of those papers.²

Characteristics of the U.S. technical assistance program.

4. Both the Federal Trade Commission and the Justice Department's Antitrust Division use their scarce resources primarily for domestic law enforcement, and do not generally make extensive use of appropriated funds for technical assistance programs³. The agencies rely principally on USAID funds to organise programs and pay travel expenses and salary compensation for the time spent on foreign missions. Therefore, the U.S. agency costs of international technical assistance in terms of personnel are chiefly opportunity costs – whatever domestic enforcement responsibilities are foregone for the time needed to plan and execute a foreign assignment. Strenuous efforts are made to reduce even these costs by employing personnel who have just completed assignments or who are otherwise not at the moment engaged in time sensitive work.

5. The U.S. program is managed and directed from outside the domestic law enforcement staff organisational structure. When the U.S. program began in 1992, its administration was lodged in the budget and financial management branches of the agencies, although substantive program design and personnel assignments were the responsibility of the larger enforcement staff structure. In the Federal Trade Commission, activities are directed by the Office of the General Counsel with the assistance of the international staffs of the FTC Bureaus of Competition and Consumer Protection. In the Antitrust Division, program direction is centered in the Foreign Commerce Section.

6. The U.S. program supports U.S. foreign policy goals, particularly the expansion of world trade and lowering of barriers to investment. Because USAID is an agency of the U.S. government, its priorities and funding have tracked the most significant developments in our foreign policy in recent years. Historically, USAID has focused on underdeveloped nations, but the concept of underdevelopment has acquired new meaning with the collapse of Communism and the failures of centralised economic systems around the world. Competition law is but one branch of a larger body of commercial law with which states characterised by central economic planning lack familiarity, much less experience. In securing funding for our activities, we have emphasised the need for an operating competition law system within a larger structure of reformed commercial law. In developing this theme, however, we have had to recognise that

1 *E.g., Assessing Aid: What Works, What Doesn't and Why*, World Bank Policy Research Report; Cohn, Stuart R., *Teaching in a Developing Country: Mistakes Made and Lesson Learned in Uganda*, 48 J. LEGAL EDUC. 101, 107-108 (1998).

2 *See id.* (noting almost universal agreement among those who have been part of short-term and long-term technical assistance missions as to the need to study the country and culture, receive feedback on local concerns and conditions, use local events and issues to flesh out theories, and know the local law).

3 Limited exceptions have occurred in cases where the competition agencies have a direct interest in the success of foreign competition agencies.

in many developing or transitional economies there exists no “culture of competition,” and that, therefore, our general approach has been first to point out that competition is an engine of economic growth and development, spawning entrepreneurship. Competition law and policy needs to be seen as facilitating business and not impeding it.

7. While the U.S. effort is mainly directed at developing investigative skills, we attempt to integrate our efforts, to the extent possible, with larger goals, because competition policy is almost always an aspect of a larger picture of economic development and expanded trade. Illustrative of this approach in our work in South America was the joint declaration of eleven nations at the First Competition Summit of the Americas in Panama City in October 1998. In the conference communiqué the signatories committed to: 1) the promotion of an authentic competition culture among market participants; 2) affirmation of a commitment to effective enforcement of sound competition laws, particularly in combating illegal price-fixing, bid-rigging, and market allocation; 3) co-operation with each other, consistent with their respective laws, to maximise the efficacy and efficiency of the enforcement of each country’s competition laws, and to help disseminate the best practices for the implementation of competition policies, with emphasis on institutional transparency; 4) encouragement of efforts by those small economies in the region that do not yet have solid competition regimes to complete the development of their legal frameworks; and 5) seeking the advancement of these principles in the Negotiating Group on Competition Policy of the Free Trade Area of the Americas. Taken together, these principles are a blueprint for the USAID technical assistance program for South America.

8. Our program focuses on the development of sound competition policy principles and institutions, taking account of distinctive national conditions. We recognise that no single model of substantive commands and institutions is suitable for all circumstances, and we give considerable attention to establishing the institutional capacity that supports effective enforcement in established antitrust systems. Many countries use civil law systems, which may require greater specificity than is characteristic of most U.S. antitrust laws. For example, the FTC Act makes it unlawful to engage in “unfair methods of competition in or affecting commerce,” leaving to the agency and the courts the delineation of such “methods.” A civil law country requires more specificity, and we adjust our advice accordingly. Likewise, we encourage other nations to benefit from the views of others, particularly the European nations that aspire to membership in the EU.

9. Although our program adapts flexibly to the different legal environments in different countries, it does focus on the three types of conduct that characterise most competition laws worldwide: anticompetitive agreements, especially cartels; single-firm conduct, referred to as monopolisation in the U.S. and abuse of dominance in many other countries; and anticompetitive mergers and acquisitions. We do not purport to be policy planners in terms of suggesting which industries or factual situations should be investigated. We do not profess specific knowledge of conditions in foreign nations, and we have no preconceived notions of what enforcement priorities should be set. Nonetheless, our experience informs us in important ways that may have value to our foreign counterparts.

- For example, we frequently suggest that countries consider cartels the most important component of the law. Cartels result in unambiguous harm, and do not require detailed economic analysis. An enforcement agency might benefit from choosing a factual situation involving a consumer product with a suspiciously high price that is uniform among competitors within defined geographic regions. An antitrust case by a new authority in a developing country that results in lower prices to everyday consumers can demonstrate the value of competition and competition law enforcement to the public and to the other institutions, inside and outside the government, that are interested parties in the results of the reform process.

- In the abuse of dominance area, we tend to suggest that a focus on increased prices that are not cost-justified by a so-called dominant firm may be of less competitive significance than whether barriers to entry into the market exist, and whether incumbent firm behavior helps maintain those barriers. We have often suggested that abuse of dominance theories could usefully be used to attack barriers to entry and have counseled against selection of enforcement targets based on dominance or pricing criteria alone.⁴
- At the other end of the spectrum, mergers and acquisitions are the most complex and the least likely to be an enforcement priority in a developing country. Such investigations are very time consuming. Nonetheless, most new competition agencies do review mergers, so in those cases we tend to suggest sensitivity to whether competition rather than political and social concerns inform the analysis. All too often, a proposed acquisition is seen as a threat to incumbent firms or employment, rather than something that might enhance efficiency and expand output in the long run. Concerns about employment or the closing of antiquated facilities may be a political reality, but we counsel the conduct of a sound competitive analysis in all merger proposals being examined.

10. Finally, we are mindful of the simple fact that government and laws often insulate markets from competition. Here we would look to the authority of the agency to examine such realities, either as an enforcement matter or, more likely, as an advocate of procompetitive policies. The idea of promoting competition advocacy also readily lends itself to larger issues, such as privatisation policy and whether, and how, to reform policies towards regulated industry sectors of the economy.

11. The experience and know-how that U.S. agencies have accumulated over a century of enforcement are uniquely helpful for building effective and creative investigative techniques. It is this experience that we seek to impart to foreign counterparts. We have seen there is a true hunger for practical, operational criteria by which general substantive commands (e.g., “don’t fix prices”) are translated into enforcement initiatives. We provide that know-how in great detail.

The Evolution of a Competition Technical Assistance Program.

12. A competition law and policy technical assistance program such as that operated by the U.S. agencies has a clear evolutionary pattern. It began in our case when the Communist state controlled economic and political systems of Central and Eastern Europe began to give way, circa 1989, to market based economic systems. Nations in the region began to implement measures to “westernise” their economic systems and commercial dealings. Competition law is only one building block of a functioning market economy, and as such can only be accomplished as part of a more complex reform process.⁵ In the

4 Particularly troublesome have been cases based on legislation that declares excessive pricing to be an abuse of dominance. Some agencies have been tempted to use this as a vehicle to impose “back-door” price regulation in response to rising consumer prices.

5 USAID’s Europe and Eurasia Bureau, as part of its Commercial Law and Associated Institutional Reform (C-LIR) project, has produced since 1999 a series of Diagnostic Assessment Reports for various formerly Communist countries. These reports show relative progress in seven areas of commercial law, including competition law, in terms of the development of framework laws, implementing institutions, supporting institutions, and the creation of functioning “markets” for each commercial law.

initial transition period, competition law took a back seat to more immediate reforms, such as macroeconomic reform, banking, and privatisation. The need for competition law reform was predicated on a functioning free market economy, which was lacking at the outset in most cases. Host countries and the U.S. agencies did not begin to address competition issues until over a year after reform efforts began. At that point, we were asked to advise on the drafting of competition laws themselves. It serves an understanding of the U.S. experience to outline a few of the competition-related issues that needed to be addressed, how some of these were suited to our expertise, and how some were not.

A. Assessment of the political and economic environment

13. Our first effort in any country is to assess the political and economic environment. In the first years of our program, this began with a high-level visit to the host country. Indeed, the FTC Chairman and the Assistant Attorney General or one of his deputies participated in the early assessment missions. The importance of competition law and policy may be unfamiliar to governments where the challenges of competition among enterprises is a new experience. Visits by top U.S. officials helped focus high-level attention on the need for effective competition laws and policies, both in the host countries and in the U.S. foreign assistance establishment. As the development of competition laws proceeded in Central and Eastern Europe and understanding of its purposes and importance became more widespread, it was no longer necessary to send top officials on these missions.

14. During an initial assessment, we seek to learn more about, among other things, the national political and economic historical experience, the principal bilateral and multilateral political and economic relationships, the construction of the political system and how it is held accountable, the extent to which private property is recognised and protected, the state of privatisation of public ownership, the degree to which the legal system supports civil society goals and the rule of law, and the main requirements for economic growth and development and expanded trade. Recognising the need for competition law to fit within a larger structure of commercial laws, we also assess the extent of compliance with internationally recognised standards of laws governing contract, corporate governance, securities, bankruptcy, collateral rights, foreign investment, and trade, as well as competition.

15. Some components underpinning a competition law regime were outside of our experience. The U.S. antitrust agencies brought to the table little expertise in the assessment of Communist or statist systems and how to dismantle and reconstruct them. In particular, the process of developing standards of corporate governance or advising on privatisation was outside our direct experience. In such situations, we limited our efforts to our own areas of expertise, and sought out means of co-ordination with others to provide assistance in related areas where appropriate. To this end, useful liaisons were established with, for example, the American Bar Association's Central and East European Law Initiative program in some countries.

16. In more concrete terms, assessment missions also allow us to learn what the agency's needs are and can help target our long-term assistance accordingly. For example, if an agency is well-staffed with qualified economists but has few trained lawyers, we might decide to staff a long-term mission with a lawyer. In two cases, assessment missions told us that the agency spent a good deal of its resources on what we consider to be consumer protection matters, and responded by including attorneys with consumer protection experience on the long-term team.

B. Drafting Framework Laws

17. We have found that our domestic law enforcement experience, coupled with our growing experience in observing what works and what doesn't in transition economies, gives us a unique perspective that we can bring to bear in helping to draft competition laws. The U.S. agencies have familiarity with the workings of the U.S. statutes and an understanding of the parallel provisions of EU law. While the day-to-day work of at least some U.S. agency personnel also involves consideration of new legislation and amendments to existing law, it would be fair to say that in the beginning the idea of helping to draft competition laws for possible adoption by foreign entities was a novel exercise, as it was to a host of other entities that were recruited in the worldwide drafting effort. Over time, however, our internal expertise grew as we accumulated experience in working with new countries based on previous work. We came to see that in a few areas the U.S. agencies brought to bear a keen eye on several discrete areas of legal drafting: forging definitions of the conduct being addressed, helping formulate the legal requirements for competitive injury, fashioning remedies, and helping design the enforcement infrastructure.

18. While countries planning to draft competition legislation often find no shortage of competent assistance in drafting the substantive provisions, we have found that legislation drafted without input from competition enforcement agencies often overlooks some important practical issues. Examples of such oversights abound:

- Competition laws typically provide that the competition agency may compel production of necessary documents by businesses. They do not always provide clear guidance as to what the agency may do when its request for documents is rebuffed.
- While many laws provide for fines of a determinate amount as a sanction in such cases, as a practical matter companies may choose to simply pay the fine as a cost of doing business. Enforcement agency staff familiar with the problem can help discuss providing for more effective remedies.
- Some competition laws provide that the terms of all members of a multi-member body expire at the same time. This can lead to a loss of institutional continuity if all members are replaced simultaneously.
- Agencies' relationship with the judiciary is sometimes poorly considered. In some cases, the judiciary is given a role in all cases but lacks adequate training and experience or lacks the capacity to decide cases based on likely future market effects as opposed to past conduct. In other cases, the agency is empowered to decide cases but lacks effective power to impose remedies and sanctions. It can be difficult to strike an appropriate balance between bringing agency expertise to bear, imposing effective remedies, and ensuring fairness through independent review.
- Some laws can be interpreted to mean that the agency is required to address every complaint, no matter how ill-founded. This can lead agencies to waste time on cases that should never have been opened or, worse, to be used by weak competitors who wish to use the competition agency as a club against more efficient competitors.
- Some laws contain deadlines for action that may not be realistic in actual experience. If a competition agency is forced to reach a decision before it can conduct an adequate investigation, the result may be ill-informed; conversely, overgenerous deadlines may result in unneeded delay to business.

- Institutional demands created by legislative command may not be adequately appreciated. A merger notification program with unreasonably low reporting thresholds may result in a new competition agency being overwhelmed with notifications and having no time to analyze them, let alone address the potentially more serious cartels or abuses of dominance.

19. Problems such as these can be avoided if we can provide pragmatic assistance during the drafting process. We do not recommend particular legislative outcomes. Instead, we advise the drafters on what our experience has shown to be the implications of choosing one course of action over another. We provide options and identify the possible benefits and consequences of the choices under consideration. We have found that being involved at an early stage is particularly useful: it may be too late, as a practical matter, to point out drafting problems during the implementation stage, as it is often difficult to get lawmakers to revisit these issues.

20. In the past ten years, our agencies have examined and advised on the drafting or redrafting of around 50 laws.

C. *Creating implementing institutions*

21. In a similar vein, we have been able to provide valuable assistance to officials responsible for setting up a competition agency. Typically this is done through short-term missions before the agency is created, but it is also done on an ongoing basis by long-term advisors, especially those who are present during the early days of an agency's life.

22. Internal operating procedures, agency structure, and internal guidelines can have a significant impact on the quality of an agency's work. Institutional issues include matters such as who holds the power to initiate investigations and to make decisions. Who within the agency will have the power to compel testimony and require documents? What form will staff recommendations take, and will they be subject to any sort of critical internal review before being presented to the decision-maker? What means will be used to assure the independence of decision-making? What will be the agency's advocacy and public education functions, and what measures will be in place to ensure that its voice is heard? What will be the organisational and procedural rules, and how transparent will they be? What is appropriate staff skills mix, agency size, budget, and technical support systems? What should be staff educational requirements and how can appropriate training be implemented? Bureaucratic inertia being what it is, it can be difficult to persuade agency officials to change these kinds of procedures once they are in place.

23. The U.S. has the advantage of two successful models of government antitrust law enforcement, as well as the ability to refer to a number of specialised regulatory agency models (such as the Federal Energy Regulatory Commission) where competition considerations are at least part of the regulatory policy analysis. While we do not suggest that the U.S. dual agency system should be emulated, that model (an executive department and an independent agency) possesses a pedigree that traces to 1890 and 1914, respectively. Consequently, years of experience – of trial and error – informs our message. In addition to the agency model, the U.S. has the advantage of a strong and independent judiciary, both at the trial and appellate level, which further strengthens and enriches the U.S. point of view.

D. *Educating supporting institutions*

24. A competition agency cannot function in a vacuum. For it to do its job, there must be other institutions in place that understand the role of competition in a market economy.

- At the most fundamental level, this includes the legislative branch that must pass on any law that is enacted. The U.S. agencies are accustomed to explaining their positions to Congress, and we have been able to offer useful advice as to how agencies can formulate their message to their legislators.
- Agencies that regulate natural monopolies, real or imagined, must understand the role of competition and not merely compare input costs with final prices.
- At some level, the work of competition agencies intersect with the courts, whether for adjudication of cases, for judicial review, or for enforcement of orders. Judges may not have any training in competition law, and without adequate training may be unwilling to uphold even the soundest decision of a competition agency.
- The linkages between competition and consumer protection are well understood in the United States, and if the competition agency does not itself handle this function (as the FTC does in the U.S.), a competition agency should have a healthy relationship with the consumer protection agency and should be able to help it understand that consumer protection should complement, not replace, competition in a market economy.

25. Our working experience in building and maintaining these kinds relationships with related institutions in the U.S. as well as with our counterpart institutions at the state and local level, helps us to counsel the need for such relationships elsewhere and to convey the techniques for building them.

26. Support for competition policy also needs to come from non-governmental institutions. This can be done, for example, by encouraging appropriate economics and law course development. In the U.S., the antitrust agencies have found it useful to maintain healthy dialogues with bar and consumer associations and business groups. Finally, we view public education through the media as a critical role. We have worked to encourage competition agencies to develop these relationships and educate these institutions, and have on occasion assisted in those efforts directly.

E. Putting the Pieces Together: Creating a Working Mechanism for Effective Competition Law Enforcement

27. These groundwork steps lead up to the final and most significant stage of our assistance efforts: creating an effective functioning competition agency. Once a law is drafted and an enforcement entity created, the most difficult work is to assist inexperienced foreign personnel learn to apply the law: to conduct investigations, to select appropriate enforcement targets, to shape prosecutions, and to craft remedies. Success in accomplishing this work is the sine qua non of judging the success of a competition regime, and is one of the most difficult undertakings by our domestic agency staffs. Our inherent strength as competition agencies is in assisting staff to develop the skills necessary to identify cases where competition agency intervention might benefit the development of a market economy and to develop the skills necessary to investigate those cases, analyse the results, and develop appropriate remedies. This is a long process. At the FTC and DOJ, experienced antitrust lawyers and economists rarely begin with skills fully developed. They acquire skills, techniques, and judgement from more experienced attorneys and economists over many years. It should not be surprising that staff at new competition agencies need the same thing, and experienced competition enforcement staff from other agencies can help fill that gap.

28. Many skills need to be imparted. How do staff members identify promising potential cases, and perhaps as important, how do they identify those that should be quickly closed? What elements must be proved to establish a case? What information is needed to satisfy those elements, and what might suggest

that the case should be closed? Where can that information be found, and how can it be obtained? What are the evidentiary standards required by the decision maker, and how may it be ensured that the information gathered will satisfy those standards? What remedies are appropriate, and what will be their impact on the marketplace? How should the results of the investigation and recommendations be presented to the decision maker? How can investigations be effectively supervised and reviewed to ensure that the right issues are identified, investigated, and discussed and time not wasted on superfluous issues? The list goes on. Given the high turnover in agency personnel, our biggest challenge is as much the teaching of skills to individual staff members as the creation of a knowledge base that will survive turnover.

29. We have learned that different legal and political environments produce special problems. The idea of reaching out to other government entities to suggest that there might be a better way is often a foreign concept in countries where minding one's own business and asking no unnecessary questions have long been the norm. The need to explain the rationale for government action may not be obvious in countries that used to rely on state coercion to implement government policies. Finally, the idea that the bottom line matters can be as difficult to inculcate abroad as it sometimes is at home. It is easy to believe that success can be measured by the number of cases brought or the amount of fines levied. Perhaps the most critical skill we try to impart is the skill of judging success by the degree that competition improves the lot of a country's consumers.

30. Our advantage in skilled professional human resources was thus brought to bear in a program that stresses long-term resident mission advisors and targeted short-term work including regional conferences. We turn next to a discussion of those two basic components of our program as well as of other techniques we have tried and assessed.

Long-Term Advisors

31. In our experience, placing advisors in competition agencies on a long-term basis is the most effective way to effectuate the goals of technical assistance⁶. No amount of lecturing, simulation exercises or retrospective case analysis can better train staff while promoting development of a competition culture than having advisors present to work with agency staff on their own investigations utilising the actual mechanisms and procedures of their own laws and agencies. Only by being there over a sustained period is it possible to learn what the agency's true needs are. Agency officials may be unwilling, or indeed unable, to identify their needs and shortcomings to those they do not know well and trust. There is no substitute for engaging staff at that point in an investigation when its energies and attention are intensely focused on a given issue and they are most motivated to learn, what some have called "the teachable moment." Having an advisor on the scene at those times is ideal, from the point of view of pedagogy and learning. Advisors who have become familiar with a country's competition law and institutions and market developments can also give much more focused counselling. Moreover, a long-term presence helps develop personal relationships, respect and rapport, which are essential to the development of trust⁷. Only when a relationship of mutual trust develops will advice, no matter how well informed, be absorbed and

6 See also, William E. Kovacic, *Antitrust and Competition Policy in Transition Economies: A Preliminary Assessment*, in ANNUAL PROCEEDINGS OF THE FORDHAM CORPORATE LAW INSTITUTE 537 (Barry Hawk ed., 2000, Ch. 23) ("The best assistance programs are anchored by the presence of long-term advisors who reside in-country and work directly with the host country's policy officials").

7 See also DevTech Systems, Inc., Final Evaluation of the Federal Trade Commission and Department of Justice Component of the Project on Competition Policy, Laws and Regulations 7-9 (Jan. 24, 1996).

applied. These relationships have fruitful by-products in the form of relationships that continue long after the advisor leaves a country. These are especially strong among fellow law enforcers, and lead to informal consulting among peers.

A. *General Description of Long-term Programs*

32. The U.S. began sending its personnel on long-term missions in 1991, soon after the former Warsaw Pact countries set out to form free-market economies. With the exception of Argentina and South Africa, most of our long-term missions have been to former socialist countries. The missions have run from three months to three and a half years. Our first advisors were to Poland (3.5 years) and Czechoslovakia -- later the Czech and Slovak Republics (2.5 years), followed by Hungary (4 months) and Bulgaria (10 months). Subsequent long-term missions were sent to the Baltic nations of Lithuania, Latvia, and Estonia (14 months), Russia (7 months), Ukraine (1 year), Romania (3.5 years), Argentina (3 months), and South Africa (2.5 years). Typically, an individual advisor's residency overseas lasts between six months and a year. Rotating teams of advisors account for the length of some missions.

33. We staff these missions with one or two experienced agency staff members. When the U.S. agencies can fund a team of two, we strive to have a lawyer and an economist, one from each agency. They live in-country and work on a daily basis within the offices of the institution responsible for implementing competition policy, supported by a capable interpreter⁸. We have on occasion extended our resources by having advisors travel on a regular basis from a home base in one country to a nearby country. After Czechoslovakia divided, our advisor in Slovakia also worked in the Czech Republic. Long-term advisors in Lithuania, for example, commuted to Latvia and, for a while, to Estonia. More recently, an advisor in Romania commuted regularly to Bulgaria.

34. Advisors review and comment on both the substance of matters under investigation and the investigative tools that are being used. In some agencies they have also counselled the decision-making body or agency head. In so doing, they help develop decision makers' capacity to identify the outcome determinative facts and issues. While U.S. agency personnel perform an active advisory role, they do not actually conduct investigations or argue the merits of cases, nor do they counsel particular outcomes. Instead, they help identify options and the strength, weaknesses, and likely consequences of the various choices under consideration.

B. *Assistance to Investigating Staff*

35. Some of long-term advisors' most important work is imparting experience to the investigating staff. These staff are very short on experience both in practical skills such as investigational skills and, in many cases, the relevant substantive areas of law and economics. When the long-term advisor programs began in the early 1990's, few of the staff at the agencies we worked with had any training in competition law or industrial economics.

36. Long-term advice on the practical application of these new concepts helps build on and coalesce some of the fragmented knowledge that agency staff picks up from other sources. The guidance of

8 The importance of the interpreter's role cannot be overstated. In most countries we hire an interpreter who usually remains with the program throughout, and who becomes a full-fledged member of the team, not just translating, but helping us understand the basis and context of a concern or question. The interpreter, as a fellow national, often becomes a conduit for news and identifies issues needing our help about which we might not have been approached directly.

seasoned lawyers and economists is needed to understand what they mean in the real world and to apply them correctly. For example, it is one thing to know that there is such an idea as a small but significant non-transitory price increase resulting from a lessening of competition, but it is quite another to learn how to ascertain whether it might result from a particular transaction.

37. Often a long-term advisor can help extend his or her own reach by calling on the U.S. resources of the FTC or DOJ when confronted with a specialised problem outside of his or her own experience. Specialists at FTC and DOJ are easily consulted by telephone or e-mail, and can send written materials as needed. In addition, as discussed below, long-term advisors can identify and co-ordinate short-term missions by industry experts from Washington.

C. *Assistance to Decision Makers*

38. When cases reach the decision-making level, long-term advisors in many cases review staff's memoranda and recommendations. They meet with the agency head or council members to discuss the matter and make suggestions. In some countries advisors prepared confidential written analyses for decision makers, some of which eventually evolved into final agency decisions. In some countries staff attended council meetings and were even asked to contribute to the discussion of the case.

39. Participation in an agency's proceedings at this decision-making stage helps to insure that the decision has a solid basis in the findings of fact, that the order and remedy, if any, is effective, and the agency's written decision is well reasoned, useful, and enlightening. Because he or she comes from an enforcement agency with a long experience, a long-term advisor can give the agency the confidence to make the difficult but necessary decision. For example, an agency head may be reluctant to reject a staff recommendation and close an investigation after a lengthy investigation has proven nothing without some reassurance that a conclusion that the law has not been violated is itself a successful outcome. Through experience garnered over time, advisors can see problems with remedies that are effective in the short-run, but anticompetitive in the long-run. They can point out problems with remedies that limit price increases or prevent labour cutting and other cost-cutting measures that can initially be very tempting. The advisor can, for example, provide useful assistance to agency decision makers who face political pressure to keep prices down or to prevent multi-national corporations from absorbing hallmark national industries. The role of an antitrust agency in these social issues should be limited to an analysis of the competitive consequence. The long-term advisor is strictly neutral with respect to issues that fall outside the scope of the law or economics of competition. The very fact that the advisor has nothing to gain or lose by the decision makes his or her own advice all the more valuable.

Short-Term missions

40. While we have found that the use of long-term advisors is the best way to provide technical assistance to new competition agencies, there are occasions when the use of short-term advisors is an effective tool. We have found that short-term advisors are effective in the legislative drafting and institutional design stages, discussed above, in targeted support of long-term missions, and for conducting interactive investigational skills workshops. On the other hand, our experience has shown that they are rarely as effective as the type of assistance we can provide through long-term advisors.

A. Targeted missions in support of long-term missions

41. Short-term missions have a role in support of long-term missions. They can supplement and extend the skills of the long-term advisors once they are in place, and can provide follow-up assistance after a long-term mission ends.

42. Although the long-term advisor will doubtless have his or her own areas of specialised expertise, the long-term advisor is necessarily an antitrust generalist and cannot be expert in all of the disciplines of antitrust. When an important issue requiring specialised expertise arises, we have found that sending someone from FTC or DOJ with the appropriate expertise can make a big difference. For example, one agency we assisted was confronted with a highly controversial privatisation that was subject to agency merger review. Highly vocal opponents of the merger claimed it would result in the loss of tens of thousands of jobs; proponents argued that blocking it would result in loss of investor confidence. There was significant pressure on the agency to “get it right.” The long-term advisor had never handled a case involving that industry, so we sent an economist with experience in the industry to assist the agency in conducting a rigorous market analysis.

43. After our long-term advisor leaves, there are often significant unfinished projects. Follow-up short-term missions by the long-term advisor can help complete the work, and perhaps more importantly help give the agency staff confidence that they can handle tough cases on their own.

B. Interactive Regional Training Programs

44. We have also used short-term missions successfully to conduct interactive investigational skills training workshops based on hypothetical cases. We have developed hypothetical cases that would present a panoply of issues one might expect to encounter. One involves a hypothetical merger; one involves a possible abuse of dominance (or monopolisation); one involves a suspected cartel agreement; and one involves deceptive advertising⁹. In these exercises, participants are initially presented with some background information and the kind of document that might trigger an investigation in the real world: a competitor or consumer complaint or a pre-merger notification. Participants are then guided through the identification of appropriate issues for investigation and the formulation of an investigational plan¹⁰. Under our guidance, they formulate a document request. This, in turn, results in purportedly responsive documents (prepared in advance) being produced. Simulated interviews are conducted. Interspersed with the practical exercise are lectures on investigational skills based on our staffs’ own experience. Participants from numerous agencies have told us that these seminars are of great value because they convey real-world investigational experience in the context of an actual case. These interactive exercises were designed by experienced former long-term advisors with extensive domestic experience and expertise with the type of investigation at issue. They are designed to approximate, as closely as possible, actual investigations that antitrust enforcement staff anywhere might encounter. We have modified each “case” to fit the facts of the countries in which they are employed.

9 The FTC has broad jurisdiction over the U.S. consumer protection laws, including those directed at marketing fraud and deceptive or false advertising. In cases where foreign agencies, like the FTC, have both antitrust and consumer protection authority, we offer technical assistance.

10 See also, William E. Kovacic, *Antitrust and Competition Policy in Transition Economies: A Preliminary Assessment*, *supra* n. 6 (advantage of short-term missions focused on hypothetical cases and role playing).

45. Our most successful training exercises have been conducted on a regional basis. Given the high turnover in foreign agency personnel, it is difficult to assure that technical assistance is learned and retained over time, but we believe that regional approaches to assistance are a measure of assurance that countries continue to learn from each others' experiences. Regional conferences have permitted the sharing of experiences and a broader approach to conveying the most important message, which is how to conduct an actual competition investigation. In particular, regional programs create other synergies that ultimately lead to more effective law enforcement. They promote regional networking. Agency staffs often receive little opportunity to meet with their counterparts in other countries, and in some cases, contacts formed at regional conferences have led to co-operation on investigations. We have also structured conferences so that more advanced agencies in the region can develop mentoring relationships with less experienced agencies, such as by co-hosting events with the U.S., and offer approaches that are indigenous to conditions within a region. This has recently been undertaken, for example, in Hungary with respect to Southeast Europe. At the end of the conference, participants leave with a full set of materials so that they can present the hypothetical case in their own office.

46. Larger international conferences, while generally successful, have proven more cumbersome and less cost-effective than regional conferences. Between 1992 and 1995, FTC and DOJ cohosted four large international antitrust conferences in Vienna, and the FTC conducted an additional program devoted to consumer protection. These events were attended by delegations from as many as eleven nations. Materials were translated into each language, with oral presentations simultaneously interpreted in each language as well. As many as ten U.S. personnel formed the faculty, and the teaching materials were of a fairly high order of sophistication, including brief hypothetical cases illustrating what to look for in investigations of specific suspect conduct. While we were pleased with the results of the conferences, we no longer are able to justify these activities. If done "right," they are extremely expensive, costing several hundred thousand dollars each. In today's environment, the amount of money needed to stage a large conference is almost as much as we need to field a resident advisor and supporting short-term missions for a year. We feel the resident advisor program is a better value, given scarce resources. It is also difficult to measure the lasting effect of what may be taught at a week-long conference. There are more effective delivery systems, such as interactive case analysis, for short-term missions.

C. *Other short-term missions*

47. In some countries, budgetary limitations or the desires of the host countries have prevented us from using long-term advisors, and we have attempted to rely exclusively on a program of short-term missions instead. While these have proven of some use in limited circumstances, they have generally not proven an effective substitute for long-term advisors.

48. Short-term missions of this sort tend to focus on lectures and, in some cases, the presentation and discussion of ongoing cases. Lectures, however, tend to focus on theoretical or general themes which cannot be readily transformed into real-world applications. One competition agency official, before setting off for another international conference, told us of her expectations for the conference and hopes not to be once again hectored on the "theory of competition." Moreover, visiting lecturers often have a difficult time adapting and interpreting concepts in ways that make sense in a developing economy. American lawyers, for example, often have difficulty adapting their comments to the civil law systems that prevail in much of the world. Discussions of judicial review and judicial enforcement of compulsory process often do not take adequate account of the limitations of judicial systems that lack the training, status, and pay of their American counterparts. Analyses of barriers to entry may ignore the subtle but real effects of corruption and the pervasive influence of networks connecting dominant firms with regulatory officials. Short-term experts without technical assistance experience cannot be expected to absorb these nuances immediately, and we have found that experts who demonstrate ignorance of them quickly lose credibility.

49. One type of short-term mission that we do believe to be worthwhile is the case analysis seminar such as those sponsored by OECD. We have participated in such seminars in Vienna, Ukraine, Russia, and Brazil, and have found that by bringing together competition agency working staffs from various countries to present and analyse cases of their own, with participation by more officials from more experienced countries, real educational synergies occur. Competition agency staffs from developing countries can be each others' toughest critics.

50. Another situation in which stand-alone short-term missions have proven valuable is when a relatively advanced agency correctly identifies an area in which its expertise is deficient and asks for focused help to remedy the deficiency. In those cases, we can dispatch a lawyer or economist with experience in the area that has been identified and can provide useful help. Recently, for example, we received a request from a moderately advanced agency that we help it learn how to analyse bank mergers. They were confronted with several such mergers and realised that they did not understand the analysis as well as they needed to. The assistance of a DOJ banking expert was well-received and useful.

Internships and Study Visits by Foreign Personnel in Washington, D.C.

51. The original U.S. program included funding for internships in Washington for teams of employees of foreign competition agencies. The theory of such internships is that by working beside U.S. counterparts, foreign representatives could learn first hand how the U.S. agencies do their work in actually conducting investigations. In practice, this proved not to be feasible because of the U.S. confidentiality laws that protect many documents, testimony, and interviews obtained in investigations from disclosure to persons not on the U.S. agency's staff. The U.S. hosts were left with arranging a series of lectures and discussions that may have had some worth because of the relatively large human resource base that existed in the Washington area.

52. Internships are very expensive because of travel and per diem costs, and require a good understanding of English to work best. The actual U.S. experience in the mid-1990s was that some of the most able interns did not remain long at their sponsoring agencies upon their return. In programs where funds are limited, there may be more cost-effective forms of assistance.

53. Our current approach is to host visiting delegations who have been funded outside the USAID programs administered by the U.S. agencies, and to divide the visitors' time between our agencies for usually no more than a week each. Each agency offers a series of presentations by a diverse group of experienced people, who describe their work and their role in the larger enforcement picture. We leave plenty of time for questions, which is one way to direct our advice to real world problems of concern to the visitors.

Advantages of Long-term Missions Over Short-term Missions

54. Long-term advisors see virtually all of the cases that are under investigation, the important and the relatively insignificant, the well-conceived and the unlikely, the successful and the ill-fated. They can interject themselves into debates and steer the analysis before opinions solidify and entrenched positions make dialogue unproductive. Open and useful discussions of agency cases requires a background of trust and rapport. A short-term advisor, on the other hand, does not have time to develop such a relationship, and cannot get to know the agency's staff, the law, or the language as well, nor can they be put in place at the critical "teachable moment."

55. Long-term advisors meet and get to know the senior decision-makers. Deference and respect for senior political appointees is ingrained in U.S. government professionals, and over time this respect

becomes mutual. The advisor can work with these decision-makers and give them the understanding of competition concepts to make them useful contributors to the debate. Often, long-term advisors have seen their advice reflected in questions that a senior decision-maker asks at hearings or in remarks for public presentations. While the expertise of short-term advisors will be respected, they cannot expect to win similar confidence.

56. Long-term advisors meet and work with agency staff at all stages of an investigation. They discuss the initial decision on whether to open an investigation, advise on requests for documents, help identify potential witnesses to interview, and encourage and train staff actually to do the interviews. They may help structure the written report or recommendation, helping to identify what is and what is not important and to identify the important issues. Short-term advisors will at best see cases at an isolated point or in retrospective, and are unlikely to learn the full story. Having a wise and seasoned helping hand involved in the process and modelling for younger staff is how we teach our own staff. Absent such seasoned staff of their own, young agencies in developing countries can use long-term advisors as their next best option.

57. Over the longer term, long-term advisors can observe problems that can be effectively “swept under the rug” in the short term. As some EC advisors have learned, agency progress cannot be judged from a distance. Well written laws and carefully edited annual reports can give the impression of a well functioning system, but they can mask a big gap between good laws and sound enforcement. Because antitrust law is very fact specific, it is relatively easy to present the facts in a way that makes an agency action designed to protect incumbent local businesses from new competition appear to be a sound use of the antitrust laws intent upon protecting the competitive process. The often too-short and too-pithy “motivations” that agencies publish may report what appears to be a good result that was reached for the wrong reasons.

58. Long-term advisors also work with the supporting institutions, or may help to build supporting institutions. Young staff in the agencies sometimes ask their law or economics professors to invite advisors to give lectures. Chambers of Commerce and trade associations receive support for market enhancing initiatives. Bar associations can seek advice, support and ideas for educating the bar and the public.

59. To summarise our conclusion favouring resident advisorship in foreign agencies, we believe there are at least five goals to be advanced that no substitute program serves as well to promote:

1. Advice on setting priorities that emphasise the matters of greatest significance.
2. Application of rigorous legal and economic analysis in real life situations.
3. Instill self-confidence in foreign counterparts through developing long-term professional and personal relationships.
4. Managing the influence of non-antitrust considerations in conducting investigations.
5. Stressing the value of written explanations and conclusions for actions undertaken with emphasis on the rationale for decisions taken.

Questions That OECD Has Posed For Discussion And Our Responses

1. *Is the supply of and demand for technical assistance currently in balance? If need for assistance exceeds the supply, what steps might be taken to make donors more aware of this need?*

60. There can be no doubt that the demand for technical assistance greatly exceeds the available supply. The ability of the U.S. to respond to this demand turns on whether additional developing nations seek commercial law reform, and Congress responds by approving assistance funds for commercial law as well as more traditional projects. The prospects for this happening are strongest in South America, Africa and Asia. Several countries have asked the U.S. agencies for technical assistance. The agencies have personnel who are qualified and could be made available to meet this demand, if funds were available to pay the costs. In some cases, we have supplied the demand within the constraints imposed by limited funding by providing short-term missions in the nature of seminars or conferences. We have even assisted one country entirely through telephone, email and fax communications, which does not require an actual travel mission. As detailed in our paper, we do not believe that short-term missions are the optimal means for meeting the demand for technical assistance. In some cases, countries have very specifically requested long-term resident advisors. We are working with USAID to respond to those requests. Once a need for assistance is identified and we are aware that funding is available, we have had no difficulties in writing proposals for giving assistance that we know are likely to be effective and low cost.

2. *What are the advantages and disadvantages of providing technical assistance through competition authorities as opposed to private contractors?*

61. Both private contractors and competition authorities share a familiarity with the ultimate goals and purposes of competition policy, but competition authorities also have familiarity with the practical and unique difficulties in implementing the policy in the public interest.

62. Competition laws and policies, unlike most other commercial laws and policies, are enforced in the public interest exclusively by government enforcement agencies. As a result, technical assistance must be geared toward implementing competition laws and policy through a government enforcement agency. Competition authorities are familiar with the practical difficulties that a government enforcement agency encounters and how to overcome those difficulties. Private contractors with significant and recent government experience are also familiar with the difficulties connected with implementing the policy. If private contractors have enforced competition laws only in private actions, as is possible in the U.S., they would be familiar with only a few of those difficulties. Prioritising investigational resources, assessing the effect on the public interest of remedies, and writing decisions that send a clear message to business and industry are only a few of the issues that are unique to government agency enforcement.

63. Providing technical assistance is more than just a matter of sharing know-how. It also entails personal relationships. The shared experience of government law enforcers is an advantage that private contractors, even those who were once part of a government agency, lack.

64. Another way of putting it is to say that the effectiveness of a program turns, more than any other thing, on the quality and quantity of human resources that can be brought to bear on the project. To match a government program, a consultant would need not only an expert on competition law with government investigative experience, and a superior written teaching product, but a way to match the ability of the government representatives to fall back on the depth and breadth of expertise within their own organisations to deal with virtually any legal or economic problem encountered, whether substantive or

procedural. An advisor from a competition agency can draw on the full resources and experience of that agency, which a contractor is unlikely to be able to duplicate.

65. It is also important to note that in a world of scarce resources, the cost of the government assistance program is the cost of government salaries and standard travel per diems, and the standard USAID percentage for administrative cost.

3. *Is it desirable and possible to give competition authorities a greater role in the provision of technical assistance without straining their limited resources? If so, what are delegates' reactions to the following possibilities?*

- a) *Legislators could allocate significant financial resources to competition authorities for the provision of technical assistance, including resources to cover the costs of having employees dealing specifically with technical assistance;*
- b) *Contracts from government funding agencies could cover the agencies' total costs of providing technical assistance;*
- c) *Competition authorities could be given a much larger share of available funding, with discretion to provide assistance through its staff or to use their expertise to shape technical assistance projects and select qualified private subcontractors; and*
- d) *Competition authorities could advise funding agencies on the design of their technical assistance projects and on the selection of qualified private contractors.*

66. As a practical matter, we acknowledge that the universe of deserving targets for foreign assistance funds is very large, and that even within commercial law, competition law is but one of more than a half-dozen components. It is unrealistic to expect a legislative appropriation earmarked for competition technical assistance alone. We have been comfortable advocating that some small portion of funds earmarked for much broader purposes (creation of a Free Trade Area of the Americas, for example) be employed in what is obviously a project that facilitates attainment of that goal. Currently, in the U.S. the vast majority of funding for technical assistance is provided to government agencies and private contractors through USAID, drawn from congressional appropriations directed to just such broad foreign policy goals. While we would like to see effective competition laws and implementing institutions in all countries, we believe that USAID is in the best position to prioritise the allocation of resources among regions of the world, among countries and among programs within countries. At times USAID has funded technical assistance to regions and given the agencies the discretion to determine where within those regions to dedicate the most time and energy. We have, therefore, found that we have sufficient discretion within the confines of USAID contracts to make effective use of the funds provided.

67. We do believe that our domestic law enforcement mission priorities necessitate compensation to the U.S. agencies for salaries and administrative costs. We have not generally absorbed the costs of technical assistance by allocating resources to them as one of our own agency programs. Technical assistance is a "reimbursable program," where the U.S. agencies recover costs.

68. It does make sense that if private contractors are to be utilised, the government agencies that possess ten years of expertise in these programs help establish the specifications and qualifications necessary for USAID funding. This very recommendation appears in the 1996 DevTech report, which USAID commissioned to evaluate the first three years of the DOJ/FTC technical assistance program in Eastern and Central Europe.

4. What are the likely costs and benefits of the following forms of co-ordination?

- a) *Reducing the cost of organising technical assistance events and providing advice by creating some sort of virtual “library;”*

69. While such a library may have benefits, it is unlikely to reduce the costs of technical assistance. Making materials available is not the same as knowing how to use it or knowing which materials are relevant and reliable. A library, traditional or virtual, can help to answer a question, but is of less use to someone who doesn't know what question to ask. Moreover, the answers to many investigational and institutional questions come from experience and judgement, not written materials. Easy access to vast amounts of material through Internet searches and to knowledgeable people by e-mail diminishes the need for collecting those materials in one virtual library. A useful project would be to assemble a bibliography of all published work in this field, in all languages.

- b) *Minimising unwarranted overlap and duplication by more and earlier sharing of information on planned events;*

70. Recipients are in a good position to minimise overlap and duplication. It would be very helpful for providers know what kinds of technical assistance have been provided in the past in order to aid long-term planning, and there may be some benefits to beneficiaries who may learn of potential sources of technical assistance. An annual report listing all technical assistance programs would be helpful and sufficient. It would be difficult to assemble a reliable pre-program list, at least with respect to U.S. programs, since we believe in flexibility and are sometimes willing to modify our programs right up until they are scheduled to begin.

- c) *Promoting better assistance through voluntary joint ventures involving international panels by even greater and earlier sharing of information on geographic and substantive areas of individual donor's interest and perhaps information on the assistance requested by particular potential beneficiaries; and/or*

71. Joint ventures such as the OECD's Vienna Conference are a good example of effective co-ordination on international panels. As stated in our paper, these case analysis seminars are useful for learning and uniquely useful for providing networking opportunities for attendees.

- d) *Rationalising technical assistance by combining extensive information sharing with the creation of a central body to advise on how donors might best meet recipients' needs.*

72. In our experience, recipients have found the direct contact with donors and the task of dealing with one government and its agencies relatively simple. In particular, they have found larger multinational entities especially cumbersome when providing resident long-term advisors, the form of technical assistance that both they and we believe is optimal. The U.S. program is a client service operation, and we prefer to deal directly with the countries and organisations we are assisting. We see no need for an additional layer of consultation, which, at best, would be a subjective “second opinion” on our plans.