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#### ABSTRACT

The FTC's technical assistance (TA) program understands that for competition to realize its potential in bringing about economic growth and development it must penetrate the culture and public policies of an economy. The TA mission, therefore, takes a comprehensive approach. Assistance focuses on building not only effective competition authorities and the capacity to enforce competition laws. It also assists in building a culture of competition and reviewing, assessing and adopting public policies conducive to competition. This article surveys how the FTC's engagement requires reaching out to different institutions and informal groups. TA directed to issues of competition culture and policies is more difficult than competition law enforcement TA that is directed primarily to a young competition authority's investigational and analytic skills. When to engage, with whom to engage, and how to engage in a way that respects local sensitivities require a greater understanding of local issues and approaches more specifically tailored to the jurisdiction. This survey of the various ways in which the FTC has engaged demonstrates how the FTC's many years of experience and long-term commitments to individual jurisdictions have honed its skill in making those engagements successful.

# The role of competition culture and policies in the Federal Trade Commission's technical assistance mission

## I. Introduction

1. The bread and butter of the FTC's competition technical assistance (TA) work is building the capacity of young competition authorities' staff to protect competition by conducting sound analysis, and effective efficient investigations and enforcement actions while affording appropriate due process to parties. But the FTC's TA program does much more than that. It assists competition authorities and other governmental bodies to promote competition by advocating for a better grassroots understanding and appreciation of the benefits of competition and more market-oriented governmental policies and regulations.

2. A TA program limited to investigational and legal analysis skills is not enough. Because the fundamental option to open or expand an economy to the forces of competition very often comes as a political decision down from above, from political and economic policy decision makers, rather than up from the grass roots, it often rests on shaky ground.<sup>1</sup> Putting this fundamental national decision on a sound foundation is a long process with four major components: (1) helping stakeholders

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<sup>1</sup> A. A. Foer, Competition Culture and the Cultural Dimensions of Competition, in D. Gerard and I. Lianos (eds.), *Reconciling Efficiency and Equity: A Global Challenge for Competition Policy* (Cambridge University Press, 2019), at 299–300.

and a public at large to appreciate the benefits that can accrue from a greater role for competition in the economy; (2) introducing and nurturing pro-competitive public policies; (3) passing a competition law and enforcing compliance with it; and (4) building an institution with the specific mandate and sufficient resources to promote and protect competition. These components reinforce each other. “[T]he co-evolutionary interactions between culture, politics, and law are complex, multidirectional, and variable.”<sup>2</sup> Greater appreciation of the benefits and role of competition, for example, will increase compliance with the law and “will [also] place indirect political pressure on officials to embrace competition-friendly regulations.”<sup>3</sup> Introducing greater competition into formerly regulated or state-controlled sectors through wise and targeted policies that have demonstrable consumer benefits will, in turn, increase public appreciation and support. Creating a specialized institution increases the odds that the fundamental option will survive against backlash and will have the resources needed to promote and protect the option. And, enforcement actions that eliminate cartels and abusive conduct by dominant firms, and prevent anticompetitive mergers will allow the entry into and innovation in deregulated and liberalized markets necessary for them to realize their fuller potential.

3. In an article published two years ago, I focused primarily on the FTC’s TA work addressing the third and fourth of these components.<sup>4</sup> This article will fill out the picture of the FTC’s competition TA work, focusing on why and how the FTC’s competition TA program, especially as it has played out in Southeast Asia, assists in building a grassroots culture of competition and advocating pro-competitive public policies.

## II. Advocating for a culture of competition

4. The FTC’s TA work usually begins before a competition authority exists when government policy and political decision makers are still discussing passage of a comprehensive competition law and creation of an enforcement body. At this stage, the FTC assists both in commenting on drafts of the legislation and in joining outreach efforts to build support for competition. After it is created, the competition authority—without losing focus on building a core cadre of staff capable of protecting competition with sound investigational and law enforcement skills—typically almost immediately launches its

competition advocacy mission, promoting competition, and asks the FTC to assist in this effort.

5. FTC attorneys and economists conducting TA missions that support this advocacy mission quickly learn that competition advocacy in developing and transitioning economies is quite different from in the U.S. The FTC’s advocacy work in the U.S. rests on a general societal acceptance that competition is a good thing. The challenge is simply how to expand competition into certain industries and professions or reduce or eliminate regulations that unnecessarily impede competition. In developing economies, competition does not have that same level of acceptance as in the U.S. Competition advocacy has a bigger target audience and broader challenge. It is directed to formal and informal institutions and groups that are not governmental or quasi-governmental policymakers, and it aims to bring about greater understanding and acceptance of the benefits of competition at all levels of society.<sup>5</sup>

6. At Competition Advocacy Workshops, that the FTC, Organization for Economic Cooperation and Development (OECD) or Asia-Pacific Economic Cooperation (APEC) have organized in developed countries, participants observe a stark difference between what advocacy means to the presenters from the developed countries or multinational organizations and presenters from the young agencies in developing countries. Presenters from developed countries run through slide decks pointing out how their competition authority has influenced legislators and policymakers to remove barriers to competition in regulated sectors. In contrast, presenters from developing countries, while acknowledging the role for advocacy in policy matters, are more concerned about outreach to lower level local political organizations, consumer groups, the media, educational institutions and, by various other means, spreading an understanding of what competition means and how it can help an economy grow. One of the strengths of the FTC’s TA work is that several of its attorneys and economists have had sufficient experience working in developing countries that they are prepared to engage with cultures that approach competition law and policy from this different starting point.

7. The International Competition Network (ICN) Competition Culture Report also recognizes the need for this broad role for advocacy that includes addressing the many institutions, formal and informal, public and private, that embody social attitudes and customs toward competition. It defines competition culture as: “A set of institutions that determine individual and/or group behaviour and attitudes in the sphere of market competition. These are influenced by wider social institutions and public

<sup>2</sup> Ibid., at 300.

<sup>3</sup> T. Zywicki and J. Cooper, The US Federal Trade Commission and Competition Advocacy: Lessons for Latin American Competition Policy, in E. Fox and D. Sokol (eds.), *Competition Law and Policy in Latin America* (Hart, 2009), at 352.

<sup>4</sup> T. Hughes, R. Damtoft and R. Tritell, International Competition Technical Assistance: The Federal Trade Commission’s Experience and Challenges for the Future, in E. Fox, H. First, N. Charbit and E. Ramundo (eds.), *Antitrust in Emerging and Developing Countries* (2nd ed., Concurrences, 2016).

<sup>5</sup> Competition law is, of course, a public policy and all laws and regulations are part of a culture. This paper distinguishes between competition law and competition policy and between competition culture and competition policy because in practice the institutions and individuals to whom the advocacy is directed and the issues addressed are, for the most part, different.

*policy choices and include customs impacting the degree of business competition and cooperation within a jurisdiction.”*<sup>6</sup>

**8.** In South Africa, India and Indonesia, for example, in a juxtaposition of apparent contradictory concepts, competition authorities call this type of advocacy, “socializing competition.” Indonesia also refers to it as consciousness raising. By this, they mean spreading through all levels of society a better understanding and appreciation of competition. “Socialization is a process directed towards the internalization of the principles, beliefs and norms of a foreign community. (...) Socialization implies a deeper understanding and penetration of the ideas borrowed from the foreign country than emulation.”<sup>7</sup>

**9.** For younger competition authorities the starting point for competition advocacy is not with narrow or specific sector policies, but with the culture as a whole.<sup>8</sup> “Where there is no ‘culture of competition’ the populous will likely have many misconceptions about how effective market economies operate. If the breakup of local monopolies leads to short-run job losses, significant popular backlash can be expected and many can quickly come to view competition as a threat to their existing benefits. Negative reactions to competition promotion have been common across the globe as public sector employees feel their livelihoods threatened by the breakup of protected industries and the private sector fears that CPL [competition policy and law] is merely an excuse for additional government meddling and oversight. Outreach to the private sector, media, and the consumer are therefore critical components of any CPL development strategy.”<sup>9</sup>

**10.** Nurturing a competition culture is a long-term project involving many parts of society. As Professor William Kovacic has said, “[a] ‘good’ competition regime,” needs many institutions that understand and support competition to have effective “competition systems.”<sup>10</sup> The ICN lists several of those institutions and key constituencies: the government, judiciary, the legal community, the business community,

members of the public, media, and academia.<sup>11</sup> And, it should begin as early as possible. It should not wait until passage of pro-competitive laws, regulations and policies. A study contrasting how India engaged in a process of socializing its competition law prior to passage with Pakistan, which did not, and the subsequent greater success of the Indian law demonstrated how important socialization is.<sup>12</sup> Doing so during the months or years leading up to the passage of pro-competitive legislation can result in much better long-term compliance with the law and support for the implementing agency.

**11.** The FTC has assisted many developing countries during this preparatory stage of socializing competition and preparing the way for competition laws and pro-competitive policies before an official national or regional competition authority exists. The assistance involved extensive consultations, workshops, studies, and general listening sessions that generated interest in and increased support for passage of pro-competitive policies and laws protecting competition.

**12.** Early work with the Association of Southeast Asian Nations (ASEAN) is one example of the FTC’s involvement during this preparatory stage. In January 2004, only two ASEAN member states (AMSs) had comprehensive competition laws, Indonesia and Thailand. Singapore and Vietnam were well along in drafting laws, but had not yet passed the laws. The other six members were at various stages of general interest in increasing competition in the economy or in talking about passing a law and creating a competition authority. The FTC met with the secretary general of ASEAN to assess his and the members’ interest in promoting competition law and policy at the individual AMS level and at the regional level. With a green light from the secretary general and in partnership with the Indonesian Competition Commission, especially Commissioner Soy Pardede, the FTC organized a series of conferences and workshops.

**13.** Because the majority of the AMSs were still in the early stages of understanding the practical implications of opening their markets to competition, conference organizers had to reach out to many different institutions. Out of these initial ASEAN regional conferences, the ASEAN Consultative Forum for Competition (ACFC) emerged.<sup>13</sup> Even a year after forming the ACFC, only three members—Indonesia, Thailand and Vietnam—were represented by competition authorities. Other

<sup>6</sup> ICN Advocacy Working Group, Competition Culture Project Report (2015), at 9; [www.internationalcompetitionnetwork.org/wp-content/uploads/2018/09/AWG\\_CompetitionCultureReport2015.pdf](http://www.internationalcompetitionnetwork.org/wp-content/uploads/2018/09/AWG_CompetitionCultureReport2015.pdf).

<sup>7</sup> A. Darr, The Interplay of Institutions: Linkages between Enacting and Implementing Competition Law in India, Centre for Law, Economics & Society Research Paper Series 4/2016, UCL, at 3, citing, J.-F. Morin and R. Gold, An Integrated Model of Legal Transplantation: The Diffusion of Intellectual Property Law In Developing Countries, 58 *International Studies Quarterly* 781 (2014), [www.researchgate.net/publication/259203702](http://www.researchgate.net/publication/259203702); [www.ucl.ac.uk/cles/sites/files/cles-4-2016](http://www.ucl.ac.uk/cles/sites/files/cles-4-2016).

<sup>8</sup> D. Hayward and M. Kemmelmeier, How Competition Is Viewed Across Cultures: A Test of Four Theories, 41 *Cross-Cultural Research* 364 (2007), <https://wolfweb.unr.edu/homepage/markusk/Hayward&Kemmelmeier2007CCR.pdf>.

<sup>9</sup> W. Butterworth, C. Nitikitpaibon, T. Thi Bich Nguyen, Outlawing Monopoly: A Programmatic Evaluation of USAID’s ASEAN Competition and Consumer Protection Program From a Development Perspective, USAID Regional Development Mission for Asia (2011), at 16.

<sup>10</sup> W. Kovacic and M. Lopez-Galdos, Lifecycles of Competition Systems: Explaining Variation in the Implementation of New Regimes, 79 *Duke L. Rev.* 85 (2016), at 88 and *passim*.

<sup>11</sup> ICN Advocacy Working Group, Competition Culture Report, *supra* n. 6. The report includes the results of a survey to which forty-nine member agencies responded assessing the level of awareness of the benefits and requirements of competition for each of these institutions and constituencies. About half of the responding agencies were from transitional or developing economies that receive or had received FTC TA. Because the other half were from developed economies in which one would expect a fair degree of awareness and acceptance, and the results were aggregated, the survey results are not useful in assessing levels of awareness and acceptance in developing versus developed countries.

<sup>12</sup> A. Darr, *supra* n. 7.

<sup>13</sup> The ACFC was the precursor to and founding organization for the current ASEAN Experts Group on Competition (AEGC).

members sent representatives from the Brunei Office for Economic Planning and Development, the Cambodian Domestic Trade Department, the Laos National Economic Research Institute, the Myanmar Foreign Economic Relations Department, and the Philippine Tariff Commission and Department of Trade and Industry. In keeping with the understanding that culture and policy were the main challenges in the region, the ACFC adopted organizing Terms of Reference that insured membership would be open not only to “representatives from the respective competition authorities and/or from the agencies, [but also to] ministries and other governmental bodies that are involved in and responsible for competition policies.” The ACFC also articulated goals focused as much on competition culture and policy as on competition law enforcement: “(b) Promote public awareness on the need for competition policy, the contribution of effective competition policy and/or law to economic competitiveness and development, attraction of foreign direct investment and the protection of consumers (...) (e) Encourage and promote the use of competition analysis in the formulation of national and regional economic policies.”<sup>14</sup>

14. A review of the speakers and topics at the ACFC’s conferences in those years clearly shows that the participants recognized the broad scope of their endeavor to move an entire public and government mindset away from excessive state, oligarchic, and crony capitalist control of AMSs’ economies. Speakers were from other jurisdictions such as Hungary and South Africa that were a few years ahead in the process. Topics included: “Why Competition Matters for Economic Growth & Trade”; “Gaining Grassroots Support for Competition: Lessons from the Developed World & Lessons Learnt in South Africa”; “Challenges Faced by Indonesia, Thailand and Hungary in Insuring Independence, Transparency and Consumer Support”; “The Interface Between Competition & Regulatory Institutions”; and, “Embedding Competition Law and Policy in School Curricula.”

15. The FTC’s work in the Philippines is another example of this effort at “socializing” a competition culture. During the years leading up to passage of the Philippine Competition Act in 2015 the FTC with support from USAID/Manila organized workshops and engaged in small group sessions to discuss competition law and policy with legislators, legislative staffers, various ministries, private attorneys, chambers of commerce, consumer groups and business trade associations. Many were supportive of competition and wanted to make sure that they understood on a more practical level what would happen when competition was introduced to their sector or when a competition law, long stuck in the Congress, would finally pass. Some had misconceptions that needed to be corrected. Family conglomerates that feared that they would not be able to coordinate the operations of their subsidiaries learned about

competition law’s approach to agreements among subsidiaries of a single economic enterprise. Small and medium enterprises that feared the overwhelming power of multinationals learned about the possibilities of matching the power of the multinationals with local joint ventures as alternatives to cartels. Consumer groups learned about the increased quality and service that would likely result from opening sectors dominated by government-owned and controlled corporations. As a result of these listening sessions, some provisions in the law explicitly address these concerns. Some of the language found in the current statute that appears to paraphrase the U.S. Copperweld Doctrine and other U.S. jurisprudence, grew out of this process of socializing competition. The presumption of dominance based on market shares in drafts of the law, and which most U.S. competition lawyers would rather not have been included, remained in the final law. But, with a better understanding of the dynamics of competition, the drafters became comfortable with making the presumption clearly rebuttable.

16. Having a competition authority gives some degree of permanence to the option in favor of opening markets to more competition. It is, however, only one small step in the direction of building a culture of competition. Outreach to stakeholders and the general public continues to be necessary. New competition authorities know this, and seek assistance with their outreach programs. The AMSs’ Guidelines recognize the need for TA to “Improv[e] the competition regulatory body’s capacity to educate the public about the objectives and scope of competition policy.”<sup>15</sup>

17. Because outreach work can be expensive, donors are also at least as important for this effort as are experienced competition authorities. The AMSs and most other competition authorities have enlisted help from the FTC, OECD and many other competition authorities and donors to help. Outreach involves organizing conferences, developing educational materials, traveling to other cities, liaising with opinion makers, bringing together educators to develop curricula from law schools, international relations and trade schools, business schools and economics departments. In recent years, competition authorities in India, the Philippines, South Africa, Ukraine and Vietnam, to name a few, have enlisted FTC and USAID help to do this. In India, the FTC worked with the Competition Commission of India in its outreach to the private bar. In the Philippines the FTC organized or joined other organizers for numerous workshops for representatives from the regulated sectors, the judiciary and law schools. In Ukraine, after building contacts with various private actors in the past few years, the FTC is now embarking on a major USAID project to work through the competition authority with consumer groups and reform-minded decision makers to address the over-concentration of economic power in some hands. In Vietnam and Indonesia, after conducting a training program with the competition

<sup>14</sup> Terms of Reference for The ASEAN Consultative Forum for Competition, adopted unanimously by representatives from all 10 ASEAN Member States at the High Level Workshop on ASEAN Consultative Forum for Competition, Oct. 11–12, 2004, Jakarta.

<sup>15</sup> See, e.g., Different Needs that could be met through Technical Assistance and Capacity Building Programmes, ASEAN Regional Guidelines on Competition Policy, para. 8.3 (2010).

authority's staff on investigational skills, the FTC very frequently added a one-day outreach competition seminar for stakeholders that businessmen, educators and government officials from various ministries would attend to learn about the benefits of competition and the practical implications for their work.

18. Another way in which the FTC has helped young authorities to maintain efforts to build a competition culture has been its work on the ICN written materials on the benefits of competition.<sup>16</sup> These practical tools give tips for effective communication to the public, businesses and governmental bodies. They outline key messages aimed at each of these constituencies. In addition, they give several case examples showing how agencies have conducted outreach and how to work effectively with media and academia. *“While the core characteristics of societal cultures tend to change quite slowly (absent social upheaval or some abject calamity such as wartime destruction), the level of understanding and acceptance of the basic requirements of competition and competition law can evolve measurably within a shorter period of years where there are determined, sustained and financially supported efforts to trigger and nurture cultural change.”*<sup>17</sup>

19. The FTC's TA program has been and will continue to be a part of that sustained effort.

### III. Advocacy for pro-competitive public policies

20. Eleanor Fox has described how her work in developing countries has broadened her antitrust interests to the point that competition advocacy on public policy is now what most intrigues her: *“It is called advocacy in the West, but is a larger-than-life advocacy and is adjunct to nothing [in the developing world]. In the U.S., advocacy entails, for example, the Justice Department Antitrust Division's arguing with a regulatory agency to allow or disallow a merger. In Kenya it is about identifying the stubbornest economic barriers that keep hundreds of thousands of people out of the market – restraints likely to be much more damaging competitively and personally than any private restraint; and assessing whether it is politically and practically possible to tear the barriers down.”*<sup>18</sup>

21. Nineteen years at the FTC devoted almost exclusively to the FTC's TA mission have had a similar effect on this author. More than law enforcement, changing public policies can produce the tangible results that improve people's lives and, indirectly, build support for competition.<sup>19</sup>

22. Whether in the context of a developed economy that has historically been very open to competition or in a transitional or developing economy, advocacy with governmental and quasi-governmental bodies for regulatory or policy changes is, in some sense, building a culture of competition. It does have, however, some unique characteristics making the process different from outreach to the general public and businesses. It aims at a narrower audience and usually addresses specific proposed regulations or other government policies.

23. Advocacy on policy issues is something with which the FTC is very familiar and able to provide TA from experienced FTC staff.<sup>20</sup> The policy-advocacy process entails: (1) identifying legislation, regulations or simply customary ways of doing business that may restrict competition; (2) drawing the attention of policymakers to the effects of the identified regulation or business practice on competition; (3) identifying alternatives that allow the benefits of competition to accrue while meeting other legitimate public policy goals; and (4) helping policymakers weigh the conflicting views of different stakeholders supporting or opposing the regulation or custom.

24. Identifying politically and culturally possible targets for competition advocacy is the first step in policy advocacy. The OECD and ICN have developed tools that are especially effective for this advocacy step. The OECD's Tool Kit is a checklist of possible ways in which regulations can unnecessarily impede competition. The World Bank, Asia Development Bank, OECD, APEC and various international aid agencies including USAID, directly or through local consultants, assist local authorities by conducting such assessments or in-depth surveys and studies.<sup>21</sup> The competition authorities themselves are also involved in these studies or initiate studies of their own.

25. Identifying governmental restraints on competition is relatively easy in developing and transitional countries. Government interventions in the market place through state-owned enterprises, import and export boards that act effectively

<sup>16</sup> [www.internationalcompetitionnetwork.org/working-groups/advocacy/benefits-of-competition](http://www.internationalcompetitionnetwork.org/working-groups/advocacy/benefits-of-competition) (2017).

<sup>17</sup> M. Marquis, Forging links between competition authorities and academic institutions, November 2019, *Concurrences Review* No. 4-2019, Art. No. 92049, para. 1.

<sup>18</sup> E. Fox, Competition Policy at the Equity–Efficiency Intersection, in D. Gerard and I. Lianos (eds.), *Reconciling Efficiency and Equity: A Global Challenge for Competition Policy* (Cambridge University Press, 2019), at 444.

<sup>19</sup> T. Hughes et al., *supra* n. 4, at 191–192

<sup>20</sup> FTC works closely with USDOJ to ensure that the experiences of both agencies are available when TA is requested in areas where one or the other U.S. agency has specialized expertise, such as DOJ's expertise in telecommunications and transportation. The FTC's experience as a consumer protection agency is also helpful where the policy debate involves the interface between competition and consumer protection concerns. In recent years, big data and data privacy are examples of this interface.

<sup>21</sup> See, for example, the description of the World Bank/Kenya Competition Authority advocacy identifying, raising public awareness of, and successfully removing the legislation giving the Pyrethrum Board a monopoly in E. Fox and M. Bakhoun, *Making Markets Work for Africa* (Oxford University Press, 2019), at 6.

as price and output cartels and legislated exemptions from competition are plentiful.<sup>22</sup> Identifying sectors or regulations that unnecessarily impede competition is like shooting fish in a barrel.

**26.** Recent assessments in Kenya and Indonesia are typical. In 2019, at the invitation of USAID in Kenya and the Competition Authority of Kenya, the FTC did a survey assessment and found numerous policies ripe for more in-depth competition assessment. Local stakeholders identified regulatory systems that limit access and affect prices paid to farmers, delays at ports of entry, on the single gauge railroad terminals and in last-mile trucking, time-consuming registration processes, and standards-based licensing requirements that have not kept pace with scientific developments or consumer preferences. In 2018, the Indonesia Competition Commission conducted twenty-two such competition assessments.<sup>23</sup>

**27.** Drawing the attention of the policymakers to the potential drawbacks for competition may also be easier. Given the smaller size of some of the economies and social networks, communication with them may be relatively easy and informal. Some competition laws also explicitly provide a role for the competition authority. Without a culture of competition, however, government policymakers may not be as aware of a policy's effects on competition or the benefits of competition, and they may resist change.

**28.** The challenge is not in identifying policies that unnecessarily restrain competition and in bringing the matter to the attention of policymakers. It is in identifying those restrictive policies on which there is a practical possibility, culturally and politically, for greater openness to competition.<sup>24</sup> Once a regulation that may restrain competition has been identified, the questions to ask are the same in both a U.S. and TA recipient context: What is the likely impact of the regulation or other proposed action on producers and consumers? What justifications exist for any restrictions on competition? Are there alternatives that would protect consumers and fulfill other important public policy goals, without restricting consumer choice or unduly burdening legitimate business activity?

**29.** Answering the questions and weighing the pros and cons of the policy, however, requires a depth of local knowledge beyond an FTC TA advisor's expertise. Determining the

appropriate weight for competition versus other policy considerations is very fact intensive and can be very politically or culturally sensitive. Introducing competition in sectors such as telephony, energy, and food staples may affect the very vulnerable poor or may affect state-owned enterprises from which ministries or powerful individuals derive significant benefit. Or, as discussed above, because the relationship between culture and politics are complex and multi-directional, deeply ingrained cultural or religious beliefs regarding cooperation and distributive justice may weigh more heavily than someone from outside could anticipate. *“Although generally embraced by market theorists, the idea of human competition is much more controversial among social theorists and the general public alike, as it is typically wrapped up in a particular view of human nature. (...) Specifically, do the peoples of this world agree with Adam Smith that competition brings out the best in people by enhancing their effort and creativity? Or is competition viewed, with Thomas Hobbes, as a corrosive force that reduces us to antisocial beasts? The answer to this question likely has implications not only for the acceptance of a market system itself but also for the culturally specific adaptation of market principles.”*<sup>25</sup>

**30.** The FTC, therefore, offers technical assistance on issues of policy advocacy with great deference and respect, and only upon invitation from local recipients and through proper local channels. It often works closely with local experts who are separately engaged in similar USAID funded projects. And, just as FTC advisors do not engage in the initial drafting of substantial parts of competition laws—unlike some consultants hired by donors—and only comment and suggest amendments to language already proposed by local parties, they also do not engage directly in drafting advocacy on specific policy issues. Instead, when responding to invitations, FTC advisors limit themselves to offering tools, frameworks, and the FTC's own typical methods of doing policy advocacy as general approaches from which the trainees can draw, not to be rigidly followed.

**31.** The FTC has organized or participated in workshops in Indonesia (2009) and the Philippines (2013) and various other jurisdictions instructing on the use of the OECD Tool Kit for doing competition regulatory assessments. In 2016, the FTC's delegate to the APEC Competition Policy and Law Group and USAID's liaison to the APEC Economic Committee (EC), Nicholas Klissas, also asked the APEC CPLG and EC to include presentations by OECD on its Tool Kit at the annual APEC Senior Official's Meeting in Lima, Peru. It has since proven to be an effective way to advance the APEC Economic Committee's objective of advancing APEC members' structural and regulatory reform and ease of doing business. The presentations in Peru led Vietnam and the Philippines to seek APEC funding for projects that would use the Tool Kit. An APEC project in Vietnam using the Tool Kit studied several regulations, made recommendations, and concluded in April

<sup>22</sup> *Global Comp Rev.* Nov 25, 2019, reports that the Indonesian Competition Commission has called for removing the section of Law No. 5, the Competition Law of Indonesia that grants SOE's exemptions.

<sup>23</sup> KPPU Annual Report on Competition Policy Developments in Indonesia – 2018, submitted to OECD Directorate for Financial & Enterprise Affairs, Competition Committee, [https://one.oecd.org/document/DAF/COMP/AR\(2019\)46/en/pdf](https://one.oecd.org/document/DAF/COMP/AR(2019)46/en/pdf).

<sup>24</sup> See, e.g., P. Wisuttisak and M. F. Cheong, Competition Law, State-Owned Enterprises and Regional Market Integration in ASEAN, in B. Ong (ed.), *The Regionalisation of Competition Law and Policy within The ASEAN Economic Community* (Cambridge University Press, 2018), 94–134; E. Fox and D. Healey, When the State Harms Competition—the Role for Competition Law, 79 *Antitrust L.J.* 769 (2014).

<sup>25</sup> D. Hayward and M. Kemmelmeier, *supra* n. 8, at 365.

2019 with a workshop in which experts, including from the FTC, commented on the study and made further recommendations. Noteworthy among the ways in which restraints on competition limit the ability of suppliers to compete were price controls for milk products for young children and the quotas and regulations on rice that discriminate in favor of SOEs.<sup>26</sup> A similar APEC funded study is underway in the Philippines.

**32.** The FTC has organized several of its own TA advocacy workshops for both competition agency staff and as a way of reaching beyond competition authorities to attorneys and investigators in government regulatory agencies to prompt them to identify ways that competition might be a better way to deliver the results desired by their regulations.<sup>27</sup> Such workshops offer practical tips for identifying policies that unnecessarily restrict competition, including FTC's experience conducting industry and merger retrospective studies, break-out brainstorming sessions on the pros and cons of regulation versus competition, and examples of how the FTC proceeds.

**33.** At a more granular level, the FTC's TA on advocacy describes in detail methods used and provides examples of actual FTC advocacy letters to legislators or regulators, and briefs submitted to courts. The FTC's written advocacy generally begins with a clear articulation of the antitrust agencies' interest and experience in promoting competition. It also emphasizes that consumer welfare is the FTC's concern as a competition authority evaluating the regulation. To the extent that restrictions on competition are necessary to prevent significant consumer harm, the advocacy points out ways to draw the restrictions narrowly and minimize the anticompetitive impact.

**34.** Coordination, cooperation and regular open lines of communication between competition authorities and other government regulatory bodies are also important elements of effective advocacy on public policies. Competition authorities need the very specialized expertise of the sector regulators, and the regulators need the expertise of the competition authorities. Codifying this relationship, as the FTC has done with the Consumer Finance Protection Bureau, in memoranda of understanding is one way to insure this exchange and cross-pollination. The Philippine Competition Commission (PCC) is one example of the many competition authorities with whom the FTC and DOJ have worked in training sector regulators on the basics of competition law and policy with the goal of having them review the structures and regulations over which

they have control. This effort has resulted in a series of memoranda of understanding between several Philippine sector regulators and the PCC. A very practical result of this cooperation has been the current Philippine Department of Agriculture competition assessment of the rules governing the supply and price of rice and sugar, staples affecting the entire population and the poor, in particular.

## IV. Conclusion

**35.** Promoting a competition culture and deeper penetration of competition into policies wherever possible is essential to the process of putting a fundamental option in favor of a market economy on solid ground. The process requires a sustained effort over many years. For many years, the FTC has been assisting the process in Africa, Latin America, SE Asia and Ukraine with its own funding and additional funding from USAID. My hope is that the FTC can continue this assistance well into the future. ■

<sup>26</sup> Le Duy Binh, Competition Assessment of Regulations: A Pilot Assessment in Viet Nam Using APEC-OECD Framework on Competition Assessment (2019), <https://www.apec.org/Publications/2019/03/Competition-Assessment-of-Regulations>.

<sup>27</sup> A non-exhaustive list of FTC workshops promoting regulatory assessments and approaches to competition advocacy includes: Armenia (2007), Indonesia (2009), Vietnam (2009), China (2010), India (2012), Pakistan (2013), Chile (2015), South Africa (2016), and Guatemala (2017). FTC staff have also assisted with training at ICN Advocacy Working Group Workshops in Paris (2012), Rome (2013), Mauritius (2014), Mexico City (2016), and Kyiv (2019).