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THE COMPETITION POLICY ENTREPRENEUR AND LAW REFORM IN FORMERLY COMMUNIST AND SOCIALIST COUNTRIES

by William E. Kovacic*

INTRODUCTION

For travelers from the United States, few destinations are more remote in culture or locale than Ulaanbataar. From North America, reaching the capital of Mongolia usually involves an eleven-hour flight across the Pacific to Tokyo, a connecting five-hour leg to Beijing, and a concluding two-hour hop over northern China and the Gobi Desert in a fully-depreciated aircraft bulging with Chinese, Mongolian, and Russian merchants and their hand-carried wares. The long journey, austere accommodations, and extended, arduous winters, deter casual visitors.

Since 1990, when Mongolia repudiated communism and embraced democracy, a new class of American adventurers has appeared in Ulaanbataar. They come not in search of the Silk Road, the ruins of Ghengis Khan's empire, or the stunning physical landscape of desert, steppe, and mountains. Instead, they come to create new laws. They are economists and lawyers who advise this agrarian country of 2.2 million inhabitants about building the legal foundation for a market economy. In the corridors of government agencies responsible for economic policy, it is common to see Americans (and consultants from other capitalist economies) bearing studies and statutes for the consumption of Mongolian policymakers.

In early February 1993, I stood in a queue of fellow Americans gathered in the offices of Mongolia's State Commission for Privatization, a major advocate of economic reform. As a member of a team from the University of Maryland's Center for Institutional Reform and the Informal Sector (IRIS), I was there to help draft a new antitrust law for

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Mongolia.¹ I watched as another group of American consultants gave a Privatization Commission official whom I knew a foot thick pile of paper containing laws and regulations for the securities industry in the United States. The American securities experts, who had been in Mongolia for all of a week, explained that the materials could serve as models for establishing a new Mongolian securities regulation system.

My Mongolian acquaintance laboriously leafed through the documents, examining almost every page. He then looked up at the securities experts, smiled, and said: "These materials are clearly of high quality and will be very helpful to us. We will put them to good use." Pleased with this favorable reaction, the Americans quickly added that they could supply more model statutes and regulations if desired. The Mongolian official replied that he would welcome more materials and asked that they be printed on one side only, like the papers he had just reviewed. The Americans said they easily would provide one-sided copies, shook hands, and headed for the airport, buoyed by what seemed to have been a most productive week in Ulaanbataar.

As I entered the privatization official's office, I asked what he would do with the securities documents, which seemed hopelessly complex for a country whose newly created stock exchange was open one day per week and traded shares in only a few companies. "In Mongolia we have a shortage of paper," he explained. "These advisors have given us high quality paper printed on one side. We will make copies on the other side. These materials are very useful. I hope they send more." After a pause he added: "Do you know how many Mongolians have the background to comprehend these laws and regulations? Maybe a handful. New laws must be suited to our capabilities, experience, and circumstances. If new laws are to succeed, Mongolians will have to carry out the new laws. Do not forget the human dimension of reform."

The Mongolian official's comment made a point that easily gets lost in discussions about economic reform in formerly communist or socialist countries. The success of a new legal regime, however well-conceived in theory, depends vitally on "the human dimension." Debates about optimal institutional models, reform paths, and technical legal details obscure the extent to which reform rises or falls on the judgment and skills of the people who will build and operate the institutions that

1. See William E. Kovacic & Robert S. Thorpe, *Antitrust and the Evolution of a Market Economy in Mongolia*, in *DE-MONOPOLIZATION AND COMPETITION POLICY IN POST-COMMUNIST ECONOMIES* 89 (Ben Slay ed., 1996) (describing the Mongolian competition law project).

apply the law. This Essay explores the central role of personal leadership and other human qualities in the reform process in the context of efforts to develop competition policy systems in transition economies. The observations in this Essay are based on my experiences with projects to design and implement economic law reforms in Mongolia, Morocco, Nepal, Russia, Ukraine, and Zimbabwe. My aim is to suggest how the personal traits and professional abilities of competition policy "entrepreneurs" are essential to the effective design and implementation of competition laws. By themselves, skillful policy entrepreneurs do not ensure successful law reform. Without them, there may be little point in trying.

The Essay treats the subject in four parts. Part One describes the obstacles that confront public officials who are attempting to create and execute competition policy systems. Part Two reviews some of the major professional characteristics of officials who have played important roles in antimonopoly systems in transition economies. Part Three examines the different functions that competition policy entrepreneurs must play in creating an antimonopoly system. Part Four discusses ways to increase the capabilities of those charged with executing new competition laws.

I. IMPEDIMENTS TO REFORM

Major obstacles confront public officials responsible for designing or implementing new competition laws in transition economies. These obstacles take at least five forms: (1) opposition from public beneficiaries of the regime of central planning; (2) severe resource constraints; (3) political instability associated with the transition from planning to markets; (4) the risk of physical harm at the hands of private criminal networks that, especially in the former Soviet Union, control many types of business activity; and (5) flaws in the programs by which external donor organizations fund technical assistance programs.

A. RESISTANCE FROM THE STATE

Creating a market system and dismantling public and private barriers to competition endanger powerful public institutions that prosper from the operation of central economic controls. It is difficult to overstate the strength and durability of opposition to competition-oriented reforms from government ministries that oversee specific economic sectors and state-owned enterprises. Among other ways, competition policy authorities routinely contradict the preferences of these bodies by promoting the

privatization of state-owned firms, by advocating the elimination of public controls on entry, and by challenging efforts by state-owned firms to use state privileges to thwart private enterprise.

In a number of cases, ministries and state-owned companies have waged effective campaigns to deflect competition reforms that would divest them of the rents that central planning provided. The strategy of resistance has focused mainly on impeding effective implementation of nominally strong substantive legal commands. Reform opponents might prefer to block the enactment of reform legislation altogether, but preventing the adoption of new laws is not necessary or, especially in the first years after the collapse of a communist or socialist government, feasible. Indeed, formerly communist and socialist countries have adopted an abundance of market-oriented laws, often to appease donors who make the adoption of economic reforms a condition for providing financial assistance.

There are a number of ways to ensure that facially significant laws have minimal practical effect. One approach is to defer, in the original legislation, important implementation decisions concerning such matters as the structure and remedial powers of the enforcement mechanism. The longer it takes for new laws to be put into effect, the greater their vulnerability to shifts in political sentiment that transfer power to individuals who disfavor the reform legislation. A second approach is to attack specific enforcement choices or other policy initiatives of the new competition authorities. Some heads of new competition agencies—most notably, Ana Julia Jatar of Venezuela—have resigned their jobs where government and private interests favoring the status quo *ante* waited for the early sentiment for political reform to abate, lashed out at specific competition and market liberalization measures, and created an environment that made it impossible for the competition reformer to remain in office.

In other cases, official opposition to competition reforms results not from rent-seeking but from a deeply held ideological belief in the superior efficacy of planning. In November 1992, I worked with IRIS advisors Karen Turner Dunn, Georges Korsun, and Robert Thorpe, to conduct case studies of Mongolia's meatpacking, telecommunications, and

wool-spinning industries.² The case studies were designed to assist in efforts to draft a new Mongolian competition law.

As part of our research, we traveled to Darhan, an industrial center located approximately sixty miles south of the Russian border. We interviewed a number of business officials, including the regional manager of Mongolia's state-owned telephone company. The phone company manager bemoaned economic liberalization and predicted that weakening central economic controls would ruin Mongolia. During the interview, he sat in his office beneath a shelf holding small, freshly dusted busts of Lenin, Stalin, and Choybalsan, the ruthless head of Mongolia's communist government from 1939-52. There was a time, since passed, when maintaining such a shrine was a compulsory gesture of political fealty. But the phone company manager displayed this troika out of admiration, not necessity. In Mongolia, and in other formerly communist nations, he is not alone.

B. RESOURCE CONSTRAINTS

Once established, competition policy enforcement mechanisms tend to be badly underfunded. New competition agencies must claw their way into national budgets where governments are being pressed to cut public expenditures. Agencies rarely receive resources that are commensurate with their responsibilities. Frail administrative infrastructures are the rule. The typical competition authority is desperately short of computers, copiers, printers, telephones, and fax machines needed to carry out routine administrative tasks and link regional offices with agency headquarters. The Mongolian privatization official's lament about a lack of copier paper was not whimsical.

Translated competition source materials for guiding policy decisions and training professional staff are scarce. In the summer of 1995, I traveled with Thomas Timberg, an economist expert in development economics, to three southern Russian cities, Chelyabinsk, Novosibirsk, and Irkutsk, to give workshops to officials from the regional offices of Russia's State Committee for Antimonopoly Policy and Support of New Economic Structures (SCAP). The program was funded by the World Bank and organized by the International Law Institute (ILI), which ar-

2. See KAREN TURNER DUNN, WILLIAM E. KOVACIC & ROBERT S. THORPE, *ANALYSIS OF COMPETITION IN MONGOLIA: THREE CASE STUDIES* (Ctr. for Institutional Reform and the Informal Sector, Univ. of Md., Country Report No. 14, 1994) (presenting the results of the Mongolian industry case studies).

ranged to have Ernest Gellhorn's and my *Antitrust Law and Economics in a Nutshell*³ translated into Russian and distributed to every workshop participant. Beginning in Chelyabinsk, autographing the *Nutshell* became a standard element of each week's activities. Before the workshops began, I could not have imagined that I would sit in the former dacha of a Communist Party official, located near one of Russia's most secret nuclear weapons research centers, and sign copies of an American antitrust text. Several workshop participants explained the source of fascination with the book. The *Nutshell* was the first volume on Western antitrust law to be printed in Russian.

Perhaps the most telling sign of resource constraints is the average salary. The typical professional employee of the Ukraine Antimonopoly Committee (AMC) receives a monthly wage of about \$20-40. The AMC Chairman gets roughly \$100 per month, along with the use of an apartment and a car. One evening in Kiev in June 1995, Roger and Linda Boner and I tried to calculate the budget for the Ukraine AMC. The Boners are American economists who were in the midst of a one-year tour as the IRIS resident advisors to the Ukraine AMC. We estimated that the total annual AMC payroll was about \$120,000. Yearly costs for computers, copiers, rent, telephone service, and travel came to another \$80,000. We looked at each other in disbelief when we realized that we could operate the entire agency for a year for roughly \$200,000.⁴

In many parts of the former Soviet Union, even the nominal wage for SCAP employees is paid irregularly. During our ILI workshop in Irkutsk, Tom Timberg and I learned that the employees of many of the SCAP regional offices had not been paid in several months. A major attraction for attending the workshop was the prospect of keeping some of the per diem provided for meals. Some participants told us that Vladimir Dormidonov, the head of SCAP's regional office in Irkutsk,

3. See ERNEST GELLHORN & WILLIAM E. KOVACIC, *ANTITRUST LAW AND ECONOMICS IN A NUTSHELL* (4th ed. 1994) (surveying United States antitrust statutes, precedent, and enforcement policy). To support the workshop project, the West Publishing Company gave ILI a royalty-free license to prepare and distribute the Russian translation and offered to waive the modest (\$500) payment that it ordinarily charges for the right to offer a translation of one of its texts.

4. Cf. *President Proposes Increased Funding for Both Antitrust Enforcement Agencies*, 46 ANTITRUST & TRADE REG. REP. (BNA) 168 (1995) (reporting that for the 1996 budget the United States Federal Trade Commission requested \$52 million for its competition mission and the Antitrust Division of the United States Department of Justice requested \$91 million; both figures include \$48 million for each agency for offsetting collections derived from pre-merger notification filing fees).

has kept his employees afloat by paying most of their salaries out of his own pocket for weeks at a time.

The poverty of resources is sobering in several respects. The small salaries make it difficult for new competition agencies to retain their best professionals for more than a year or so. Employment in the SCAP territorial offices has become the equivalent of a mini-MBA program—one of the few places in Russia where young professionals can get hands-on experience and training about the theory and practice of a market economy. After a year with SCAP, a recently graduated economist or lawyer becomes highly attractive to private sector employers who are eager to recruit individuals familiar with concepts central to a market system. A more serious concern is that low salaries create dangerous possibilities for corruption. Timberg and I heard a number of comments about the manipulation of SCAP's Register of Monopoly Enterprises. Regulations promulgated under Russia's antimonopoly law require SCAP to place firms with market shares of thirty-five percent or more on the Register and subject them to extensive oversight, including price controls.⁵ We were told that SCAP officials sometimes have taken bribes to leave firms off of the Register or to delete registered firms from the list.

C. PUBLIC DISCONTENT ABOUT MARKET REFORMS

The political equilibrium favoring market-oriented reforms is highly unstable in many formerly communist and socialist countries. Former communists shrewdly have exploited public discontent with the economic and social disruption occasioned by the transition to democracy and a market system. In a number of countries, new competition agencies work in the shadow of developments that are shifting political power to communists and socialists who wish to retard, or reverse, the progression toward a market economy.⁶ Reformers have no assurance that their commitment to developing competition programs will yield enduring accomplishments, and they face the prospect of professional disgrace or

5. See Vladimir Capelik & Ben Slay, *Antimonopoly Policy and Monopoly Regulation in Russia*, in *DE-MONOPOLIZATION AND COMPETITION POLICY IN POST-COMMUNIST ECONOMIES* 57, 70-76 (Ben Slay ed., 1996) (describing the operation of Russia's Register of Monopoly Enterprises).

6. See, e.g., Alessandra Stanley, *Communists Lead the Ruling Party by 2 to 1 in Russia*, N.Y. TIMES, Dec. 19, 1995, at A1 (reporting on substantial gains by the Communist Party in recent parliamentary elections in Russia).

retaliation if shifts in the political equilibrium restore power to planners and statist⁷.

D. PHYSICAL DANGER

In late October 1995, Ukraine's AMC held a Conference on Antimonopoly Policy in Kiev. The attendees consisted mainly of officials from the AMC's Kiev headquarters and its twenty-six regional offices. The principal speakers included competition agency officials from transition economies and Western nations, including William J. Baer, the Director of the Bureau of Competition of the United States Federal Trade Commission (FTC). In one plenary session, Baer described various aspects of United States antitrust enforcement and fielded questions from the audience. An attendee from an AMC regional office asked if, in enforcing the law, Baer ever faced threats to his physical safety. To the surprise of the audience, Baer said that threats against United States antitrust enforcers are unheard of. He explained that United States law enforcement officials sometimes require physical protection when prosecuting persons accused of violent crimes or drug trafficking. Business managers sometimes disagree with FTC decisions strenuously, but the thought that a company might assault an antitrust official never crosses Baer's mind.

The question posed by the Ukrainian conference participant is grimly serious for antitrust officials in the former Soviet Union, where organized criminal networks exert extensive control over the economy. In parts of Russia and Ukraine, the "mafia" functions as a private government, controlling entry into some business sectors and "taxing" incumbent business operators. Implementing a competition policy program may place antimonopoly agencies at odds with the mafia where the agencies seek to dissolve cartels or dismantle barriers to new entry or expansion by existing firms. During our workshop for Russian SCAP officials in Novosibirsk, Tom Timberg and I acted out a problem involving petroleum distribution. Timberg played the manager of a state-owned firm that dominated the sale of petroleum products, and I played a private entrepreneur who recently had entered the gasoline retail market and was

7. See, e.g., Jane Perlez, *Ex-Communist Appears to Best Walesa for President of Poland*, N.Y. TIMES, Nov. 20, 1995, at A1 (reporting on continued gains by former communists in Poland following their regaining control of the Parliament in 1993); Claudia Rosett, *Russian Communists Target Privatizers*, WALL ST. J., Feb. 13, 1996, at A11 (describing prospects for political retaliation by communists against the architects of Russia's privatization program).

gaining sales at Timberg's expense. After he tried to cut off my supply of gasoline, I accused Timberg of illegal monopolization and asked SCAP to dissolve his monopoly.

With the workshop participants, we analyzed competition in petroleum distribution, including questions of defining markets, measuring market power, identifying unlawful exclusionary behavior, and designing demonopolization remedies. The dialogue was insightful and invigorating. As the session ended, one workshop member cautioned that all of us had ducked a major issue. The mafia, he explained, was a major distributor of petroleum products. If it issued a demonopolization order, SCAP's regional office would have to consider the possibility that the entrant whom I portrayed and the head of SCAP's regional office might be shot.

E. FLAWED DONOR PROGRAMS

New competition policy institutions depend substantially on assistance by foreign donors. These include multinational organizations, such as the United Nations Development Program and the World Bank, and national entities such as the United States Agency for International Development (AID). Foreign donors give competition bodies money to buy hardware (such as computers), and they fund programs to provide technical assistance in drafting and implementing competition laws. Heavy reliance on support from external donors exposes the competition agencies to various pathologies that afflict decision-making by these groups.

The chief pathology is nearsightedness. Donors prefer to invest in activities whose outputs are readily measured. Donors tend to favor projects such as law drafting, because they can directly observe and count the output of the drafting effort—a new statute. By contrast, donors are generally reluctant to invest much effort in institution-building activities whose outputs they cannot easily quantify but whose contributions are crucial to successful implementation.⁸ Donors commit too little support to assistance for activities such as preparing internal protocols and external guidelines that describe how the competition agency will perform its duties, conducting training programs that help the agency's professional staff to develop analytical methodologies and

8. See William E. Kovacic, *Designing and Implementing Competition and Consumer Protection Reforms in Transitional Economies: Perspectives from Mongolia, Nepal, Ukraine, and Zimbabwe*, 44 DEPAUL L. REV. 1197, 1219-20 (1995) (discussing incentives that cause donors to underinvest in implementation activities).

investigative techniques, and devising outreach programs that publicize the agency's work and inform the business community and the public about the competition law's commands. The tendency of donors to underinvest in activities that ensure that nominal legal commands will be applied effectively is exacerbated by the desire of individual donor managers—such as the director of a donor field mission—to generate tangible accomplishments during the typical two- or three-year posting. Few field office directors care to fund long-term projects that generate benefits for which the director who began the project cannot claim credit.

Experience with Mongolia's competition law provides an instructive example. AID funded efforts by IRIS to help the Mongolians draft an antitrust law. When the draft law was completed, AID ceased support for the competition project. The Mongolian law drafting group received no technical assistance during the summer of 1993, when the Mongolian parliament debated and passed the law, or in the two years following enactment, when a small team of Mongolians prepared rules to implement the law. The lack of assistance during the parliament's deliberations contributed to a failure to address key implementation issues (including enforcement agency design), and denied the Mongolian implementation team needed help in getting the new competition authority off the ground. AID's withholding of assistance was painfully shortsighted. Today Mongolia has a new antitrust law—a measurable accomplishment for AID—but a feeble institution for enforcing it.

The ability of individual donor field offices to undermine the attainment of the donor organization's reform goals is a second important weakness of technical assistance programs. Even if the donor agency supports a sustained program of assistance, the program's execution often depends on how faithfully the donor's in-country officials carry out the policy. Because it can be relatively difficult for donors to monitor the behavior of their agents in the field, the agents enjoy discretion to indulge in preferences that contradict the donor's technical assistant aims. In 1992, I observed this problem during an AID project in Zimbabwe to prepare a study that would provide a framework for drafting a new competition law. The project's immediate supervisor in the AID Mission in Harare was enthusiastic about market-oriented reforms and the possible contributions of a competition policy system. Approval for the study team's recommendations, however, had to come from a more senior AID official in the Mission.

The senior official had joined AID over twenty years earlier, and embraced the view, common in development circles in the 1960s and 1970s, that socialist and other planning-intensive models offered Third

World countries the best path to economic growth.⁹ If Zimbabwe were to enact a new competition law as part of a market-oriented reform program, he preferred that the country emulate the interventionist form of antitrust policy he had known as an attorney with a New York law firm in the late 1960s and early 1970s. Before coming to Harare, I thought that the chief barrier to market-oriented law reform in Zimbabwe would be socialists within the Zimbabwean Government. The senior AID official's response to my segment of the study showed that an equally serious obstacle is getting tackled by your own side.

To prepare options for a Zimbabwean competition system, I spent days with local practitioners, government officials, and academics expert in administrative law, business law, and civil procedure. They tested my tentative suggestions about a mix of public and private enforcement mechanisms and about a simple set of conduct prohibitions. As refined by this process, my preliminary findings proposed that Zimbabwe start by banning producer cartels, creating a Competition Commission that would perform studies and advocacy functions, and vesting enforcement power in the Attorney General's office, a well-respected and capable government bureau.¹⁰

The senior AID official rejected the proposals as being out of touch with Zimbabwean experience, *and* even at odds with mainstream American antitrust law. He said the institutional options lacked antecedents in Zimbabwe's legal system, even though the Zimbabweans whom I had met (and with whom he had not spoken) had guided me toward mechanisms with strong links to existing Zimbabwean practice and procedure. He also criticized my discussion of antitrust policy toward distribution practices in developed and transition economies. "You're an antitrust professor who doesn't know basic American antitrust law," he said. "You say the Supreme Court treats vertical restraints other than resale price maintenance tolerantly. It's black letter law that all vertical restraints are illegal per se." In a minute or so, I realized I was debating a modern-day Rip Van Winkle, who had learned and practiced antitrust in the era of *United States v. Arnold, Schwinn & Co.*¹¹ and had slept

9. Cf. ROBERT L. HEILBRONER, *THE GREAT ASCENT—THE STRUGGLE FOR ECONOMIC DEVELOPMENT IN OUR TIME* 148-49 (Harper Torchbook, 1963) (urging American policymakers to accept the need for "political authoritarianism and economic collectivism" to spur development).

10. See William E. Kovacic, *Competition Policy, Economic Development, and the Transition to Free Markets in the Third World: The Case of Zimbabwe*, 61 *ANTITRUST L.J.* 253, 258-65 (1992) (describing the study team's findings concerning the design and implementation of an antitrust law in Zimbabwe).

11. 388 U.S. 365 (1967) (holding that non-price vertical restraints are illegal,

through *Continental T.V., Inc. v. GTE Sylvania Inc.*¹² I described the post-Schwinn history of Supreme Court vertical restraints jurisprudence, but he called this a "technical nit." As he grasped for other objections, it became clear that neither I nor the project was going to win his essential vote.

A third recurring problem with donor technical assistance programs arises from their multiplicity. New antimonopoly agencies in transition economies often receive technical assistance from two or more donors at once. Sometimes multiplicity can benefit a new antimonopoly agency. Consulting a variety of advisors can help identify a fuller menu of options and clarify the strengths and weaknesses of specific antitrust standards and implementation methods.

Georges Korsun, an IRIS economist, and I recently participated in an AID project to help one country undergoing economic liberalization draft a new competition law. For two years before our project, the host country had received technical assistance from the competition agency of a European country, which had persuaded the host country to draft a law largely based on the European nation's antitrust statute. Among other flaws, the draft law distributed ill-defined enforcement authority across several government bodies. The AID project gave the host country a needed second opinion. Citing our experiences in other transition settings, Korsun and I demonstrated how a failure to give clearly-specified enforcement power to a single government entity would doom the law to futile implementation.

Transition economies also realize that donors—especially donor entities of individual nations—sometimes use technical assistance programs to compete for influence by shaping the host country's laws and policies to promote the donor's interests. A competition agency can exploit donor rivalry to extract larger amounts of assistance (such as computers, training programs, and travel funds for antimonopoly agency officials) from each donor. Donor rivalry probably increases the total pool of resources available for new antimonopoly agencies.

Multiplicity also has costs. In some cases, a single donor will support duplicative projects for the same antimonopoly agency. In 1995, AID funded a project that placed two American economists (Roger and Linda Boner) in the headquarters of the Ukraine AMC. Among other activities,

without proof that such restraints actually reduced competition).

12. 433 U.S. 36 (1977) (reversing *United States v. Arnold Schwinn & Co.* and holding that plaintiffs challenging non-price vertical restraints must prove that such restraints actually reduced competition in the relevant market).

the Boners helped the AMC draft laws and regulations, prepare internal enforcement protocols, train AMC professionals, design a publicity program, and develop specific enforcement initiatives. Later in 1995, mid-way through the Boners' mission, AID gave \$100,000 to another United States-based group to provide law reform assistance to the Ukraine Government. One component of the latter project was to give Ukraine advice on needed adjustments to the country's antimonopoly laws.

I was in Kiev at the AMC during a visit of the second group and its competition policy consultant, a distinguished United States antitrust expert. The consultant spent hours interviewing Ukraine AMC officials with whom the Boners worked closely, covering the same policy terrain that had occupied the Boners' energies for months. For AID to spend precious technical assistance resources on an activity that so clearly duplicated its existing long-term, in-country competition policy project struck me as absurd. The overlapping initiative also annoyed my AMC acquaintances, who had to steal time from busy schedules to provide yet another American with information previously dispensed in detail to the Boners. Submitting to repetitive interviews by Westerners is not the thrill of a lifetime for high-level officials in transition economy competition agencies.

One afternoon during this visit, I saw an overworked and exasperated AMC commissioner leave his office after a long meeting with the consultant. The commissioner and I had worked on several projects, and we often discussed the inability of public bureaus to develop and implement coherent programs. We used the phrase "right hand, left hand problem" to describe an organization's pursuit of inconsistent or needlessly duplicative initiatives. From my employment with federal and state bureaucracies in the United States, I argued that American public bureaus were as prone to right hand, left hand problems as their Ukrainian counterparts. We dueled each other with stories about which country's public bodies committed greater managerial blunders. As I watched the commissioner storm through the hallway on this day, I knew that AID had dealt me the trump. The commissioner rushed toward me, raised his hands in the air, and shouted, "Insane right hand, left hand problem. You win."

The costs of multiplicity are also evident when different donor groups vie to provide technical assistance to new antitrust agencies. As noted above, donor rivalry can confer real benefits on new competition bodies. But the competition sometimes exacts a substantial price. Donors seldom coordinate their activities and sometimes channel resources to projects that pointlessly repeat the work of other donors. In 1995, the Ukraine

AMC received assistance from four foreign donors—AID, the European Community (EC), Germany, and the United Kingdom. One part of the EC project consisted of preparing surveys of the competition laws of the EC member states and the countries of Central and Eastern Europe. Others have often and skillfully performed these comparative studies.¹³ Given the Ukraine AMC's desperate need for office equipment, professional training, and funds to pay basic expenses such as rent, utilities, and employee salaries, spending money on redundant comparative surveys is a pathetic waste.

A second, more significant cost is the sum of donor resources devoted to protecting turf and aggrandizing influence at the expense of sound policy development. Where donors separately fund parallel technical assistance projects, one donor's advisors can spend much effort counteracting mischief by another donor's experts. During one AID-sponsored technical assistance project, Georges Korsun, the IRIS economist, and I were "shadowed" by an antitrust agency official from Europe who was also advising the host country on antimonopoly issues. Whenever we met with the host country law drafting group, our shadow appeared. He seized every chance to remind the drafting group that Korsun and I embodied the "Anglo-Saxon" perspective on competition law, and that he espoused European approaches which better suited the host country's circumstances America had embraced competition as a matter of mere "dogma"; the European advisor's country had moved toward a market system by gradual steps that were "reasoned" and "empirical."

At best, the European consultant's posturing was tiresome and misdirected. Korsun and I are poorly cast as American antitrust imperialists. My own doubts about Western antitrust experience prevent me, when advising transition economy governments, from preaching either the global manifest destiny of American antitrust models or the suitability of Western antitrust laws as ideal templates for transition economy reforms. Korsun is even less of a carpetbagger. Korsun's professional work in transition economies makes him the antithesis of the development tourist—the foreign advisor who specializes in short-term, hit-and-run consultancies and shuns the messy business of long-term engagement

13. See Roger A. Boner, *Competition Policy and Institutions in Reforming Economies*, in *REGULATORY POLICIES AND REFORM: A COMPARATIVE PERSPECTIVE* 38 (Claudio R. Frischtak ed., The World Bank, 1996); James Langenfeld & Marsha Blitzer, *Is Competition Policy the Last Thing Central and Eastern Europe Need?*, 6 *AM. U. J. INT'L L. & POL'Y* 347 (1991); Russell Pittman, *Some Critical Provisions in the Antimonopoly Laws of Central and Eastern Europe*, 26 *INT'L LAW.* 485 (1992).

with the people who bear the impact of the consultant's advice. Korsun lived in Ulaanbataar for over a year while working on an IRIS project to advise the Mongolians on market-oriented law reform. He gained the abiding respect of Mongolia's economic reformers and became a leading expert on privatization in transition economies.

At worst, the European consultant's proselytizing impeded our efforts to improve the host country's draft competition law. Our frame of reference was the experience of formerly communist and socialist states. Our recommendations reflected our assessment of the successes and failures of other transition economies that have grappled with the issues of substantive law and institutional design now confronting the host country. Never did Korsun or I utter the words, "Do this because that's the way it's done in the United States." We exercised this caution because transition economy law reformers are of two minds in listening to Western advisors. On one hand, the reformers admire Western countries for their economic achievements and see Western consultants as holding keys to progress for their own nations. On the other hand, the reformers are wary of Western advice. They worry that Western experience may not readily apply to transition economy conditions. They fear that Westerners mainly desire to manipulate the reform process in order to serve selfish Western goals. And they suspect that the Westerners may have a superficial understanding of their nation and, beneath an exterior of professed respect, may secretly denigrate the host country's accomplishments and capabilities.

The European advisor's lobbying predisposed the host country's officials to discount what Korsun and I had to say. The head of the law drafting group routinely introduced us as representing the "Anglo-Saxon point of view." Korsun and I eventually were able to focus needed attention on serious flaws in the draft law. The current version is a major improvement over the draft of a year ago. Yet it is dismaying to contemplate how many hours we squandered in trying to dispel the notion, nurtured by the European consultant, that we were merely salesmen for the Sherman Act and therefore untrustworthy guides for the host country.

II. THE HUMAN CAPITAL

The obstacles described above would test the skills of even the most experienced competition policy experts. In seeking to build competition policy systems, transition economies cannot tap a large reservoir of individuals trained in competition law and industrial organization economics and who are adept at navigating a new institution through

treacherous political waters. This section describes prominent characteristics of those who have helped create competition systems in formerly communist and socialist states.

A. PROFESSIONAL BACKGROUNDS

In Western economies, competition law is the province of economists and lawyers. In transition economies, a more diverse mix of disciplines is brought to bear on establishing competition policy systems. The diversity is a consequence of history and necessity. In many formerly communist and socialist countries, the legal community is small, weak, and discredited—a testament to government policies that scorned the rule of law and debased legal institutions. Professional training in economics in the former regime meant immersion in Marxist thought. Gaining a degree in political economy or public administration usually involved mastering the techniques of central planning and price controls. At the same time, the emphasis in the former Soviet Union on attaining technical superiority yielded an abundance of engineers and scientists. Consequently, the talent pool from which newly-formed competition authorities must draw tends to be lean on lawyers experienced in commercial law or economists trained in market economics, and rich in engineers and scientists, and in public administrators steeped in the techniques of a command and control economy.

1. The Engineers and Scientists

Last summer Tom Timberg and I began our ILI workshops in Russia by asking all participants to describe their backgrounds. Of the total of seventy or so SCAP regional office employees who attended the three workshops, roughly a fifth were engineers or scientists. To a Western observer, the large number of engineers and scientists is striking. The United States Justice Department's Antitrust Division and the FTC employ economists or lawyers with engineering or science backgrounds, but these antitrust agencies rarely hire engineers or scientists who lack a degree in economics or law. In the former Soviet Union, where pursuit of technical achievement made science the career path of choice for the best and brightest, the new antimonopoly agencies have hired large numbers of engineers and scientists.

The heavy representation of engineers and scientists deeply influences the culture of the new competition agencies. One effect is to produce a desire for mathematical formulas by which the competitive effects of business behavior can be measured and enforcement decisions can be

made. During the IRIS competition policy mission to Mongolia in November 1992, IRIS advisors Karen Turner Dunn, Robert Thorpe, and I conducted seminars on competition policy for Mongolian Government officials, many of whom were engineers or scientists. From 1921 until 1990, Mongolia essentially functioned as a republic of the Soviet Union. Like their Soviet counterparts, Mongolians with great academic promise were often channeled into the sciences. Many seminar attendees hoped that we would focus on technical formulas that Mongolians could use to resolve issues that regularly surface in antitrust analysis.

Dunn presented a lecture summarizing the industrial organization economics of antitrust enforcement. For much of her presentation, the Mongolians listened with growing frustration as Dunn emphasized the fundamentally subjective nature of the analytical processes by which Western antitrust officials delineate relevant markets and assess the competitive significance of actual and potential suppliers. Their spirits rose when Dunn introduced the Herfindahl-Hirshmann Index (HHI), a quantitative calculus that American antitrust agencies use to measure industry concentration.¹⁴ Dunn cautioned the Mongolians that the HHI's mathematical certainty is largely an illusion, because antitrust officials still must make many subjective judgments to construct the market shares that supply the raw material for computing HHIs. Dunn's careful attempts at qualification did not dampen the newly upbeat mood of the Mongolians. The HHI was unmistakably the highlight of all that Dunn had said. The audience disbanded in a buzz of excitement, grateful that the American expert had relented at last and disclosed the crucial formula.

Three years later, Dunn's presentation came vividly to mind as I gave a workshop at the Conference on Competition Policy hosted by Ukraine's AMC in Kiev. My workshop treated a hypothetical problem involving a luxury automobile producer's insistence that its dealers buy minimum quantities of spare parts as a condition of obtaining new cars for sale. The producer had a small market share of total automobile sales, and one issue was whether the producer had market power in a relevant market consisting of luxury cars. The workshop participants, all employees of Ukraine's AMC, focused heavily on market definition questions. Was the relevant market in Ukraine all automobiles or luxury

14. See U.S. DEPARTMENT OF JUSTICE AND FEDERAL TRADE COMMISSION, HORIZONTAL MERGER GUIDELINES § 1.5 (1992) (providing for application of the Herfindahl-Hirshmann Index to measure increased concentration in a defined antitrust market).

vehicles only? If a luxury car market existed, which models did it include? Should the market include or ignore used luxury vehicles?

The workshop discussion was lively and sophisticated, but the AMC attendees hesitated to draw conclusions. One participant, formerly an engineer in Ukraine's weapons industry, asked what formulas United States officials ordinarily used to plot the market's boundaries and attribute market shares to individual participants. Somewhat impatiently, he suggested that after a century of enforcement experience, American antitrust agencies surely must have devised and refined a scientific methodology for answering difficult market definition and market power questions. I replied that improvements in theory and empirical techniques had yielded more precise answers to demand and supply substitution questions. I added, however, that limited data and conceptual uncertainties often required the use of rough approximations and estimates. Thinking about my experiences as an attorney at the FTC and in private practice, I asserted that the evidence sometimes is so indeterminate that enforcement officials ultimately rely on intuitions or hunches—sometimes based substantially on their own experiences as consumers—about the market's dimensions. As I explained, even in the United States, antitrust analysis was more art than science.

In one sense, my comments dismayed the workshop participants. How could the world's oldest antitrust system, with decades to form and test hypotheses and refine analytical approaches, have failed to wring more subjectivity out of the decision-making process? How could new antimonopoly agencies in the former Soviet Union, working with much less experience and relevant intellectual capital, hope to reach correct decisions in the face of so much analytical ambiguity? At the same time, my remarks were reassuring. I confirmed that no antitrust system had conceived the type of mathematical formulas that the AMC engineers had believed might exist. The workshop participants realized they were not alone in feeling the anxiety that arises from the need to make difficult choices amid great analytical and empirical uncertainty.

The engineers and scientists bring more than a craving for formulas to the new competition agencies. Some are expert in technical issues that emerge in formulating policy for industry sectors such as energy, telecommunications, and water that will be subject to continuing public regulatory oversight in a liberalized economy. It is important that the transition economies rigorously define which activities are "natural monopolies" and are appropriate subjects for continuing regulation of rates and entry, and that regulatory policies properly account for the distinctive technological features of each natural monopoly sector.

Alexander Andrusenko heads the Ukraine AMC bureau that deals with natural monopoly competition issues. An engineer by training, Andrusenko often jousts with government ministries responsible for overseeing specific industry sectors. In the era of central controls, sectoral ministries derived enormous economic and political power from their role as industry patrons. Each ministry orchestrated its industry's development and provided myriad services, such as housing for the industry's employees. Today Ukraine's sectoral ministries are striving to defeat economic liberalization measures that would privatize their client industries and pull them outside the ministries' control.

A key point of contention between Andrusenko's office and the sectoral ministries is the drafting of a new Ukrainian law on natural monopolies. The definition of what constitutes a "natural monopoly" in the law will be crucial, for natural monopolies are exempt from privatization. The sectoral ministries prefer a broad definition of natural monopoly that includes not only bottleneck facilities such as long-distance electric power transmission lines and local distribution systems, but also a host of other assets such as apartments, stores, and farms owned by the electric power company. The Ukraine AMC has primary responsibility for drafting the natural monopoly law. The draft law prepared by Andrusenko's office limits the definition of natural monopoly to facilities with genuine natural monopoly traits and excludes assets that, when privatized, unregulated competitive markets could absorb. Andrusenko's mastery of technical engineering concepts and his solid grasp of industrial organization economics, acquired during two years of on-the-job learning within the AMC, has shaped a sensible draft law and has given the AMC expertise to rebut spurious arguments in debates with sectoral ministries, in the Ukraine cabinet, and before the parliament.

2. The Economists

When Mongolia abandoned communism in 1990, the country's Economics College contained some 40,000 volumes dealing with economics, but no texts on Western economics.¹⁵ The study of economics in Mongolia and other communist countries usually meant extensive exposure to methods of central planning, with no more than a passing, jaundiced

15. See PETER MURRELL, *REFORM ISSUES IN MONGOLIA* 11 (Univ. of Md., Center for Institutional Reform and the Informal Sector, Country Report. No. 1, 1991) (describing higher education in economics in Mongolia at the time of the country's repudiation of communism).

treatment of market economies. In formerly communist or socialist countries there are many economists, but few have substantial theoretical or practical knowledge of market systems.

In some transition economies, newly created antimonopoly agencies have enjoyed the good fortune to attract economists with a sophisticated understanding of market economics and industrial organization theory. Poland's Antimonopoly Office benefitted greatly from the intellectual acumen and leadership skills of its first president, Anna Fornalczyk. As a professor in the Economics Department of the University of Lodz, Fornalczyk studied and taught Western economics as Poland began the process of economic and political liberalization in the late 1980s. The success of her tenure (1990-1994) as head of Poland's Antimonopoly Office suggests the value of the leader's intellectual capital in building a new competition policy entity.

One of the chief architects of Russia's antimonopoly and regulatory reforms is Vladimir Capelik, an economist and a highly-regarded authority on competition policy in formerly communist countries. In 1990-91, he played a major role in drafting legislation that became Russia's antimonopoly law. Capelik's first exposure to Western economics came during his studies as a graduate student in Moscow in the 1980s. Doctoral candidates were allowed a limited, controlled glimpse of Western economics texts. Like countless American undergraduates, Capelik began his formal study of market economics with an early edition of Samuelson's *Economics*. After the collapse of communism in the Soviet Union, Capelik spent one year studying at Princeton University's Woodrow Wilson School for Public and International Affairs. Now with the Institute for the Economy in Transition, a think tank in Moscow, Capelik is a major source of ideas for Russia's economic reformers and the preeminent Russian author for Western audiences on Russian anti-trust policy.

A third example is Ana Julia Jatar of Venezuela. Jatar holds a doctorate in economics and is an expert in the field of industrial organization economics. In 1991, she became the first head of Venezuela's newly-created antitrust agency, the Superintendency for the Promotion and Protection of Free Competition. Drawing on her extensive knowledge of Venezuela's economy and understanding of the state's role in impeding competition, Jatar formulated an ambitious program for the Superintendency to act as a competition advocate before other government bodies. Jatar resigned in 1994 after the government retreated from core elements of its economic liberalization program. Yet her vision of the contribution of an antimonopoly agency in the transition process

remains influential, for the Superintendency continues to provide an important voice for market-oriented reforms in Venezuela.

3. The Lawyers

The new antimonopoly agencies in transition economies typically cannot recruit from a large pool of lawyers with competition policy expertise. Commercial law in communist or socialist regimes usually occupied a minor place in the practice of law. In the former Soviet Union and its satellites, the primary concern of legal education and practice was criminal law. Civil law rarely emerged as a major academic or practice concern, with occasional exceptions such as domestic relations. The practice of commercial law was limited largely to the "arbitrazh" process by which government ministries resolved disputes between different state-owned enterprises.¹⁶

Despite these confining initial conditions, some antimonopoly agencies attracted exceptionally capable lawyers to key leadership positions. The Ukraine AMC provides a major example. The treatment of legal policy issues in the AMC is mainly the responsibility of Svetlana Moroz, an AMC State Commissioner, and Alexander Melnichenko, the AMC's Deputy Chairman. Moroz studied law in Kiev and spent most of her professional career before joining the AMC with the Antonov Design Bureau, one of the Soviet Union's largest aerospace firms. On the wall in her office hangs a poster of a massive airplane with the caption, "From Russia With Love. The Antonov 124, the World's Largest Cargo Aircraft." By the end of her tenure at Antonov, Moroz became the firm's General Counsel and established herself as one of the premier attorneys in Ukraine. Moroz has superb insight into the practices and culture of Ukraine's state-owned business enterprises. She also possesses a keen awareness of how Ukraine's business community is likely to respond to the AMC's enforcement programs.

Melnichenko came from the AMC from a judgeship in the local courts of Kiev. From his time on the bench, he acquired a strong appreciation for the importance of procedure and an unmatched understanding of the Ukrainian courts to which AMC decisions can be appealed. He is also a student of Ukrainian political science and comparative public

16. See Christopher Osakwe, *The Modern Soviet Legal System in Comparative Perspective*, in 8 MODERN LEGAL SYSTEMS CYCLOPEDIA § 8.150.1, §§ 8.150.84-89 (Kenneth R. Redden ed., 1991) (discussing the operation of the state arbitrazh system in the former Soviet Union).

administration. His knowledge of the structure and operation of Ukrainian and foreign government institutions is important, for the AMC is a novel institution in Ukraine. The AMC is the country's first experiment with an administrative agency that combines prosecutorial, adjudicatory, and rule-making functions. This hybrid mechanism fits awkwardly into Ukraine's scheme of government, which previously followed a clear separation of executive (prosecutorial), legislative, and judicial functions. Melnichenko's background enabled him to explain that the AMC's structure and powers, though unprecedented in Ukraine, mirror the approach taken in many other countries in implementing competition policy.

Between them, Moroz and Melnichenko bring an exceptional collection of legal skills and experiences to bear on building the AMC's competition programs. Their energies focus largely in two directions. First and perhaps most important, they are responsible for all law drafting projects related to the AMC's organization, procedures, and remedial powers. In the past year they were instrumental in persuading the Ukraine Parliament (the Rada) to increase the penalties for violations of the antimonopoly law. The original law set fines in pre-inflation *kupons*, Ukraine's currency. High inflation during the transition from communism rendered the original fines meaningless, allowing firms to break the law at the rate of roughly \$20 per offense. Moroz and Melnichenko are also drafting a comprehensive procedural code for the AMC. If adopted by the Rada, this "Codex" may serve as a prototype for a Ukrainian Administrative Procedure Act. As envisioned by Moroz and Melnichenko, the Codex will create binding procedural safeguards and will grant standing for aggrieved parties to challenge violations in Ukraine's courts.

The second major concern of the Ukraine AMC's two leading lawyers is the development of internal guidelines and procedural protocols for managing the activities of the AMC's headquarters and its twenty-six regional offices. Achieving consistency in enforcement policy and quality control are major challenges for the AMC. The novelty of competition concepts in Ukraine, the limited training of many AMC professionals, and the lack of resources to develop an effective internal AMC communications network collectively create many possibilities for an individual AMC office to embark on cases that are substantively weak, procedurally flawed, or contrary to policy guidance provided by other AMC units. Moroz and Melnichenko are emphasizing the formulation of internal process controls because they realize that the AMC's credibility and reputation will hinge significantly on the agency's ability to implement a coherent enforcement approach.

4. The Public Administration Specialists

In many transition economies, the development of new competition laws and antimonopoly institutions features the participation of professionals trained in public administration. These specialists ordinarily take college or graduate courses in political science and government management with an eye to obtaining career civil service positions in government ministries. Under communist or socialist regimes, students who aspired to work in ministries dealing with the economy took academic courses and held summer internships that provided extensive exposure to the techniques of planning and central economic control.

With economic liberalization, governments sometimes assign administrators who served in ministries with planning or price control duties to draft new competition laws or implement them. At the time of its creation in 1990, for example, many former employees of the country's price control authority staffed Poland's Antimonopoly Office. The use of planners or price controllers to formulate or carry out an antitrust law usually makes Western competition policy experts flinch. Market processes rely fundamentally on decentralized decision-making, and antitrust intervention in a market economy is supposed to be exceptional, not routine. Westerners often fear, justifiably, that professionals imbued with the culture of planning and price controls—mechanisms that view individual discretion suspiciously and presume the efficacy of intrusive government intervention—will shape competition programs to resemble the old apparatus of command and control.

To some extent, the staffing of competition agencies with former planners or price controllers is inevitable. Transition economy governments are reluctant to fire public employees from the former planning or price control ministries when it is possible to relocate them in new government agencies. In addition, the retooling of planners and price controllers into competition advocates sometimes has a substantive logic. The competition laws of some transition economies give the antitrust authority power to control price increases by dominant enterprises.¹⁷ In some instances, price controllers acquire knowledge that could assist in challenging anticompetitive trade restraints. Price control officials sometimes gain sophisticated insights into the operation of the commercial

17. See Ben Slay, *Industrial De-monopolization and Competition Policy in Poland*, in *DE-MONOPOLIZATION AND COMPETITION POLICY IN POST-COMMUNIST ECONOMIES* 123, 138-41 (Ben Slay ed., 1996).

sector. This knowledge can be valuable to a competition agency as it attempts to identify the sources of market failure in specific industries.

Mohammed Rachid Baina is a key figure in the law drafting group that is writing a new competition law for Morocco. Baina studied public administration in Morocco and spent his professional career in Morocco's price control agency, the Direction des Prix (DDP) of the Ministry of Economic Incentives. If Morocco adopts a competition law, Baina is likely to hold a significant position in the new enforcement authority. In the course of implementing Morocco's price control laws, Baina obtained broad knowledge about specific industries and patterns of business behavior. Although Morocco today directly sets the prices of few goods and services, firms that previously had been subject to direct price controls still must inform the DDP of intended price increases. In reviewing price increase notices, Baina and his colleagues sometimes observe that all members in an industry sector simultaneously submit requests to raise prices to identical levels, even though the increases do not appear to result from an exogenous cause, such as a hike in prices of common inputs. Baina has a good idea of where to look for producer cartels in the Moroccan economy, and he would be ideally suited to help a new competition agency formulate an enforcement program against collusion.

B. THE BASE OF KNOWLEDGE AND THE SOURCES OF IDEAS

To say that few professionals in formerly communist or socialist countries have not been formally trained in antitrust law or industrial organization economics does not mean that they lack sound insights about competition policy. Some officials, such as Vladimir Capelik of Russia, have studied in Western universities. Others have gained exposure to modern antitrust learning by attending seminars or workshops funded by Western donors. Many of today's competition policy entrepreneurs, however, are largely self-taught. Their base of knowledge of competition policy and market processes often is built through efforts to read about the economic theory, law, and history of competition policy abroad. Surprises await Westerners who underestimate what the transition economy competition specialists know, or their determination to learn more.

One source of knowledge is an informal network through which translated texts of Western competition policy documents are disseminated. In February 1993, Robert Thorpe and I spent two weeks in Mongolia in the second phase of an IRIS project to help draft a new antimonopoly law. Thorpe and I worked side-by-side with a small, highly capable

Mongolian drafting team consisting of economists, lawyers, and engineers. Much of the drafting took place in Nukht, a government retreat located in the mountains about a hour's drive west of Ulaanbataar. We worked in a weakly-heated wooden building that creaked as powerful Siberian winds pressed the frigid winter air against the windows and walls.

Many of our discussions about specific drafting approaches involved comparative perspectives. During one session, Badarch, a Mongolian economist, asked Thorpe and me if our advice reflected "the current state-of-the-art of antitrust thinking." He showed us a Russian translation of a recent article by Joseph Kattan, who then headed the planning office of the FTC's Bureau of Competition. The margins of the article were filled with Badarch's hand-written notes. Badarch quizzed us about Kattan's article and went on to explore our knowledge of the details of the antitrust laws of Japan and Korea. The Mongolians plainly had done a great deal of homework. Walking back to our rooms under bright stars splattered across the pitch of the night sky, Thorpe and I wondered which event was less probable—that our antitrust careers would bring us to Nukht, or that a group of Mongolians would engage us in a discussion about the latest developments in United States antitrust literature.

The views of some competition policy entrepreneurs in formerly communist and socialist countries are informed by their study of history and political science. Since the late 1980s, the process of political liberalization has made available an increasing number of translations of Western texts dealing with the history and politics of economy policymaking in the United States and other market economies. Coupled with their own experiences, the knowledge of history and political science gives the competition policy reformers a keen awareness of the barriers to abandoning government policies that impede the proper functioning of market processes.

The reformers' awareness of historical and political obstacles to liberalization is apparent when they hear a Westerner give advice that the advisor's own government ignores. In February 1994, at the Administrative College of Nepal in Kathmandu, I gave a seminar on the role of government intervention in restricting competition. For each of my points, the Nepalis politely but persistently offered examples of competition-suppressing government policies in the United States. I argued that government subsidies can harmfully distort resource allocation and undermine rivalry. *Doesn't your government heavily subsidize agriculture?* I warned that import tariffs, quotas, and antidumping laws often injure consumers and remove needed pressure upon domestic producers to

reduce costs and improve quality. *Doesn't the United States strictly limit imports of textiles and many other products? Didn't your government invent and perfect antidumping mechanisms?* I said that controlling prices and entry for fundamentally competitive industries was a source of massive welfare losses. *Don't some American cities regulate the rents for apartments and restrict the number of taxicabs?*

For several hours, we discussed the propensity of governments in all national settings to curb competition in order to achieve myriad political and social goals. We acknowledged how hard it is to remove legal impediments to rivalry in the face of shrewd, determined opposition by beneficiaries of the status quo. At the seminar's end, one Nepali said, "You see our dilemma. You give good theoretical arguments for competition. Yet these arguments do not persuade even your own government. And your country has far more experience with a market economy than Nepal. How are we to convince our government to reduce subsidies, liberalize prices, and free imports when the United States will not do so?"

I gave two answers. First, United States experience shows that government policies which restrict competition often are extremely costly. Transition economies need not repeat our mistakes. Second, the United States is a relatively wealthy nation and can better afford the cost of misguided laws. Because Nepal is a poor country and has little margin for error, there is greater urgency to get the policies right. In offering these responses, I told the audience that I could not deny the force of the questioner's implicit point. Economic liberalization endangers entrenched interests which have the means and incentive to resist. If Western countries cannot easily overcome such interests, what can they reasonably expect of transition economies?

Competition policy reformers often examine United States history for clues about the appropriate model for economic transition. At the Ukraine Conference on Antimonopoly Policy in October 1995, during a session on the role of competition policy in privatization, I spoke about the long-standing tension in many capitalist countries between those who believe in the efficacy of competition and those who believe that government bodies, cooperating with private firms, should play an active role in orchestrating economic activity. One Ukraine AMC official suggested that Ukraine faces the same choices that confronted the United States after the 1929 stock market crash. How should Ukraine recover from an economic collapse that caused a twenty-five percent drop in gross domestic product since 1990? In the early 1930s, he added, the United States embraced statist solutions, such as the National Industrial Recovery Act, to extricate itself from the Depression. Should not

Ukraine take a similar course, instead of relying more heavily on competition? I responded that subsequent experience has shown that many economic policy responses to the Depression in the 1930s were ill-conceived. A major focus of United States competition policy in the past quarter-century has consisted of efforts to dismantle 1930s-vintage regulatory schemes that curtailed competition in key sectors such as transportation. In facing its modern equivalent of the United States Depression, Ukraine can observe that United States policies of the 1930s that sought to cartelize specific industry sectors tended to retard, rather than advance, economic progress.

For many competition policy reformers, the study of history provides convincing evidence of the importance of a sound legal infrastructure to the functioning of a market system. En route to Mongolia for our second consultation in February 1993, I told Bob Thorpe that my law reform experiences in transition economies intensified my irritation with observers who revel in Shakespeare's famous line, "The first thing we do, let's kill all the lawyers."¹⁸ Thorpe urged me to read *Henry VI, Part II* and study this passage in context. He assured me that, just as it is dangerous to learn cases by reading headnotes, it is risky to learn Shakespeare by skimming *Bartlett's*.

Thorpe was right. Two years later I attended a lecture in Kiev on law reform and competition policy. The audience consisted mainly of Ukrainian Government officials with economic policy responsibilities. The speaker was an American businessman, who emphasized the idea that the legal profession was a blight on the American economy. To close his talk, he said he would borrow his solution from Shakespeare: "The first thing we do, let's kill all the lawyers."¹⁹ This line often gets a big laugh in the United States, and the speaker expected the same result in Kiev. Even with a long pause for translation, the punch line produced no smiles from the Ukrainians. Slightly unnerved by the silence, the speaker solicited questions and comments.

I was present only to observe, but I was tempted to respond. It was not necessary. A young Ukrainian lawyer immediately stood up and spoke. He said that he read and enjoyed Shakespeare, but doubted that this fragment of *Henry VI, Part II* was a suitable prescription for Ukraine. To explain, the lawyer recounted the context of the line. The

18. WILLIAM SHAKESPEARE, THE SECOND PART OF KING HENRY THE SIXTH, act IV, sc. 2, lines 76-77, in THE RIVERSIDE SHAKESPEARE (G. Blakemore Evans ed., 1972).

19. *Id.*

famed proposal is uttered by Dick the Butcher during the gathering of a gang that wants to impose tyrannical rule by its leader, John Cade. The gang seeks to seize wealth by force and redistribute it, to have the state sell goods at a fraction of their cost, and to hang those who can read and write. Killing all the lawyers is only the first step toward liquidating anyone whose obsession with rules and reason might block the gang's ascent. After recreating the literary setting, the Ukrainian posed a question. "In this century," he said, "the Soviet Union did what Dick the Butcher wanted. We killed many lawyers. We killed laws that disperse power. We destroyed people with independent ideas. We elevated tyrants. Why do Americans ridicule institutions that have helped protect personal freedom and create economic prosperity?" The businessman watched silently, swamped by waves of nodding heads.

C. FORTITUDE

Law reform in transition economies is a precarious endeavor. Competition policy entrepreneurs routinely confront intransigent opposition from the many defenders of the status quo *ante*. The competition reformers generally are, however, not a timid lot. Many stake their future personal and professional well-being on building competition policy institutions and making them an effective constraint on efforts by government bodies and private firms to undermine rivalry.

In advising competition policy reformers, one finds many reminders of their fortitude. During our ILI workshops in Russia in 1995, Tom Timberg and I spent an evening touring Novosibirsk with the head of the local SCAP office. We visited a memorial park that commemorates Russian soldiers who died fighting the Nazis in The Great Patriotic War. In the park's center stood several towering concrete slabs bearing the names of 265,000 Russian soldiers from the Novosibirsk area who fell on the Eastern front. The sum of names roughly equals the number of United States war dead in World War II. Earlier in the week I had told our host that I marveled at his perseverance in the face of so many obstacles to building a competition policy system. On several occasions I recited to him the litany of stubborn problems—low (and often unpaid) salaries, intransigent opposition from state-owned firms and their ministerial patrons, and threats from the Russian mafia.

On this evening, we paused beneath the huge tablets near an eternal flame. Our host said, "Russians are not strangers to severe hardship. We are not complainers. The names on these stones won opportunities for us with their lives. What they did is far more difficult than what we are trying to do. We can only try to be worthy of their sacrifice."

III. FUNCTIONS

Competition policy entrepreneurs perform a number of distinct roles in establishing and carrying out competition policy programs in transition economies. This section identifies these roles, beginning with early efforts to lay the groundwork for enactment of a new law and extending through its implementation.

A. THE COMMITTED CHAMPION

Creating a competition policy system ordinarily requires the commitment of individuals within the transition country's government to champion the development of a new law and promote its enforcement. By itself, pressure by a foreign donor might induce a transition country to pass new laws or even to begin enforcing them. Prospects for success, however, increase where the impetus for change arises internally, and the possibility for reform captures the imagination of indigenous policy entrepreneurs within the government.

I observed the effect of lukewarm internal support during my trip to Zimbabwe in 1992. I was part of a team of American advisors funded by AID to prepare a study on approaches that Zimbabwe might take to establish a competition policy system. Responding to pressure from external donors, the Zimbabwean Government included the adoption of an antitrust law as an element of its Economic Structural Adjustment Program. The government assigned its Ministry of Commerce and Industry responsibility for overseeing competition projects. AID assembled our team at the Commerce Ministry's request and formulated the content of the mission with the Ministry's approval. In effect, the Commerce Ministry was our Zimbabwean client and the nominal government champion for creating a competition system.

At the beginning of our mission, the study team went to the Commerce Ministry to see the Deputy Minister, who was designated to be our principal contact in the government. After brief introductions, the Deputy Minister asked, "Why have you convened this meeting? What is the purpose of your mission?" It was a distressing start. The highest career civil servant of the government ministry with the greatest apparent interest in our work had just asked us to explain the purpose of a mission that his office had helped arrange. The Deputy Minister listened impassively as we reviewed our agenda for the coming weeks. He said nothing about the Ministry's expectations and preferences. The Ministry's position on a new competition law would depend on whether we built a consensus among government and nongovernment groups in

the coming weeks. Our client would wait to see if our mission was perceived as a success before giving us its support. The Deputy Minister's indifference characterized the attitude of key government officials throughout the project. The lack of a committed champion in the government is one reason that, four years later, Zimbabwe has no competition policy system.

The development of Mongolia's antitrust law provides a sharp contrast to the experience in Zimbabwe. Bailyhuu, a high-ranking official in Mongolia's Privatization Commission spearheaded the law drafting process in 1992-93. Like a number of competition policy reformers, Bailyhuu envisioned the new competition law as both a valuable ingredient of economic reform and a means for personal advancement. Building an antitrust system entails forming new institutions in which reformers, such as Bailyhuu, can play major roles. Bailyhuu's professional and personal commitment to the competition law project was indispensable to the enactment of Mongolia's competition law in 1993.

Where the success of efforts to build a competition program hinges on the commitment of a champion within the government, the project is vulnerable to swings in political sentiment that change governments and bring new officials to power. In 1993-94, the Minister of Nepal's Ministry of Commerce supported a law drafting project to design a new consumer protection law that would contain some important antitrust provisions. With technical assistance from AID, a highly capable working group of Nepali Government officials and Nepali consultants conducted case studies and interviewed representatives of Nepal's consumer groups, legal community, government agencies, and trade associations. By the spring of 1994, the working group prepared a sophisticated draft law, and prospects for adoption seemed promising. Later in the year, Nepal's Communist Party regained control of the country's Parliament and formed a new government. Many of the incumbent cabinet ministers, including the sponsor for the consumer protection project, lost their jobs. The working group was forced to start from scratch in finding a patron in the new government who might return the consumer protection law to the political agenda.

B. THE DRAFTERS

The process of drafting a competition law ideally should accomplish two things. The first is to devise substantive commands, institutions, and procedures that are best suited to the distinctive economic, historical, political, and social conditions of the transition economy. To accomplish this task, the drafting group should combine three basic forms of exper-

tise: familiarity with the country's legal system, knowledge about the country's economy, and understanding of political forces relevant to the creation and operation of new competition policy institutions. In Mongolia, for example, the core drafting team consisted of an experienced and politically astute government official with broad knowledge about the economy by reason of his work on privatization (Bailyhuu), an economist who understood the Mongolian economy and had a good grasp of industrial organization concepts (Badarch), and a lawyer from the Ministry of Justice with a sure grasp of the Mongolian courts and procedure (Hungersogt).

The second goal is to use the law drafting process to build a consensus among affected constituencies and decision-makers about the appropriate content of the law. Competition policy reformers in formerly communist and socialist countries are well attuned to the need to gain the support or acquiescence of important actors *within* the government. During the period of central economic controls, achieving adjustments in economic policy ordinarily required laborious efforts to build coalitions inside the government and to appease ministries or state-owned firms that might lose power or prestige as a consequence of change.

The novel aspect of economic reform and consensus-building in an era of liberalization is a growing emphasis on engaging affected parties outside the government in the process of designing new competition laws. In Mongolia, Bailyhuu's drafting group and foreign technical advisors met with representatives of state-owned enterprises and private entrepreneurs to discuss the new law. Each of these sessions provided valuable insights about the Mongolian economy and the best approach for writing a statute. In February 1993, Bailyhuu and I reviewed the main ingredients of the draft law with managers of several state-owned firms. I explained that the draft law had two basic elements: it forbade various agreements involving competitors, and it prohibited certain unilateral conduct by dominant firms. A member of the audience interrupted to tell me that I could skip the discussion of provisions dealing with collective conduct. "We have no competitors," he remarked. "We are all monopolists. Tell us what the law says about monopolists."

Two major themes emerged in the course of an extended discussion with the "monopolists." First, the state-owned firms depended heavily on government intervention to block the emergence of private competitors. To spur competition, a new antitrust law would have to discourage collaboration between the government and its state-owned companies to halt new entry. Second, a number of more junior managers in the room were receptive to the idea of demonopolization if it meant that they

would gain autonomy to run their own business units, free from intrusive interference by a government ministry. Some managers plainly welcomed a dismantling of existing industry structures if it meant that, in return, they could run their own businesses with fewer government controls.

Consumer groups also provide an important focal point for drafting group consultation. In Nepal, the core drafting group for the consumer protection law project consisted of Prakash Ghimire, Ramesh Dhungal, and Kul Ratna Bhurtyal. Ghimire and Dhungal held several positions in the Nepali Government and owned their own private consulting firm. Bhurtyal was an attorney with Nepal's natural resources ministry and had extensive experience with competition policy and consumer protection issues involving the country's utility sector. As a foundation for preparing the law, the drafting group conducted seminars in three Nepali cities to obtain the views of consumers about recurring problems. During my visit to Kathmandu in February 1994, the drafting group also held lengthy meetings with representatives of Nepal's consumer groups.

The consultation with nongovernment groups has important implications that go beyond the formulation of competition or consumer protection laws. The competition and consumer protection law reform drafting processes represent a significant departure from the traditional approach, prevalent in the era of central planning, to avoid external discussion and present new laws to the public as accomplished events. The law drafting projects provide potentially path-breaking experiments with transparent policymaking procedures that have real promise to enhance the legitimacy of the law. In November 1995, the Moroccan law drafting group from the Ministry of Economic Incentives held a day-long conference in Rabat to present a basic outline of the draft competition law. The 150 attendees and speakers included representatives of academic institutions, the business community, consumer groups, foreign donors, government agencies, and the media. The conference format featured many prepared presentations, but also allowed considerable time for discussion and questions and comments from the audience. The discussion segments were provocative and uninhibited. Many attendees and program organizers remarked that they could not recall another occasion on which a Moroccan Government agency convened a public conference to discuss a proposed law whose enactment was not already assured.

C. IMPLEMENTATION AND EARLIER LEADERSHIP

Passing new laws without implementing them effectively is at best a meaningless exercise. At worst, enacting moribund legal commands is

counterproductive, for such measures tend to discredit the rule of law. The first few years of a new competition policy institution are crucial to effective implementation. Getting off to a good start establishes the credibility of the new enterprise and the laws committed to its jurisdiction.

Good beginnings demand inspired leadership. Ideally, the leaders of competition authorities during the formative period following passage of a new law possess a mix of several skills. They must be expert in the economics or law of competition policy to devise a sound substantive enforcement program, politically adroit to anticipate and rebuff threats from the business community and other government bodies, and adept at public relations to establish awareness of the competition system.

Several competition agencies in transition economies have enjoyed the good fortune of inspired leadership. The success of Poland's Antimonopoly Commission is substantially attributable to its first President, Anna Fornalczyk. From 1990 through 1994, Fornalczyk oversaw the development of the agency and the formulation of a significant enforcement program. As a member of the economics faculty at the University of Lodz, she already accumulated substantial intellectual capital in the field of industrial organization economics. She had a vision about the potential contribution of a competition policy system to the process of economic liberalization. In particular, she perceived that a competition agency could help press the Polish Government to abandon massive subsidies for inefficient state-owned firms and to use the process of privatization to create rivalry in sectors once occupied by a single firm. She also had a brilliant strategy for managing the new agency, which began with 110 employees, including many former price controllers. Her top priority was to assemble a management team of roughly ten trusted and skilled professionals. The core team helped Fornalczyk design an enforcement program and monitored the program's implementation at the staff levels. This aspect of Fornalczyk's tenure provides a crucial lesson for other new competition agencies. A small, critical mass of capable managers in the top leadership tiers can successfully launch a new competition institution.

The Ukraine AMC provides a second illustration of the benefits of astute leadership in the formative period. Ukraine passed its new anti-trust law late in 1992 and began organizing the AMC one year later. Alexander Zavada became its first Chairman and still runs the agency. Zavada had no formal training in competition law or economics but, as an engineer in Ukraine's weapons sector, acquired a good base of knowledge about the Ukrainian economy. Like Fornalczyk, Zavada un-

derstood the importance of building a small, capable management team to formulate a coherent enforcement program and construct the administrative infrastructure for carrying it out. His core group includes Svetlana Moroz and Alexander Melnichenko, who focus on legal issues, and skilled professionals such as Alexander Andrusenko, who oversees the development of policy for natural monopolies.

The strategy of building a professional staff around a small core of experts also has applications to the regional offices of the new competition agencies. At the close of our week-long ILI workshops in Chelyabinsk, Novosibirsk, and Irkutsk last summer, Tom Timberg and I nominated two workshop participants to attend an additional week of training along with AMC professionals selected from workshops in six other cities. We found that choosing two from the twenty to twenty-five participants in each city was a difficult task because of the strong field. In each city we found at least five or six participants whose contributions to the workshop and grasp of the course materials was exceptional. Some participants, such as Irina Knyazeva from the Novosibirsk AMC office, had come to the AMC from full-time positions in university-level economics departments and knew a good deal of microeconomics. Others, such as Sergei Timofeyev from Tyumen, Omsk, were lawyers with extensive litigation experience as government prosecutors. Having three or four such individuals in a regional office of twenty-five to thirty professionals could provide capable guidance for the office.

IV. BUILDING CAPABILITY

Progress in establishing new competition policy institutions in formerly communist and socialist countries will depend heavily on increasing the capability of the professional staffs of these agencies. Enhancing capability means not only improving the skills of existing employees, but also creating self-sustaining mechanisms for training new recruits. Experience in competition law reform suggests several ways that new competition agencies and foreign donors can apply their resources to strengthen the human capital of the competition policy entrepreneurs. Above all, there is a vital need for investments in activities that transfer antitrust knowhow from more experienced competition policy experts to those who are trying to learn.

A. WORKSHOPS

One promising path for transferring knowhow is to conduct workshops in which participants solve hypothetical problems posing competi-

tion issues that arise within the transition country. The workshop leader can be a foreign advisor, an experienced member of a transition economy competition agency, or a team of both. Compared to lectures, workshops have the considerable advantage of compelling all participants to take an active part in analyzing the problem and conceiving a solution. Workshop role-playing exercises can be especially effective in countries where traditional pedagogical techniques encourage the passive absorption of knowledge and discourage critical inquiry.

B. CASE STUDIES

A second method for transferring knowhow is to have foreign advisors and AMC officials work side-by-side in performing competition case studies. Collaborative efforts to analyze competitive conditions in an industry sector can provide many opportunities to teach theory, data collection, and practical enforcement techniques. During one of our trips to Morocco, Georges Korsun and I spent an afternoon in Casablanca interviewing the director of Morocco's principal banking trade association. Accompanying us were two bright young professionals, Nauofel Rieche and M. Amalel, who are employees of Morocco's DDP and members of the competition law drafting group. Rieche holds an undergraduate degree in public administration, and Amalel did college work in public affairs. During the interview, the trade association director supplies a stunning view of a cartel at work. He describes how the banking association's members collectively set terms of trade (such as interest rates), identify deviations from prescribed terms, and punish members who fail to comply. Driving back to Rabat at the day's end, Korsun and I describe what we were seeking and why the association director's comments fascinated us. Rieche and Amalel relate other cartel-like patterns they have seen in implementing Morocco's price control laws. It is an instructive day for the Western advisors and the Moroccans, alike.

C. LONG-TERM IN-COUNTRY CONSULTATION

Since the early 1990s, foreign donors have funded programs that place foreign competition policy experts on long-term assignments inside new antitrust agencies. For example, AID funded programs by the United States Department of Justice and the FTC to place attorneys and economists on six-month assignments in transition economy competition policy agencies in Central and Eastern Europe.²⁰ AID also funded a just-com-

20. See Kathleen E. McDermott, *U.S. Agencies Provide Competition Counseling*

pleted IRIS project through which Linda and Roger Boner served as resident advisors to the Ukraine AMC. Compared to short-term technical assistance visits, long-term, in-country consultancies offer a stronger likelihood that the foreign advisor will be able to identify and address the most serious needs of the host country's antimonopoly agency. Ongoing collaboration between the long-term advisor and the competition authority provides many opportunities to discuss general principles and communicate practical enforcement methodologies.

D. TRAINING IN WESTERN COMPETITION AGENCIES

Foreign donors occasionally have financed programs by which transition economy competition officials spend internships in Western competition agencies. The interns absorb knowhow by watching their Western counterparts formulate enforcement strategies, investigate cases, and litigate claims. The scope of such programs may be limited, however, by concerns about allowing the interns access to confidential business data.

E. NETWORKING

There is great value for transition economy competition officials in learning from the experiences of their counterparts in other antimonopoly offices, especially new antitrust agencies in transition settings. Individual consultations and visits provide one means for competition officials to transfer knowhow. Since January 1995, when she left the Polish Antimonopoly Commission to return to academia, Anna Fornalczyk has consulted for Alexander Zavada, who chairs Ukraine's AMC. Fornalczyk's advice to Zavada has been invaluable, including suggestions about anticipating and deflecting attacks from the AMC's opponents in Ukraine's Rada.

A second networking technique is to hold conferences. The Ukraine AMC's Antimonopoly Conference in Kiev in October 1995 is illustrative of this technique. Organized by IRIS resident advisors Roger and Linda Boner, the week-long Conference attracted an impressive collection of competition policymakers and enforcement officials: Arved Deringer, Hanfried Wendland from Germany, Nikolai Radostovetz from Kazakhstan, Anna Fornalczyk from Poland, Vladimir Capelik from Rus-

to *Eastern Europe*, 6 ANTITRUST 4 (1991) (describing placement of Justice Department and FTC antitrust specialists in antimonopoly agencies in Eastern Europe).

sia, FTC Commissioner Mary Azcuenaga, and the FTC's Director of the Bureau of Competition, William Baer. The foreign experts participated in panel discussions and workshops for over 150 professionals from the headquarters and regional offices of Ukraine's AMC.

The Kiev Conference was a tremendous success in several respects. It enabled the professionals of Ukraine's AMC to gain a wealth of comparative perspectives, especially from other transition economy officials. After panel discussions and workshops, large groups of conference attendees clustered around the foreign experts to pose a host of theoretical and practical questions. The conference also enabled professionals from the AMC's headquarters and regional offices to meet for the first time. In formal sessions and social gatherings, AMC employees discussed common problems and formed personal and professional bonds that will be useful in building an institutional spirit, in developing consistent analytical methodologies, and in carrying out specific enforcement programs. Finally, the presence of the foreign experts and the abundant local media coverage of the conference certified to the Ukraine AMC staff the importance of their work.

F. DEVELOPING UNIVERSITY CURRICULA

Renewing and sustaining the human capital needed for a competition policy system will require transition economies to develop courses involving antitrust law and industrial organization economics for business schools, economics departments, and law schools. During our ILI workshops in Russia, Tom Timberg and I learned that economists and lawyers in a number of regional AMC offices serve as adjunct faculty members at local universities and teach courses in antitrust law and industrial organization economics. Some offices are developing liaison arrangements through which promising students in economics and law serve internships with the local AMC office. To supplement these efforts, transition economy governments and foreign donors should support efforts by universities to augment their curricula by adding courses dealing with the functioning of a market system.

CONCLUSION

In many formerly communist and socialist countries, competition policy entrepreneurs have achieved the enactment of antitrust laws. Some countries, such as Poland and Ukraine, have made considerable progress toward implementing new antitrust laws. For most transition economies, the success of competition policy reforms is highly uncertain.

A major determinant of success will be the willingness of foreign governments, which encouraged the adoption of antimonopoly laws as part of economic liberalization, to provide continued support for law drafting and implementation. Withdrawing technical assistance now means that many transition economy competition policy experiments will fail.

Though the need for assistance remains acute, the will of Western governments to provide it is faltering. In the United States, having witnessed an extraordinary transformation in the communist and socialist world, we begrudge spending modest additional sums to develop an infrastructure of laws and institutions that facilitate market processes. In doing so we risk leaving a legacy of abandonment and unfulfilled promises.

When traveling in a transition economy, I enjoy wandering through local markets and shops. On my visit to Kathmandu in 1994, a Nepali colleague joined me to tour the city's markets. For over a year the Nepali had toiled on the consumer protection project, and he deeply hoped for its success. Throughout the day we discussed local commerce, the frustrations of technical assistance programs, and the chances for a consumer protection law. At the day's end, we drove to a carpet factory operated by Tibetan refugees. For many minutes, I studied the magnificent carpets and wall-hangings as my colleague described the origin and meaning of their designs. We returned to my hotel and said goodbye.

The next day, as I left the hotel to return home, the clerk gave me an envelope that my Nepali colleague had left early in the morning. Atop a single handwritten page was a note: "May the Parliament approve a law as splendid as the carpets." At the bottom was a transcription of the Yeats poem, *He Wishes for the Cloths of Heaven*. The poem's beginning lines present the writer's wish to place "the heavens' embroidered cloths" beneath the reader's feet. The poem concludes:

But I, being poor, have only my dreams;
I have spread my dreams under your feet;
Tread softly, because you tread on my dreams.²¹

In recent years Western governments have urged formerly communist and socialist states to embrace market-oriented law reforms. At our behest, competition policy entrepreneurs and others who promote market processes have spread their dreams at our feet. Tread softly.

21. WILLIAM BUTLER YEATS, *He Wishes for the Cloths of Heaven*, in *SELECTED POEMS AND TWO PLAYS OF WILLIAM BUTLER YEATS* 27 (M.L. Rosenthal ed., 1966).