



Qualitative Study



European
Commission

DG COMPETITION STAKEHOLDER STUDY

Aggregate Report
July 2010

Qualitative study – TNS Qual+

This survey was requested by Directorate General for Competition and coordinated by Directorate General for Communication (DG COMM - "Research and Speechwriting" Unit)

This document does not represent the point of view of the European Commission. The interpretations and opinions contained in it are solely those of the authors.

Qualitative Eurobarometer

DG COMPETITION STAKEHOLDER STUDY

Conducted by TNS Qual+ at the request of
Directorate General Competition

Survey co-ordinated by Directorate General
Communication (DG COMM - "Research and
Speechwriting" Unit)

TNS Qual+
Avenue Herrmann Debroux, 40
1160 Brussels
Belgium

CONTENTS

1	Executive Summary.....	4
2	Background and Research Method	11
2.1	Background and objectives	11
2.2	Methodology.....	12
2.3	Respondent context and selection.....	14
2.4	Contributing organisations.....	16
3	Soundness of Legal and Economic Analysis	18
3.1	Clarity and comprehensibility of decisions	18
3.2	Predictability of decisions	20
3.3	Predictability of fines imposed	22
3.3.1	Rating: legal soundness of decisions	23
3.4	Technical quality of economic analysis	23
3.5	Understanding of the markets	26
3.5.1	Rating: market knowledge.....	28
3.6	Focus of enforcement activities	28
3.6.1	Rating: quality of economic analysis	30
4	Integrity	32
4.1	Transparency - listening and informing in a timely manner.....	32
4.1.1	Rating: informing in a timely manner	34
4.2	Transparency - stakeholder consultation on new rules	34
4.2.1	Rating: stakeholder consultation on new rules	36
4.3	Observance of procedural rules	37
4.4	Burden on businesses and organisations.....	39
5	Economic Effectiveness	42
5.1	Effectiveness of detection policy	42
5.2	Impact on the markets.....	43
5.2.1	Rating: impact on the markets.....	45
5.3	Timeliness of decisions.....	45
5.3.1	Rating: timeliness of decisions	47
5.4	Ability to enforce decisions	48
5.5	Deterrent effect of fines	49
5.6	Response to the financial and economic crisis.....	51
6	External communication	54
6.1	Clarity and comprehensibility of external communications	54
6.2	Timeliness of communication	55
6.3	Choice of communication and media channels	56
6.4	Targeting of communications	58
6.5	Promotion of competition culture	59
6.5.1	Rating: promotion of competition culture	61
	ANNEX - Interview topic guide	63

1 Executive Summary

DG Competition commissioned this Qualitative Eurobarometer study in order to obtain feedback on perceptions of the quality of its activities from its most important professional stakeholders. The study covers DG Competition's enforcement, policy and advocacy activities. Feedback was sought in relation to the legal and economic soundness of DG Competition's activities; on aspects of its integrity (such as transparency during case proceedings, compliance with procedural rights, etc.); in relation to the economic effectiveness of its actions on the markets and for citizens; and finally, with respect to the quality of its external communications.

The findings of the study are expected to assist DG Competition in achieving more targeted and dynamic communication and interaction with its professional stakeholders and with the general public; in detecting areas of possible improvement in its cooperation and interrelations with stakeholders; in prioritising its projects to achieve a greater impact on the markets; and in measuring its performance in a number of fields related to the quality and impact of its work.

The study targeted DG Competition's professional stakeholders, in particular law firms, economic consultancies, business associations, consumer associations, companies, national competition authorities and EU Member State ministries. All stakeholders were knowledgeable about DG Competition's work, either through direct involvement in case work as part of DG Competition's enforcement activities or, indirectly, by having influenced policy work or benefitted from it. 113 in-depth interviews (IDIs) lasting 75 or 90 minutes were thus carried out, conducted face to face wherever possible. The interviews took place between December 2009 and March 2010.

Soundness of legal and economic reasoning

The majority of respondents from most stakeholder groups felt that the Commission's *decisions are clear, understandable* and appear to be based on sound legal and economic reasoning. Most felt that, even if on occasion they do not agree with the outcome of a decision, the rationale for the decision is usually clear. Lawyers, respondents from economic consultancies and companies perceived an improvement in clarity over recent years. Only respondents from business and consumer associations had more mixed views, offering examples of decisions they perceived as unclear. About half of the lawyers referred to differences in the quality of decisions depending on the area of competition policy, with the perception that the legal analysis of cartel cases is less thorough than for other cases. A number of lawyers, respondents from companies and economic consultants felt that case team members' seniority and (market) knowledge may affect the clarity and comprehensibility of the decisions.

The majority of respondents in each of the stakeholder groups felt that Commission *decisions are predictable*, due to the praiseworthy application of legislation, rules and published guidelines. Economic consultants perceived an improvement in predictability since the creation of the Chief Economist's Team, but at the same time stressed that the complexity of cases makes an absolute predictability very hard to achieve. Some respondents from business associations and companies felt that changes, especially late ones, in DG Competition's position during the lifetime of a case may prevent final decisions from being predictable. In accordance with this, the main improvement requested by stakeholders across all groups was increased transparency during the entire life-time of a case. In particular, respondents want communication with DG competition to begin earlier on in the process and they want more frequent follow-up communication.

The *predictability of fines* imposed in Commission decisions was seen in a more mixed way within each of the stakeholder groups. Respondents from national competition authorities were most positive about the predictability of fines, feeling that fines are predictable as they follow the clearly defined legislative guidelines. In contrast, lawyers and respondents from companies felt that, with the possible range of fine levels now laid down in the new guidelines, fines are even more difficult to predict. At the same time, many lawyers acknowledged that there are numerous variables involved, rendering the prediction very difficult. A small minority of lawyers and respondents from companies and national competition authorities felt that making it difficult to predict fine levels is intentional in order to prevent companies from making a cost-benefit analysis of breaching competition rules, some of them agreeing with DG Competition retaining such discretion.

Stakeholders from all groups generally felt that both DG Competition's economic analytical capabilities and the application of its *economic analysis* have improved in recent years. Many attributed these improvements to the work of the Chief Economist Team which was praised. The use of economic analysis is viewed by many stakeholders across various groups as adding credibility to DG Competition's investigations, increasing transparency and removing potential subjectivity from the Commission's decisions. While some respondents from national competition authorities felt that State aid decisions could benefit from more economic analysis, others, especially from smaller Member States, already found the present requests for economic analysis very complex and burdensome. In addition to the general appreciation of the quality of DG Competition's economic analysis, respondents provided a number of specific suggestions for further improvements, such as involving economists at early stages of case work, or allowing stakeholders to communicate directly with DG Competition's economists, rather than being restricted to communicating through lawyers.

Stakeholders generally view DG Competition's *market understanding* positively. They felt that DG Competition is effective in gaining an understanding of the sectors it is operating in. However, criticism was also voiced, mainly from business associations and companies. While

stakeholders generally felt that DG Competition could not be expected to have a complete understanding of all sectors and all markets at all times, there were calls, backed with a number of concrete suggestions from the various stakeholder groups for further improvements.

On the whole, all the stakeholder groups are satisfied with DG Competition's current sector focus. Most stakeholders believe that enforcement activity is correctly *focussed on sectors* with important impact for consumers and the European markets, and suggestions for future priorities were in line with DG Competition's present priorities. However, a few stakeholders criticised DG Competition for being either too active or not active enough in specific sectors. With respect to DG Competition's recent activities in the pharmaceutical sector respondents across most groups perceived this increased focus as appropriate. However, while not questioning the focus of activities some economic consultants and a significant minority of lawyers criticised DG Competition for the way it handled the pharmaceutical sector enquiry. They felt that some of the work done was inadequately planned, expensive and unnecessarily burdensome on companies. They questioned whether the burden put on companies by the enquiry justified the outcomes they saw at the time of interview.

Integrity

Views as to DG Competition's performance with respect to *communication with stakeholders* during case proceedings were very mixed. Respondents from national competition authorities, economic consultancies, business associations and Member State ministries were the most positive. Their positive views were based on interactions with DG Competition staff, which they perceive as highly professional and transparent. In contrast, lawyers, respondents from companies and consumer associations were more negative, in particular with respect to DG Competition's performance on informing in a timely manner. With respect to stakeholder consultations, the majority of respondents in each group commended DG Competition on the regular and, as they perceive, adequate consultations on new rules and policies. However, most of them share the feeling that DG Competition does not allow sufficient time for the preparation of submissions, in particular where consultation with other concerned parties would be appropriate. Moreover, a number of respondents expressed doubts as to whether their views, once sought, are actually taken into account in the formation of new rules. In some instances stakeholders even felt the rules had already been largely decided by the time they were consulted.

Stakeholders generally believe that DG Competition is observing *procedural rules* and they were particularly positive about the handling and protection of sensitive and confidential information. The great majority of company representatives included in the study were very complementary about DG Competition's integrity in observing procedural rules. Less positive were some business association respondents, citing examples of perceived breaches of procedural rules they have experienced, essentially leaks or off-the-record briefings to journalists. In respect of

procedures, a minority of lawyers questioned the purpose of hearings, where the person taking the final decision is not present, and the role of the Hearing Officer. Although it was not one of the subjects of the survey, some criticised DG Competitions' institutional setup for the fact that Commission's decisions are made without the direct involvement of independent third parties; in effect acting simultaneously as prosecutor, jury and judge.

Stakeholders' views on the *appropriateness of the burden* DG Competition is putting on them in requesting information for investigations were polarised. Respondents from economic consultancies and Member State ministries were most sympathetic. In contrast, many lawyers and respondents from companies felt that the burden of requests is greater than it needs to be, referring with examples in particular to the recent investigations in the pharmaceutical sector. Respondents from business associations and national competition authorities were mixed in their views. The main criticisms across the stakeholder groups were, firstly, the volume of data requested - often perceived as unnecessarily large; secondly, the quality of the data requests in terms of questions asked by DG Competition - there were doubts as to whether they provide added value to the investigations; thirdly, the tight deadlines of the requests. Respondents provided a number of concrete suggestions for improving this burden, such as the Commission providing pre-warning of requests and a rationale about how the data will be used, streamlining questionnaires, following a timetable that is determined at the start of the case etc.

Economic effectiveness

The majority of respondents in every stakeholder group felt that DG Competition's *detection policy* is effective and that this is primarily attributable to its leniency policy. At the same time, respondents from companies, economic consultancies, lawyers and national competition authorities perceived the detection policy as reactive and being over reliant on leniency. They ask for more proactive detection. Moreover, a minority of lawyers and respondents from companies voiced concerns about the quality and credibility of some leniency applications and they suggested dropping 'insignificant' cases from leniency applications. Half of the consumer associations felt that they could assist DG Competition in its detection activities and felt they were often ignored or used too little.

Most respondents across different stakeholder groups perceive *DG Competition's activities* have a beneficial *effect*, in particular the control of cartels and the increased competition in the markets. Exceptions to this positive view came from the business associations and to some extent the consumer associations, the former feeling that the effect of the decisions were circumvented by affected parties, the latter stressing the need to measure the effect of the decisions on the market.

There were mixed views as to whether the *length of time the Commission takes to make a decision* is acceptable, in particular for cartel and anti-trust decisions. The majority of the respondents from consumer

associations, economic consultancies and national competition authorities were sympathetic towards DG Competition's position and the trade-off between speed and quality of decisions. Some respondents from national competition authorities and consumer associations also stressed that the length of the decision process is not entirely attributable to DG Competition as it can be a result of lengthy consultations, obstacles raised by lawyers or simply due to the complex nature of a case. However, a few respondents from the business associations, companies, Member State ministries and national competition authorities voiced the concern that in certain cases, decisions may become irrelevant as a result of the delay in decision making, as markets may have changed or competitors left the market. Problems with delays due to translation of each state aid procedural step into national languages were mentioned by a small number of Member State ministries. A number of lawyers referred positively to the speed with which DG Competition dealt with State Aid cases during the financial crisis. Specific suggestions for improvements in the area included the introduction of set time frames in antitrust proceedings and a better prioritisation of cases in order to reduce the investigation time on the more urgent ones.

The majority of respondents in each stakeholder group believe that, on the whole, DG Competition is able to enforce the Commission's *decisions*. However, some question whether DG Competition has sufficient resources to check that the Commission's decisions are being followed and, consequently, to enforce its decisions. Respondents from companies, economic consultancies, law firms, Member State ministries and national competition authorities believe that Commission's decisions are adhered to because the Commission has the competence to fine or penalise those who do not comply. A common theme amongst lawyers and company representatives was that antitrust or state aid cases (in comparison to merger decisions) are less likely to be enforced because they are perceived to be less precise and the follow up to these decisions is less systematic. Some of the company respondents stressed that DG Competition should also focus on the impact of its decisions on the markets after enforcement.

Fines were recognised by the majority of respondents across most of the stakeholder groups as being an effective deterrent, particularly as they have become so high. Some lawyers stressed that the size of fines has reached the acceptable level and that their deterrent effect would not increase proportionately. Some lawyers also warned that the high level of fines may deter companies from being cooperative with DG Competition and applying for leniencies. In contrast, some company respondents see the leniency policy as contradicting the purpose of competition regulations, since the company applying for leniency benefits from the anti-competitive conduct and becomes exempt from paying a fine. A number of stakeholders across all groups stressed that, while fines are an effective deterrent, they are not the only tool available to DG Competition. A number of alternatives were suggested (criminal sanctions, publication of the companies' infringements, compensation payments for harmed consumers, etc.) but with mixed views about whether individual criminal liability should be introduced as an additional deterrent.

The majority in each of the stakeholder groups commented positively about DG Competition's *response to the financial and economic crisis*. Respondents from business associations, companies, lawyers, Member State ministries and national competition authorities commended DG Competition's speedy, flexible and appropriate reaction to the financial and economic crisis. Lawyers and respondents from Member State ministries praised the speed with which DG Competition was able to mobilise resources over weekends to increase decision making. In contrast to the generally positive view, some respondents from economic consultancies felt that DG Competition had been 'too invisible' during the crisis. Some consumer association respondents were concerned that decisions were made too quickly and DG Competition's position was weakened during the crisis.

External communication

The majority of respondents from each stakeholder group view the *clarity and comprehensibility* of DG Competition's external communications, such as press releases, the website and speeches favourably. However, the opinion was expressed across most stakeholder groups that current external communication is not appropriately targeting non-technical audiences.

The majority of respondents from each stakeholder group considered that DG Competition's communication is delivered within an *appropriate time frame*. At the same time, a significant minority of the respondents from the companies, law firms, Member State ministries and national competition authorities felt that decisions are released too quickly, without giving affected parties or their representatives a pre-warning before the public and media are notified. In particular occasional leaks to the press before a decision is adopted were criticized. Moreover, a small minority of respondents from national competition authorities, companies and consumer associations felt that translations of State aid decisions into the Member States' languages were sometimes only provided after a delay. Finally, a small minority of lawyers and respondents from companies, Member State ministries and national competition authorities felt that the full-text of final decisions sometimes takes too long to be published.

There was consensus amongst respondents that DG Competition's *choice of communication channels* is appropriate, the website receiving the most praise. Respondents from each stakeholder group also referred positively to press releases, newsletters and conferences. A minority of the respondents from companies felt that there could be more dialogue at the conferences, the perception being that the communication process is largely one way. A minority of the respondents from the business associations, consumer associations and national competition authorities felt that DG Competition needed to appeal to a broader audience, in terms of the channels and language it uses, for example, using platforms like YouTube and improving the readability of press releases.

The majority of respondents felt that DG Competition is *targeting communication* appropriately. Only the respondents from the Member State ministries felt the further need for improvement in DG Competition's communication with stakeholders. A minority of respondents (particularly those from the Eastern European Member States) would like more information from DG Competition. They called for more information seminars on relevant topics, together with open discussions enabling participants to gain a better understanding of DG Competition's policies and mindset. A minority of respondents across all the stakeholder groups, apart from the economic consultancies, felt that DG Competition's current communication strategy is too technical and inappropriate for consumers. National competition authorities expressed the view that communication with consumers should be coordinated with each national competition authority in order to ensure consumers are targeted appropriately in each Member State.

There were mixed opinions among respondents about how well DG Competition is *promoting a culture of competition*. The majority of respondents from business associations, companies, economic consultancies and national competition authorities felt that DG Competition has been effective. Half of the consumer association respondents feel that DG Competition could be doing better at promoting a competition culture. Amongst the lawyers there was little consensus, with some feeling DG Competition has some good initiatives for promoting a competition culture, others believing there to be room for improvement. Stakeholders generally had mixed views as to whether it is DG Competition's responsibility to promote competition to this wider audience. Respondents from companies, consumer associations and Member State ministries felt that DG Competition should promote competition culture to consumers. In contrast, respondents from the economic consultancies felt that this was outside the remit of DG Competition and was the responsibility of national authorities. Lawyers and national competition authorities had a mixed view on this issue. About a quarter of respondents from the companies were of the opinion that there is no communication on 'pro-competition' aspects, the benefits of healthy competitive markets and case studies of companies behaving within the law and succeeding. A minority regretted that the emphasis on abuse of the rules is felt to ignore the efforts of those that do obey them.

2 Background and Research Method

2.1 Background and objectives

The objective of this qualitative study was to obtain feedback on the perception of the quality of DG Competition's activities from its most important professional stakeholders. In particular on:

- The legal and economic soundness of its activities
- Aspects of integrity (such as transparency during case proceedings, compliance with procedural rights, etc.)
- The economic effectiveness of its actions on the markets and for citizens
- The quality of its external communications

It is expected that the findings of the study will assist DG Competition in:

- Having a more targeted and dynamic communication and interaction with its professional stakeholders and with the general public
- Detecting areas of possible improvement in its cooperation and interrelations with stakeholders
- Prioritising its projects to achieve a greater impact on the markets.
- Measuring its performance in a number of fields related to the quality and impact of its work

The focus of the study is on the perceived quality of DG Competition's actions; enforcement work (antitrust and cartel, merger and State aid control), as well as policy and advocacy activities. The study targeted DG Competition's professional stakeholders who are knowledgeable about its work, either by having been directly involved in case work as part of DG Competition's enforcement activities or indirectly, by having influenced or benefitted from policy work. A separate study directly addressed citizens in all EU Member States.

This report draws together the views of the seven different groups of stakeholders interviewed:

- Lawyers
- Economic consultancies
- Business associations

- Consumer associations
- Companies
- National competition authorities
- EU Member State ministries

2.2 Methodology

The study consisted of 113 in-depth interviews (IDIs) lasting 75 or 90 minutes. Interviews were conducted face to face wherever possible, at the respondent's place of work or another suitable location. Interviews took place between December 2009 and March 2010.

Due to data protection considerations, potential respondents were initially contacted by DG Competition and invited to participate in the study. Details of those organisations willing to take part were provided to TNS Qual+.

The interviews conducted were distributed amongst the various stakeholder groups as follows:

Stakeholder Type	Interviews completed
Lawyer	27
Economic consultancy	5
Business association	6
Consumer association	4
Company	40
NCA	22
Member State ministry	9
Total	113

Only stakeholders with headquarters in an EU Member State (or in Switzerland) were considered. The geographical distribution of companies contacted and, as a result, interviewed was based on the enforcement work of DG Competition. Other stakeholders were selected based on the level of contact they had with DG Competition. No specific effort was made to ensure equal coverage of Member States beyond national competition authorities and Member State ministries. As a result, a significant proportion of the interviews took place in Belgium and some of the larger Member States. The final distribution of interviews by Member State was:

Country	Interviews
Austria	3
Belgium	36
Switzerland	2
Czech Republic	1
Germany	11
Denmark	3
Greece	1
Spain	6
Finland	3
France	7
Hungary	3
Ireland	2
Italy	2
Lithuania	1
Luxembourg	2
Latvia	2
Malta	1
Netherlands	6
Portugal	1
Romania	1
Sweden	4
Slovenia	1
Slovakia	2
United Kingdom	12
Total	113

The reader should note that this report is based on findings obtained through a qualitative research methodology. The interviews were structured around a consistent set of topics agreed with DG Competition but, within each topic area, they were open and discursive in nature allowing each respondent to address the topics which he or she felt were of most relevance.

Whilst we have striven to provide an indication of how widely the reported perceptions and views were held, such information should be treated with some caution. It is important to remember that the issues raised by each respondent will have been those that were of primary concern to them on

the occasion of the interview. The fact that some respondents did not mention an issue spontaneously should not necessarily be taken as an indication that the issue was of no concern to them. It is also important to note that, although a number of respondents may have referred to the same issue in the discussion, it has not always been possible to categorise their responses in a straightforward way; some will have introduced caveats, expressed mixed views, referred to a topic only tangentially, focused on a specific aspect of an issue etc. This can also make it difficult to state, definitively, how many people held a particular view.

Verbatim quotations from respondents have been included in this report in order to use respondents' own words to illustrate the points being made. Quotations are selected to provide a representative range of views from the different stakeholder groups and to provide as much clarity as possible about the issues under discussion. Quotes are written *in italics*. For anonymity's sake, they have not been attributed to particular individuals or organisations.

A series of quantitative questions was included as part of the interview process, to provide an overall summary of respondent views on key aspects of DG Competition's performance. Not all respondents felt able to provide a rating for all the elements due to lack of immediate personal knowledge. The data on raw scores, an overall mean and a mean for each stakeholder group are included within the report.

2.3 Respondent context and selection

The **lawyers** interviewed were partners or senior partners in law firms and specialised in competition policy and competition law in their respective countries. Most of the lawyers have frequent contact with DG Competition and those based in Brussels in particular deal with case teams at least weekly. Those outside Brussels and the more senior partners tend to have less frequent contact with DG Competition. The initial list of potential lawyer respondents was established based on DG Competition's most frequent contacts in different enforcement cases and / or consultations. This list was narrowed down by inviting only one lawyer per company, in the majority of cases (the choice within law firm was based on inviting the most senior of the named lawyers or on availability within the law firm). If a law firm had offices in more than one Member State, the Brussels location was generally given priority, on the assumption that those working from that office would have the most comprehensive knowledge.

The **economists** were all highly experienced and in senior positions in their consultancies. They had extensive experience of working with DG Competition. The initial list of potential respondents for this stakeholder group was drawn by DG Competition based on the 2006 Handbook of Competition Economists of the Global Competition Review. A further narrowing down of economic consultancies was done in accordance with the most frequent contacts of DG Competition's Chief Economist Team.

The respondents from the **business associations** represented a diverse range of sectors. These respondents were rarely involved in individual cases but rather interacted with DG Competition about its policy work. Only one of the respondents interviewed had not had direct contact with DG Competition; this association's only direct contact with the Commission had been via DG Enterprise. DG Competition's initial list of potential business association respondents aimed to represent various EU-wide business sectors, including SMEs. The selection was based on DG Competition's existing contacts within these organisations.

The **consumer association** respondents were senior representatives of their associations, in legal or economic posts. All had reasonably regular contact with DG Competition. DG Competition's initial list of potential respondents covered its most frequent contacts.

A sample of **companies** was interviewed from those involved in cases closed between 2006 and 2009. Respondents were all key staff in their companies, either at a senior executive level, in the legal department or monitoring competition. Most had backgrounds either in law or management/economics. They all had personal experience of or direct contact with DG Competition. The initial list of potential respondents aimed to cover a broad range of companies dealing with DG Competition, in order to get as balanced view as possible. This included companies who had been involved in cases as complainant or recipients of prohibition decisions or fines as well as those who had been beneficiaries of the Commission's decisions (in many cases companies fell into multiple categories). DG Competition's initial selection of companies was based on those involved in cases which closed between 2006 and 2008, although this was extended to 2009 for companies or financial institutions involved into the financial crisis. It should be noted that qualifying companies were not excluded if they were also involved in current cases. The sectoral coverage of the invited companies was broadly in accordance with DG Competition's policy priorities of the last three years.

The respondents from the **national competition authorities** (NCAs) were almost exclusively senior employees. Job titles included Director General, Chairperson, Head of Department and Director/Vice Director. They are in both direct contact with DG Competition themselves and indirectly through their employees. The initial list of interviewees was provided by DG Competition. It was based on replies from Member State competition authorities which DG Competition had contacted and invited to participate in the survey.

The **Member State ministry** respondents interviewed function as intermediaries between their country and the European Commission for competition matters. The majority of the ministries included in the study were concerned with finance, economic affairs or business issues. The respondents are in frequent, personal contact with DG Competition and most have a representative role at some Brussels meetings in a consultative capacity. The list of potential respondents provided to TNS Qual+ by DG Competition was based on the replies from the EU Member

States Permanent Representation to the EU. These replies were the result of a request from DG Competition to help finding interested and knowledgeable experts from the respective Member States.

2.4 Contributing organisations

Representatives of the following organisations participated in the research:

A. P. Moller - Maersk A/S	France, SGAE (Secretary for European Affairs)	Nokia Corporation
AIR FRANCE KLM	Freshfields Bruckhaus Deringer	OCU European Public Affairs and Competition
Allen & Overy	Garrigues	Redeker Sellner Dahs & Widmaier
Antimonopoly Office of the Slovak Republic	Gazdasagi Versenyhivatal (GVH)	Repsol YPF
Austria, Ministry of Economy, Family and Youth	General Electric Company	Ryanair
Autorité de la Concurrence de la République Française	German Competition Authority	SABAM
Baker & McKenzie	Glasvezernet Amsterdam CV	Saint Gobain
Belgian Competition Authority	Gleiss Lutz	Sanofi Aventis
BEUC - The European Consumers Association	Google	Schönherr, Austria
Bird & Bird	Haver Mailaender	Schuette Law
Bonelli Erede Pappalardo	Hellenic Competition Commission	Shell International Ltd.
Bredin Prat	Hengeler Mueller, Germany	Squire Sanders & Dempsey
Cableuropa, S.A.U. (ONO)	Hispasat, S.A.	Sweden, Ministry of Enterprise, Energy and Communications
Cleary Gottlieb Steen & Hamilton	Howrey	Swedish Competition Authority
Clifford Chance	Hungary, Ministry of Finance	Total
Comision Nacional de la Competencia	Hunton & Williams	UK Competition Commission

DG Competition Stakeholder Study - Aggregate Report

Competition Council of Latvia	IBERDROLA	UK, Department for Business, Innovation and Skills
Competition Council of Romania	IBERIA LAE	Unilever
Competition Council of the Republic of Lithuania	Irish Competition Authority	Vattenfall AB
Competition Protection Office Slovenia	Linklaters	Vinge, Sweden
Czech Competition Authority	Lovells	Westinghouse Electric Company
Danish Competition Authority	Maqs, Denmark	Which?
Easy Jet	MOL Plc	White & Case
Federation of German Consumer Organisations	Nestlé	Wilmer Hale
Finland, Ministry of Employment and the Economy	Netherlands Competition Authority	Wolf-Theiss, Austria
Finnish Competition Authority	Netherlands, Ministry of Economic Affairs	

The remaining participants indicated that they would prefer their input to be provided anonymously.

DG Competition and TNS Qual+ would like to thank all those who participated in this research for their time and their contributions.

3 Soundness of Legal and Economic Analysis

3.1 *Clarity and comprehensibility of decisions*

- **The majority of respondents within most of the stakeholder groups felt that Commission decisions are clear and understandable, with only business associations and consumer associations having a more mixed view -**

The majority of respondents within most of the stakeholder groups felt that Commission decisions are clear and understandable.

Several of the stakeholders explained where their confidence in the Commission's decision making comes from. There was a broadly held view that DG Competition is a very professional organisation, with competent and committed staff. Beyond this, the majority of the lawyers and company respondents referred to the rigour of the Commission's decisions. The majority of respondents from the national competition authorities focused particularly on the integrity and professionalism of DG Competition. On this note, the majority of company respondents talked about the professionalism of DG Competition's case teams, expressing the view that these teams are knowledgeable and hard working.

Most stakeholders felt that, even if on occasion they do not agree with the outcome of a decision, the rationale for the decision is usually clear.

*"As a rule, the argumentation is certainly coherent, which does not change the fact – and I think that is self-evident – that one can be of a completely different opinion about certain individual points and remain so right through until the end of the proceedings or process."
(Company)*

The vast majority of respondents from the economic consultancies and companies and many of the lawyers reported an improvement in the clarity of decisions in recent years. A small minority of respondents from companies attributed this development to the overall improvement of DG Competition's economic analysis, in particular to the setting up of the Chief Economist's Team. Respondents from the Member State ministries added that, in their view, the use of economic analysis provides a more objective perspective than a purely legal approach. They considered the use of figures more transparent and less subjective.

Respondents from business and consumer associations had more mixed views as to the clarity of Commission decisions. Two of the six respondents from the business associations cited examples of decisions which they felt were unclear. In both cases, DG Competition was said to have changed its view at a late stage in the process without, as it was seen by the business associations, giving sufficient explanations about the reasons. Talking about similar issues the respondent from one of the consumer associations stressed the importance of DG Competition making

it possible for stakeholders to understand the full rationale of a Commission decision - both during the course of a case and on its completion. For this respondent the primary rationale for this was the need to make informed choices about whether or not to challenge decisions.

In addition to the general perceptions expressed above, the following detailed criticisms and suggestions to further improve the clarity and comprehensibility of decisions were voiced across the different stakeholder groups:

- Some lawyers and respondents from national competition authorities felt, at times, a lack of information provided by DG Competition to support Commission decisions at their initial release. Lawyers, in particular, perceived such a lack of rationale as frustrating, especially after submissions of long arguments to DG Competition.
- Some respondents from companies and consumer associations, in particular those without a legal background, felt the terminology used in decisions was difficult to understand.

"You have to understand how they work and how they think to take a view on what they are really saying." (Company)

- Several respondents from national competition authorities considered the full documentation of a decision, at times, very lengthy. Some suggested, moreover, that decisions and their supporting documentation should be more understandable for non-experts and called for the text of decisions to be more succinct and to provide a clearer message.
- Half of the lawyers felt that the quality of decisions varies depending on the area of competition policy involved (antitrust, cartel, mergers or State aid). For example, a significant number felt that the legal analysis in cartel cases is less thorough than in other cases.
- A majority of the lawyers, a quarter of the respondents from the companies and almost all of the respondents from the economic consultancies believed that the composition of the team assigned to a case in terms of seniority and (market) knowledge affects the clarity and comprehensibility of decisions.

"Talking about DG COMP as one solid body that is consistent is not correct. There is a lot of variance." (Economic consultancy)

- A minority of the lawyers and the respondents from the national competition authorities expressed the view that, in order to clarify legal arguments it would be useful to meet with DG Competition during or after the decision process to discuss the decision face to face.

- Over half of the respondents from the companies felt that long decision processes could hamper the clarity of decisions, since in the context of an evolving market, rendering a 'logical' outcome becomes more difficult.

3.2 Predictability of decisions

- Most respondents felt that Commission decisions are very predictable with companies and business associations being more nuanced -

The majority of respondents in each of the stakeholder groups felt that Commission decisions are predictable. Business associations and companies were more mixed in their views.

"Yes, by and large they are clear." (Member State ministry)

"By and large we feel very secure with the legal development on the Commission's side, it's quite predictable." (Lawyer)

"In principle, the result is already clear at the outset, you know what you are going to get at the end of the proceedings." (Company)

Most of the lawyers and the respondents from the national competition authorities explicitly recognise that the predictability of Commission decisions arises out of DG Competition's following of legislation, rules and published guidelines. At the same time, some lawyers referred to *"slavish reliance"* on rules and guidelines and to the downside of rules becoming overly predictable.

All the respondents from the economic consultancies reported a perceived improvement in the predictability of decision making since the creation of the Chief Economist's Team (CET) within DG Competition. At the same time, some stressed that an absolute degree of predictability would be very difficult to achieve.

"In reality the cases they deal with are so complicated and difficult that predictability is unrealistic." (Economic consultancy)

About half of the lawyers considered merger decisions as the most predictable, in contrast to cartel cases which they consider more difficult to predict, particularly in their early stages.

Opinions amongst business associations and companies varied the most of all stakeholder groups. Most of the respondents from the business associations did not feel knowledgeable enough to answer this question. The two who did answer were, however, rather negative, stating that 'late changes of position in relation to final decisions' affect predictability.

About a quarter of the respondents from companies praised DG Competition's case teams for their open communication which was said to render decisions more predictable. At the same time, another quarter of the respondents from the companies believed that competition rules are occasionally applied inflexibly, resulting in pre-determined decisions with an insufficient weighting of evidence. Moreover, a small minority of respondents from companies believe that the Commission's decisions are shaped by political influences at both a European and Member States level.

In addition to the general perceptions expressed above, the following detailed criticisms and suggestions to further improve the clarity and comprehensibility of decisions were voiced across the different stakeholder groups:

- The main improvement, requested by several respondents across all stakeholder groups, was for increased transparency during the entire life-time of a case. In particular, respondents want communication with DG competition to begin earlier in the process and they want more frequent follow-up communication.

"Predictability in the earlier stages is important when you are defending your client from accusation. If the accusation is not crystal clear you are shooting in the dark." (Lawyer)

- Stakeholders considered a continuous exchange of information particularly important for lengthy cases where legislation itself can change, which can make it more difficult to predict the outcome. Almost a quarter of the respondents from the Member State ministries made special reference to the importance of exchanging information in relation to State aid issues.
- In particular lawyers and respondents from business associations called for avoiding changes at later stages of the process as these render decisions less predictable.
- A minority of the respondents from the consumer and business associations called for ongoing communication to ensure that they are kept up-to-date with DG Competition's position from the early stages of the case. They felt that this is particularly important if DG Competition appears to change its position mid-case.
- The stakeholders want to understand the rationale; otherwise they tend to suspect that such changes are politically motivated. Again there was a call from stakeholders for DG Competition to reduce or control the variability in case teams in terms of seniority and (market) knowledge.

3.3 Predictability of fines imposed

- There were mixed views about fine predictability, with some feeling that it is DG Competition's intention to make the prediction of fines difficult -

Within each of the stakeholder groups opinions varied as to whether the fines imposed by the Commission were predictable or not.

The majority of the respondents from the Member State ministries, economic consultancies and business and consumer associations felt unable to comment on the predictability of fines as they felt they have insufficient experience on which to base an assessment.

The respondents from the national competition authorities were the most positive about the predictability of fines. Most of them felt that fines are predictable as they follow the clearly defined legislative guidelines. Only a few thought that the weightings applied to the variable factors contained in the legislative guidelines were unpredictable and could result in large discrepancies between fines.

Lawyers and company respondents were the most divided on this question. Half of the respondents from the companies felt that fines are relatively predictable. However, two thirds of the lawyers and the remainder of the companies felt that, with the possible range of fine levels now available in the new guidelines, fines are even more difficult to predict. At the same time, many lawyers acknowledged that there are a lot of variables involved, which make prediction very difficult.

Among those respondents from the economic consultancies who were able to express a view on this issue, the overall feeling was that, although the level of fines was generally appropriate, it was difficult to predict the levels of fines which would be imposed.

Several lawyers and respondents from the companies and national competition authorities felt that making the levels of fines difficult to predict is intentional on the part of DG Competition. A small minority from each group (the largest group being amongst the lawyers) agreed with DG Competition retaining such discretion.

*"If someone internally asks you, 'how much can it cost if I carry on doing this?' you can't give an answer... But not being predictable in terms of fines is rather healthy since it means companies don't know what to expect. And the high bracket is known anyway."
(Company)*

"The value of the fine shouldn't necessarily be predictable. Of course, we try to be predictable in the sense that the regulations that establish the fines should be clear and well known because this is the principle of the law. However, the fine shouldn't be too

predictable because then the economic agents make their own calculations to break the law and say, 'all right, I can break it'." (National competition authority)

"They don't want companies to be able to do a cost benefit analysis of breaking the law; they might decide on balance that it's better to break the law. That is the Commission's theory. It's a bit ivory tower." (Lawyer)

Half of the lawyers, a few respondents from the companies and one from the economic consultancies consider that the size of fines has become disproportionately high. The respondents from some of the companies indicated that this is of concern to them.

"When you hear the amounts Microsoft has to pay, you are shocked!" (Company)

3.3.1 Rating: legal soundness of decisions

Mean score = 5.1

Commission decisions were not legally sound						Commission decisions were very legally sound
1	2	3	4	5	6	7
-	4	3	19	36	32	7

Scores by stakeholder type:

Stakeholder Type	Lawyer	Economic consultant	Business assoc.	Consumer assoc.	Company	NCA	MS ministry
Mean	5.0	4.4	4.8	5.3	4.5	6.0	6.0

3.4 Technical quality of economic analysis

- The majority of respondents felt there had been a marked improvement in DG Competition's economic analysis since the establishment of the Chief Economist Team and believe that economic analysis has an appropriate weight in decisions -

The overall quality of DG Competition's economic analysis was perceived positively by most respondents.

Stakeholders of all groups generally felt that both DG Competition's economic analytical capabilities and the application of its economic analysis have improved in recent years. Many praised the work of the Chief Economist Team.

"I certainly believe that a great deal of effort is made to get to grips with the economic aspect and that the considerations made and the theories which are relied upon in this field are very good... Since the introduction of the Chief Economist very significant improvements have been achieved." (Company)

"Economic analysis has certainly improved... We sometimes use outside economists and they have a high regard for the economics team at DG Competition." (Lawyer)

The vast majority of respondents from companies, as well as lawyers, Member State ministry and national competition authority respondents stressed that the use of economic analysis is adding credibility to DG Competition's investigations, increasing transparency and removing potential subjectivity.

Nearly all respondents from the economic consultancies acknowledged that the traditional over-reliance on legal reasoning in decisions had been addressed and the economic reasoning in cases had improved.

Respondents from the national competition authorities perceived DG Competition overall as being thoroughly competent in terms of economic analysis. However, since this is a relatively new discipline within DG Competition, they considered that its application will improve with experience over time.

A few lawyers felt that economic analysis is sometimes given too much weight over legal analysis and that the inclusion of economic analysis slows down the decision making process. In contrast, a minority of business associations feel that DG Competition is still putting too much emphasis on legal analysis and not enough on economic impact.

"By the time the economic analysis is produced it may be too late. Sometimes it's done just to justify their position. I think the Chief Economist is looking more at the big cases. We have not seen them getting involved at all [on smaller cases]." (Business association)

In addition to the generally very positive view of the economic analysis conducted by DG Competition, a number of specific suggestions for further improvement were made (in all instances by only a small number of respondents), including the following:

- About a quarter of company respondents felt that the application of economic analysis is too standardised and that the market context is not always taken into consideration.
- A minority of respondents from business associations and from national competition authorities felt that DG Competition's choice of analytical methodologies and tools was, on occasion, flawed and that the Chief Economist Team was unable to explain the rationale for using such economic tools. Consequently, in those specific cases, they doubted DG Competition's conclusions.

- A few of the respondents from the national competition authorities felt that State aid decisions could benefit from more economic analysis.

"It would be possible to improve the State authorities work if we could use the same methodologies." (National competition authority)

- At the same time, some respondents from the smaller Member State ministries referred in particular to certain very technical and complex State aid case related requests, which, they felt, were sometimes difficult to comply with.
- A minority of the company respondents felt that DG Competition's economic analysis is not always easy to follow and that the final decision can be difficult to understand for a 'lay' non-economist.
- A respondent from the consumer associations pointed out that, while economic analysis was important, it could disadvantage smaller companies who do not have the resources to provide detailed economic analysis to defend their case.
- A minority of the respondents from the national competition authorities felt that there is some variation in terms of economic expertise in the case teams. Similarly, some lawyers felt that the Chief Economist Team is not sufficiently integrated into case teams and, as a result, risked looking at data that was irrelevant to the case. Some of the respondents from the business associations suggested including both legal and economic personnel in case teams to ensure cooperation between legal and economic analysts.
- A minority of lawyers and of respondents from companies called for increased transparency from DG Competition's economic analysis during cases and clearer communication of the economic rationale in final decisions.
- A small but significant number of lawyers were of the opinion that involving economists at the beginning of cases would ensure initial discussions were as broad as possible and would help circumvent any potential delays in the process if they get involved later. In line with this, a minority of company respondents asked for a procedure to enable them to communicate directly with DG Competition's economists, rather than being restricted to communicating through lawyers.

3.5 Understanding of the markets

- Most feel that DG Competition either already has or is able to acquire the market understanding it needs. Business associations and companies were more mixed in their views -

Many stakeholders (consumer associations, lawyers, national competition authorities and Member State ministries) view DG Competition's market understanding positively. They believe such understanding is the result of DG Competition's demonstrated ability to obtain the necessary information. Most of the stakeholders also showed understanding that DG Competition could not be expected to have an in-depth knowledge of all sectors and markets at all times. However, whilst DG Competition's case teams may not understand the market at the outset, stakeholders feel that they have the capacity to obtain the necessary information.

"I am not sure to what extent DG Competition has initial market expertise but it has its tools and means for obtaining an independent analysis of the markets and does obtain it from both an independent source and the applicant before making a decision." (Member State ministry)

"I see DG Competition as an institution that goes out of its way to get the information they need to be able to decide." (National competition authority)

"By the end of the case I think they understand the market but that's the same for the advisors as well. Early on during the case they go through a process and they learn." (Economic consultancy)

However, business associations had more mixed views. Two thirds of respondents from business associations were critical of DG Competition's market understanding.

"It was good that they looked into our sector [but] the report was some 250 pages and some parts were either misleading or not reflecting the reality of the market; a problem of definitions based on old information." (Business association)

Companies were also divided in their views: a third believe DG Competition has a good grasp of markets; a third feel its understanding is variable; and a third feels its understanding is poor. A minority of the respondents from the companies referred favorably to DG Competition's sector-based reorganisation. This range of views is illustrated by the following comments made by respondents from companies:

"Yes, market knowledge is really very good. It has indeed improved... As a consequence of the sectoral organisation, it has improved significantly." (Company)

"They have good enough understanding to make reasonable decisions; I don't necessarily think they have a good enough understanding to make great decisions." (Company)

"We encounter only a very limited knowledge of our industrial environment and our operations, in terms of the procedures used, the way companies act and the requirements of the market." (Company)

"In our view that was really one of the major deficiencies in the proceedings; the Commission's inadequate knowledge of the subject it was dealing with. That is not a criticism; our industry is indeed extremely difficult." (Company)

Although many of the lawyers felt that DG Competition's market understanding is good, many feel this is an area where improvement would still be beneficial because of its importance in making decisions.

In addition to the general perceptions expressed above, the following concrete points were mentioned by stakeholders as suggestions for further improvements:

- Most of the economic consultants and several lawyers feel that DG Competition can sometimes become isolated from the realities of the markets it is dealing with. They suggested that it would benefit case team members to 'get out of Brussels' to experience the markets first hand. They also felt that the involvement of industry specialists and independent advisors in cases would improve market understanding.
- The variability of experience within case teams was again raised as a potential problem by companies and lawyers. Most of DG Competitions' case teams are believed to have a mix of experienced staff with a high level of competence and inexperienced individuals. To balance this situation, training from staff members with experience in the relevant sector or the establishment of a knowledge sharing database were suggested as solutions, so that those assigned to a new case can learn about the relevant sector.
- A number of economic consultants felt that DG Competition's senior staff are insufficiently involved in cases. However, half of the lawyers and some of the respondents from the companies also referred to the variability of staff seniority within teams and the impact this can have on cases. While most of the teams have an appropriate mix of seniority, they felt that problems arise when the proportion of experienced staff is too low.
- A significant minority of lawyers and respondents from the companies saw a need to build experience within DG Competition's case teams. They felt that experience is being lost either through staff turnover or through staff rotation within DG Competition and

the European Commission as a whole. Consequently, they feel that DG Competition's staff is continually working in new sectors or on new cases and not building on their knowledge base in a particular area. The high rate of turnover was also seen as contributing to institutional memory loss and a lack of continuity in longer lasting cases. A few lawyers see, however, the positive side of rotating personnel - ensuring they remain fresh, inspired and without preconceptions.

- A minority of the respondents from the Member State ministries criticised DG Competition's application of its market understanding to individual Member States. These individuals feel that DG Competition does not take sufficient account of cultural differences.
- One of the consumer associations felt they could provide DG Competition with information but explained that, for this to happen, DG Competition needs to inform them what it is looking into.

3.5.1 Rating: market knowledge

Mean score = 4.8

DG Competition do not know the markets at all							DG Competition know the markets very well
1	2	3	4	5	6	7	
-	3	10	22	37	23	5	

Scores by stakeholder type:

Stakeholder Type	Lawyer	Economic consultant	Business assoc.	Consumer assoc.	Company	NCA	MS ministry
Mean	4.6	4.5	5.0	6.0	4.3	5.3	6.0

3.6 Focus of enforcement activities

- On the whole, all the stakeholder groups are satisfied with DG Competition's current sector focus -

Most stakeholders believe that DG Competition's enforcement activity is correctly focused. They feel that it is appropriately directed at sectors which impact consumers and the European markets.

"I think they have a good balance." (Lawyer)

"I think that, by and large, they are doing the right thing." (Company)

There was broad consensus with regard to the current and future focus for DG Competition. In addition to the area of copyright / patent legislation and implementation (which, although not a sector as such, but was often mentioned in the context of this question), the following sectors were identified as worthwhile to focus on by respondents from two or more stakeholder groups:

- Energy
- Banking/ finance
- Pharmaceutical
- Insurance
- Telecoms
- Food
- Transport

Few criticisms were made about DG Competition being either too active or not active enough in specific sectors. A few of the economic consultants felt that DG Competition had been too active in the high tech market. A minority of the companies felt that DG Competition had been overly active in markets in which there was a political focus, which were in the media spotlight or received a lot of public attention (such as IT, airlines, banks, telecoms, energy and food). And finally, a couple of the respondents from the national competition authorities felt that the energy sector had still been under-scrutinised.

With the exception of business associations all stakeholder groups discussed DG Competition's recent activities in the pharmaceutical sector. Most felt that the increased focus was appropriate and a number expressed the view that pharmaceuticals are liable to be a sector of increasing interest in future.

"The pharmaceutical industry has become a problem area recently and it seems that it's going to be a matter for the future. Here in [COUNTRY] we have not had much to do with this sector apart from a ruling on one merger, but the Commission feels that this is a sector in which the market is not operating well. A sector inquiry has been carried out and this has shown that there are problems on the pan-European level." (National competition authority)

While not questioning the focus of activities, a minority of economic consultants and a significant minority of lawyers criticised DG Competition for the way it handled the pharmaceutical sector enquiry. They felt that some of the work done was inadequately planned, expensive and unnecessarily burdensome on companies.

"Did they bite off more than they could chew with pharma?... The angle they are taking does make sense, but what I'm not clear on is [what they expected to achieve]... I'm pretty sure when they went into the enquiry they had these questions in their minds, they did a massive [costly] enquiry process and the questions they are coming up with... it makes you think did they really have to do that bit in the middle?" (Economic consultancy)

“The pharma sector enquiry was called the ‘Friday questionnaire’; badly formulated questionnaires sent out every Friday during the course of several months. It was murder. The industry suffered seriously from that analysis and it was not good for the Commission’s image.” (Lawyer)

A minority of the company and consumer association respondents discussed the motivation for DG Competition’s choice of sectors. They believe that the choice is not independent and suspect that it may be politically motivated or influenced by leniency applications.

“I don’t think that the Commission is arbitrary, but it does have its limitations. This is a very political arena, and depending on the political support received, more or less action can be taken.” (Consumer association)

“We were also partly responsible for the amount of attention, because we applied for leniency several times.” (Company)

The following concrete suggestions were made by stakeholders for further improvements to DG Competition’s sector focus:

- A small but significant minority of lawyers called for DG Competition to interact more with other services of the Commission, as well as to follow market changes.
- One out of the four consumer associations felt that DG Competition should be proactive and not only investigate sectors from which leniency applications or complaints arrive¹.
- Member State ministries asked DG Competition to provide more explanations to stakeholders and citizens in general about its interventions in specific sectors and how these interventions are expected to benefit competition.

3.6.1 Rating: quality of economic analysis

Mean score = 4.9

DG Competition’s economic analysis is very poor						DG Competition’s economic analysis is very good
1	2	3	4	5	6	7
2	2	6	18	32	32	2

¹ Although this specific point was only raised by a consumer association, there was more widespread criticism of what some perceived as DG Competition’s over-reliance on leniency. This is covered in section 5.1.

Scores by stakeholder type:

Stakeholder Type	Lawyer	Economic consultant	Business assoc.	Consumer assoc.	Company	NCA	MS ministry
Mean	4.9	4.8	4.2	5.7	4.4	5.6	5.5

4 Integrity

4.1 Transparency - listening and informing in a timely manner

- Stakeholder views in this area were very mixed. The major criticism concerned DG Competition's ability to inform stakeholders in a timely manner -

The majority of respondents from the national competition authorities, economic consultancies, business associations and Member State ministries were positive in their views on this issue. Most of their positive perceptions stem from their interactions with DG Competition's personnel, whom they perceive as highly professional. This gives them the impression that DG Competition acts in an open and transparent way.

"[My] close contacts [are] very open and accessible. We go to meetings, taking DG Competition staff with us, even to visit national organisations; they explain in their language what they are doing, what the options are." (Business association)

"We can always get in contact with the responsible handling officer or the management. It is very smooth and professional, not at all bureaucratic." (Member State ministry)

The majority of the companies interviewed feel that DG Competition is prepared to listen to them.

"Access is very, very open. And, in fact, there is always the readiness to hold discussions about a subject. It is always possible to find someone to talk to and to whom one can present one's concerns." (Company)

However, most of the lawyers and consumer associations as well as about a third of companies interviewed were more negative about DG Competition's ability to listen and inform in a timely manner. Lawyers were, on balance, the most negative, with half of them having mixed opinions and a third of them having mainly negative views.

A range of specific, concrete criticisms were voiced:

- The main area of criticism was about 'informing stakeholders in a timely manner'. Respondents from all of the stakeholder groups, with companies being least critical, complained about DG Competition in this regard, citing issues such as insufficient notice being given, the poor speed of response and the setting of unrealistic deadlines. In particular:
- A significant minority of lawyers stressed that the lack of communication about case progress might contribute to unexpected requests and unrealistic deadlines. While they considered merger

case-handling with its 'state of play' meetings as very transparent, a minority requested, in particular, more transparency for antitrust cases between statement of objections and decisions.

- A small number of economic consultants also felt that long periods in between communications tend to occur towards the end of a case. To maintain a more consistent level of communication throughout the life of a case they suggested a more structured and focused approach.
- Some company representatives expressed the view that not being directly involved in a case creates difficulties for them in obtaining information. A number voiced their concern about being left 'on their own' when subject to complaints by competitors; access to the type of complaint and argument against the company being denied. Some companies feel they received little or no feedback during an investigation, rendering the final decision unpredictable.
- Member State ministry respondents found that the long gaps between communications about progress on longer procedures puts pressure on them as well as on the businesses involved. They considered delays in the translations of documents into the Member States' languages as one of the important causes of procedural delays.
- Respondents from national competition authorities suggested more open sharing of information between DG Competition and themselves; in particular, they suggested they be notified when DG Competition starts proceedings because not doing so might negatively impact them. Moreover, they asked for a more timely communication about State Aid decisions.

Another criticism voiced by several respondents, including lawyers and representatives from business associations, consumer associations and national competition authorities, was that DG Competition does not give enough warning to stakeholders when it requires information or submissions from them. DG Competition is also characterised as sometimes being poor in its speed of response and as setting unrealistic deadlines. To improve this, lawyers in particular would like DG Competition to follow a timetable that is determined at the start of a case so that the timing is clear to all involved.

"The documentation that is necessary for the meetings and for the [country meeting] always arrives late. Often we receive the documentation on the eve of the meetings." (National competition authority)

"We had to present eight position papers, which is a lot on one single issue. That was good but it was challenging for us. Sometimes we had just two or three days to respond." (Business association)

“Last Friday evening, it was about 5 or 6 pm, we received a request or rather a demand for a statement of our position and today [less than a week later] is the deadline for a response. For an organisation like ours, a period of notice like that is too short.” (Consumer association)

“The Commission asked us for input by 21st December; no-one there is going to read that before 15th January.” (Lawyer)

The perception of stakeholders was also that feedback from DG Competition is inconsistent and dependent on the personnel working on the case, something mentioned by lawyers, company representatives and consumer association respondents.

“There’s always going to be a certain element of unpredictability just down to personnel, who you happen to get staffed on your case.” (Company)

“Some [case teams] are very transparent, others make several U-turns. It’s a question of individual style.” (Lawyer)

4.1.1 Rating: informing in a timely manner

Mean score = 4.6

DG Competition has not at all informed me in a timely manner						DG Competition has informed me in a very timely manner
1	2	3	4	5	6	7
1	11	8	24	25	17	9

Scores by stakeholder type:

Stakeholder Type	Lawyer	Economic consultant	Business assoc.	Consumer assoc.	Company	NCA	MS ministry
Mean	4.3	5.8	4.8	3.0	4.3	5.0	5.6

4.2 Transparency - stakeholder consultation on new rules

- Stakeholders feel appropriately consulted but some question whether their views are actually incorporated into new rules –

The majority of respondents in each stakeholder group commended DG Competition for the way it ensures that they are regularly and, as they perceive, adequately consulted on new rules and policies.

"They do hold fairly open consultations and we have responded to a number of those around economic questions." (Economic consultancy)

"Very transparent. Commission officials make themselves available to talk to practitioners." (Lawyer)

"When new regulations are passed, or new guidelines are announced, then all the interested parties are always given the opportunity to express their view and become involved." (Company)

Respondents from the economic consultancies and national competition authorities commended the variation of specific communication vehicles through which this consultation was being achieved; conferences, workshops, advisory boards, invitations to comment on legislative proposals, etc. In one or two instances, respondents mentioned their appreciation of this market research exercise (the stakeholder survey) the purpose of which is to determine the perceived quality of DG Competitions' activities.

Only a minority of companies stated they had not been involved in consultations and they felt that they should have been.

"As one of the biggest players on the market, I think we should be consulted." (Company)

Despite the general feeling that stakeholders are appropriately consulted on new rules, the following concerns and points for improvement were raised:

- Half of the respondents from the business association and some from the Member State ministries considered that DG Competition does not allow sufficient time for the preparation of submissions, in particular where consultation with other concerned parties might be appropriate.

"I believe the rules say they should give us at least one month, up to 2 or 3 months. Even one month is not enough and sometimes they give us less. I had to prepare a position paper, learn about the issues, consult my members, who in turn have to consult their members." (Business association)

"We would like to get involved at an earlier stage and have a dialogue with DG Competition in order to be more prepared, have time to discuss with our government and parliament and be able to present our political view on how the rules should be designed to also satisfy [our national] interests in a better way." (Member State ministry)

- Within almost all the stakeholder groups (apart from within the consumer associations and economic consultancies) some of the

respondents expressed doubts as to whether their views, once sought, are actually taken into account in the formation of new rules. In some instances stakeholders even felt the rules had already been largely decided, prior to the consultation. Some lawyers felt that this could be because consultations tend only to occur at a late stage in the process. One of the lawyers suggested that a consultation stage, after the input from stakeholders, would improve the clarity and transparency of the process. This additional stage would allow stakeholders to understand which input had been included and which had not.

“It seems clear that DG Competition has its own agenda when going through the consultation exercise.” (National competition authority)

“It’s lip service. The draft already has everything in it, as far as the Commission is concerned. They take note of what you say but the text remains the same. It’s rare that a draft consultation changes.” (Lawyer)

“The process is there, but do they take the comments on board?” (Company)

4.2.1 Rating: stakeholder consultation on new rules

Mean score = 5.2

DG Competition has not involved me at all in the creation of new rules						DG Competition has involved me very much in the creation of new rules
1	2	3	4	5	6	7
5	3	5	15	18	36	18

Scores by stakeholder type:

Stakeholder Type	Lawyer	Economic consultant	Business assoc.	Consumer assoc.	Company	NCA	MS ministry
Mean	5.7	4.8	5.5	5.8	4.1	5.9	6.0

4.3 Observance of procedural rules

- It is widely believed that DG Competition is duly adhering to the appropriate procedural rules but in some situations it is perceived to be too strict -

Stakeholders generally believe that DG Competition is observing procedural rules and they are particularly positive about the perceived handling and protection of sensitive and confidential information.

Most respondents in each stakeholder group feel that DG Competition sets a good example and adheres to procedures and rules.

"The system is in place and there are no problems." (National competition authority)

"One of the advantages of having an organization with a lot of lawyers in it means that they are very mindful of the law." (Member State ministry)

"They are very conscious of the rules and they know what they have to do. It's very clear and there are no doubts about that." (Economic consultancy)

Most believe that DG Competition treats data with the required degree of confidentiality.

The great majority of company representatives included in the study were very complimentary about DG Competition's integrity in observing procedural rules. It was noted that breaches of rules or violations of the principle of confidentiality were practically unknown.

"Of course, they have to set an example. If they don't do it, nobody will. After all, it's their own rules they have to live by." (Company)

"There has been tremendous integrity there." (Company)

"You indicate what you consider confidential among the documents you are presenting. You mark it and they consider it as confidential." (Company)

However, the following concerns and points for improvement were raised by stakeholders:

- There were a few cases of perceived breaches of procedural rules mentioned by stakeholders from various groups.
 - For example, one respondent from the consumer associations described a situation where a colleague had been sent an enquiry in the post containing confidential information but the

declaration of confidentiality had arrived in the same postal delivery. She feels her colleague should have signed the declaration before receiving the information.

- Moreover, a minority of respondents from the national competition authorities, companies and law firms referred to 'leaks' of confidential documents and information while an investigation was underway and before the documents were published or the information made public. Several lawyers specifically criticised off-the-record briefings to journalists on newly taken decisions before the lawyers had the chance to inform their clients.
- A number of points were raised, in each case by a minority of lawyers about the procedures and procedural rules relating to oral hearings:
 - The role of the Hearing Officer was questioned by a number of lawyers.
 - Some lawyers expressed the view that hearings are perceived to be more about a third-party complainant creating publicity than addressing legal or economic questions.
 - The value of attending the hearing was also questioned because the person taking the final decision was often not present in the oral hearings
- Two of the four consumer associations interviewed felt that the confidentiality rule is sometimes applied too strictly and becomes a hindrance.
- A minority of lawyers and respondents from business associations felt that DG Competition, on occasion, applies procedural rules to its own advantage.
 - One example offered to demonstrate this point was the perception that, if personnel are running out of time on a case, they simply introduce new questions to gain more time.
 - Another respondent referred to 'stopping the clock' which he felt was used inappropriately. He felt that, for instance, if only 5% of the required data is missing, which would make no difference to the outcome of the case, DG Competition should not put the clock back in order, as he saw it, to gain more time to get more organised.

Although they did not form part of the subject of the survey, some respondents criticised the procedures themselves. The main criticism mentioned by respondents from companies and law firms was that DG Competition is not overseen by an independent, external authority. As a consequence, they feel that DG Competition is inappropriately playing all

the roles in the process, without sufficient external oversight or control. As one respondent put it, they are *'judge, jury and executioner'*.

4.4 Burden on businesses and organisations

- Views are polarised. Many stakeholders being of the opinion that DG Competition could streamline its requests to reduce the burden of information requests -

Many lawyers and respondents from companies feel that the burden of requests from DG Competition is greater than it needs to be, while the respondents from the business associations and national competition authorities have mixed views as to whether this burden is appropriate.

"The minimum trouble possible for the company? No! As I said, these proceedings ultimately turned out to be a mammoth exercise." (Company)

"I think there is too heavy a burden but I wish I knew how to make better." (Lawyer)

Respondents from the economic consultancies and Member State ministries did not feel the burden was too great as they were sympathetic to DG Competition's need to collect data.

"The problem is, when they are asking for information, they don't quite know what they are looking for, so they tend to ask for information on quite a broad front... Only part of it turns out to be relevant but they only know this when they've got [the] information and, in advance, they couldn't have narrowed it down." (Economic consultancy)

"I don't think there is anything that they can do, to be frank. In order to get a decision that is sound they have got to have the information." (Member State ministry)

The main criticisms across the stakeholder groups were:

- The volume of data requested is unnecessarily large (a view expressed by a minority of respondents from the business associations, the majority of the companies and a significant number of lawyers).
- The data formats requested often do not take into consideration the format that the data is kept in by the companies. Reformatting the data is said to require considerable work (a view expressed by a minority of respondents from the business associations and economic consultancies and a number of lawyers).

"I have a case where massive amounts of information were requested. I think, because they don't work for companies, they think that companies have all this information readily available. They don't realize it's a massive amount of work." (Economic consultancy)

- A minority of lawyers and respondents from the national competition authorities felt that deadlines for replies are often unreasonably short.
- A minority of respondents from the business associations, companies and Member State ministries perceive a lack of feedback and little evidence that the information they provided is used in the final decision (a view expressed by a minority of respondents from the business associations, companies and Member State ministries).
- Some of the companies interviewed have the impression that if they are very cooperative they will receive a disproportionate amount of sector requests in future; in effect they feel 'penalised' for being helpful.

Suggested improvements included:

- Streamlining questionnaires so that only the pertinent information is asked (suggested by a quarter of company respondents and a few national competition authority respondents).
- Involving experienced case handlers early on so that only relevant questions are asked (a small minority of lawyers).

"From their case experience they could say: 'in the past we asked A, B, C, D and E; in fact what we need is B and D'. But youngsters will ask for A - E, and also F." (Lawyer)

- Give pre-warning and sending out a draft request, as the national competition authority in the UK does (minority of economic consultancy respondents).

"They ask their questions in draft and they ask the company to feed back whether they are able to ask these questions realistically and how long it will take to get this feedback." (Economic consultancy)

- Giving a rationale for the request and explain how the data will be used (a small number of economic consultancies and a minority of national competition authority respondents).

"They are famous for issuing requests without explaining why the data is needed and without clear information about how they are going to use it and often don't do anything with it... it's frustrating." (National competition authority)

- A small minority of company respondents suggested establishing sector focussed competence so that sector information is shared and retained within DG Competition. Consequently unnecessary information requests to stakeholders would be avoided.

"If such competence centre teams were established, this [burden] could be significantly minimised and the really decisive, core questions could be asked, which then can be articulated more clearly in a questionnaire... They could well be exhaustive; as long as they are core questions they can always be exhaustive."
(Company)

- A minority of lawyers and national competition authority respondents felt that DG Competition should not request information that is available from other sources in the public domain.

Only one respondent felt under-utilised. One of the consumer associations felt that they could provide DG Competition with more data than they were currently doing. They felt that some of the studies they already conduct in their role as a consumer association could benefit DG Competition.

"There are synergies because, after we conduct a supermarket study, the data can be re-used." (Consumer association)

5 Economic Effectiveness

5.1 Effectiveness of detection policy

- Leniency policy is seen as the key to DG Competition's successful detection policy; however, many respondents believe that DG Competition should be more proactive in its detection policy, instead of relying on leniency -

The majority of respondents in every stakeholder group feel that DG Competition's detection policy is effective and that this is primarily attributable to the leniency policy.

"The most important cartels which have been broken up recently have been broken up as a result of this system [the leniency policy]. We have been using it for almost two years and lots of cartels have been detected." (National competition authority)

Although stakeholders feel that DG Competition's detection policy is effective, respondents from companies, economic consultancies, law firms and national competition authorities criticised DG Competition for being reactive as opposed to proactive.

"It is the companies themselves who do the detection, as a result of internal inquiries, and then approach the Commission. I am not at all sure that the Commission has ever recently, as a result of its own efforts, actually discovered anything." (Company)

"The intelligence activity belongs to the cartel activity but we do not have intelligence. I remember that we do not have a case that would be based on our own exploration since 1998." (National competition authority)

Similarly, a small minority of stakeholders from companies, consumer associations, national competition authorities and law firms said that they would like to see DG Competition engage in more proactive detection and not only rely on leniency policy. Specifically, some lawyers indicated that ex-officio investigations should be continued in high-tech and consumer goods markets.

Moreover, a minority of the lawyers and respondents from companies voiced concerns about the quality and credibility of some leniency applications and consequently the significance of some cases. They also suggested that 'insignificant' cases should be dropped from leniency applications.

"With leniency applicants DG Competition... has to understand that a company which applies always has an interest in providing as much information as possible to increase their chance of getting a

significant reduction of the fine... Information should be checked carefully." (Company)

"There is an incentive to make up stories and exaggerate. It's an efficient instrument but the Commission should keep some distance. It's like journalists and their sources. Objectivity is not the driving force." (Lawyer)

Half of the respondents from the consumer associations felt that they could assist DG Competition in their detection activities because they too are involved in detection of anti-competitive behaviour as a result of what they hear from consumers.

"We can also serve as a detection service, and I think we are often ignored or used too little." (Consumer association)

Some respondents from the companies, consumer associations and national competition authorities recognised that it is difficult to measure the absolute effectiveness of DG Competition's detection policy since the number of undiscovered cases is unknown.

"We don't know what they haven't detected." (Consumer association)

"[Effectiveness] is difficult to judge if you do not know how many undiscovered cases there are. But in the field of cartel activities, relevant cases are certainly detected." (Company)

Finally, a minority of companies expressed the perception that investigations are, on occasion, discontinued due to (Member States') political influences and lobbying.

5.2 Impact on the markets

- With the exception of business and consumer associations, most stakeholders feel that DG Competition has had a positive impact on the competitiveness of markets -

Most of the lawyers and respondents from companies, economic consultancies, Member State ministries and national competition authorities perceive a beneficial effect of DG Competition's activities, particularly through the control of cartels and through increased competition in the markets.

"I think it's had a very positive impact. If you look at the behaviour of companies 20 years ago and their behaviour now it's radically different. DG Competition is an excellent [policeman]." (Company)

"Work on cartels has been excellent and made markets significantly more competitive." (Economic consultancy)

"I certainly believe that the companies are thus forced to be careful to stay competitive and to not become involved in anti-competitive agreements. With the threat of very high fines, you have to be careful to act in compliance with cartel laws. I think that the observation of cartel regulations has become much more important in the last ten years and the main reasons for this are, on the one hand, the increase in the amounts of the fines and, on the other hand, the leniency policy. It is simply too dangerous to do anything wrong." (Company)

"A big impact. Much more compliance. People know there is an authority they can complain to, which is willing to act." (Lawyer)

In contrast, respondents from the business and consumer associations felt less positively about the impact of DG Competition's activities on the market. The majority of the respondents from the business associations felt that DG Competition's impact had been insufficient because decisions were circumvented by the affected parties. For example, two business associations discussed the impact of the MasterCard case on the market which they felt had been negligible. One business association felt that a decision regarding electricity pricing had indirectly damaged a high electricity consumption industry sector.

On a similar note, a minority of respondents from the companies, law firms and national competition authorities expressed the view that DG Competition's actions could even have a negative impact on markets. It was felt that too much scrutiny and the risk of large fines could make businesses more cautious and would risk stifling innovation and market development.

Similarly, a respondent from one of the business associations felt that Commission decisions on State aid had resulted in the demise of the manufacturing industry which his association represents, affecting the existence of many companies.

The following more specific comments and suggestions were also made:

- Some lawyers expressed concerns about whether some companies would be discouraged from looking at merger or State aid opportunities for fear of being subject to strict competition regulation.
- Some companies warned that investigations and fines should not become overwhelming for companies (as is perceived by some to have happened in the pharmaceutical or financial sectors).
- A few respondents from the companies, consumer associations, economic consultancies, Member State ministries and national competition authorities suggested that DG Competition should measure the effect of its activities on the market.

“It is evident that, when a guideline intended to deregulate airlines is adopted, competition gets involved, with a decrease in prices. However, I have no data which can demonstrate whether this is thanks to a decision from the Commission... I don't know whether this is thanks to this or due to other influences.” (Consumer association)

“My sense is that it has had a positive effect in merger control, but there aren't enough studies being done in merger effectiveness to know for sure.” (Economic consultancy)

“DG Competition should communicate with us saying - ‘Look, we are going to take this decision, we are expecting that the effect will be this, that and the other. To guide you, you need to look for this, that and the other’ – this would help us to know locally, where we should be looking.” (National competition authority)

5.2.1 Rating: impact on the markets

Mean score = 4.8

Not at all effective at creating better working competition in the markets							Very effective at creating better working competition in the markets
1	2	3	4	5	6	7	
1	4	5	23	34	22	4	

Scores by stakeholder type:

Stakeholder Type	Lawyer	Economic consultant	Business assoc.	Consumer assoc.	Company	NCA	MS ministry
Mean	4.9	5.0	3.4	3.7	4.6	5.4	5.3

5.3 Timeliness of decisions

- Most feel that, apart from merger proceedings, there is scope for DG Competition to improve the speed of its decision-making -

There were mixed views as to whether the length of time DG Competition takes to prepare a decision is acceptable. Everyone feels that Commission decisions take a long time to make. Some stakeholders understand DG Competition's position, whereas others feel that the length of time is simply unacceptable.

The majority of the respondents from the consumer associations, economic consultancies and national competition authorities are sympathetic of DG Competition's position and the trade-off between speed and quality of decisions. A few of the respondents from the national competition authorities and one from the consumer associations also stressed that the length of the decision making process is not entirely attributable to DG Competition and can be a result of consultations, obstacles raised by lawyers and the complex nature of a case.

"Courts of law demand a burden of proof which is so high that the Commission would be expected to provide a great deal of documentation in order to support the case. The time taken is understandable, and I think we do insist upon being consulted. We are not going to expect this to take a week." (Consumer association)

"We cope with the same problem when people ask us why something takes 3 years. But we cannot deliver a decision that was not tested by the court which is the authorised body." (National competition authority)

Lawyers and respondents from companies felt that timeliness of decisions varied between the different instruments. The majority of these respondents feel that merger decisions are made within a reasonable timeframe, whereas cartel and anti-trust decisions take too long.

"With the exception of merger controls, where the Commission has to reach a decision within a legally imposed period of time, it acts much too slowly." (Company)

"Mergers are OK, due to the regulatory framework." (Lawyer)

"Some cartel cases take forever, creating huge commercial uncertainty in the companies concerned. That uncertainty dragging on for five or six years is a real problem." (Lawyer)

Lawyers and respondents from national competition authorities referred positively to the speed with which DG Competition responded to State aid cases during the financial crisis; they would like to see this reaction time on all cases.

"We have, for example, theoretically 18 months to resolve conduct issues. To solve concentration issues, we have three months. And the European Commission does not have those time frames." (National competition authority)

Even though some respondents from the business associations and two thirds of those from the Member State ministries feel that DG Competition tries to prepare decisions as quickly as possible, they feel that Commission decisions should be delivered more quickly.

“They should definitely be quicker. Everybody says that. They should take their time to make a correct decision but should be able to streamline their internal process. My feeling is that DG Competition is very bureaucratic.” (Business association)

“If you are giving aid you want to be able to give it as quickly as possible in order to remedy the market failure that you are wishing to address... though you need to make sure you are making the right decision.” (Member State ministry)

A few respondents from the business associations, companies, Member State ministries and national competition authorities voiced the concern that, in certain cases, decisions may become irrelevant as a result of the delay in decision making because the market has changed or competitors have left the market.

“In this case the market has already grown from 20% to 80%. And there is no way back.” (National competition authority)

“For instance, the case of Microsoft took 10 years! By that time, the complaining companies had left from the market.” (Company)

Specific suggestions to improve the speed of decisions included:

- Lawyers and respondents from national competition authorities suggested the introduction of set time frames to reduce the length of decisions, for example 18 months for anti-trust proceedings.
- Respondents from economic consultancies and national competition authorities requested a better prioritisation of cases in order to reduce the investigation time on the more urgent ones
- A small number of the respondents from the Member State ministries mentioned the problem of delays due to translations of each procedural step into their national language.

5.3.1 Rating: timeliness of decisions

Mean score = 4.1

Commission decisions are not made in a timely manner						Commission decisions are made in a very timely manner
1	2	3	4	5	6	7
-	8	19	27	22	10	1

Scores by stakeholder type:

Stakeholder Type	Lawyer	Economic consultant	Business assoc.	Consumer assoc.	Company	NCA	MS ministry
Mean	3.8	4.5	4.8	4.0	3.9	4.7	4.5

5.4 Ability to enforce decisions

- While most of respondents felt that DG Competition does enforce Commission decisions well, some suggestions for improvement were made -

The majority of respondents in each stakeholder group believe that, on the whole, DG Competition is able to enforce Commission decisions. Respondents from companies, economic consultancies, law firms, Member State ministries and national competition authorities believe that the Commission's decisions are adhered to because DG Competition has the right to fine or penalise those who do not comply.

"In our experience the Commission has the ability to enforce its decisions because, if the company does not comply, a fine may be imposed." (National competition authority)

"They make sure their decisions are enforced; they have it checked by a third party." (Company)

"I'm sure parties comply with the conditions imposed by the Commission. Anyone who is really determined to cross swords with the Commission is going to have a tough time. The showdown would be in the public arena, he couldn't afford to do that." (Lawyer)

Some of the lawyers and economic consultants cited Microsoft's additional fine as an example where non-compliance had been enforced by DG Competition.

However, a few of the respondents from the companies, law firms and national competition authorities doubted that DG Competition is able to enforce compliance with Commission decisions or whether it even has sufficient resources to do so. A common theme amongst lawyers and respondents from companies was that antitrust or State aid cases (in comparison to merger decisions) are less likely to be enforced because they are perceived to be less precise and the follow up of these decisions is less systematic. However, one business association respondent felt that there had been improvements in the enforcement of State aid decisions over the past few years.

"With companies, very good. With Member States, in the field of State aid, the record is very poor. There is a huge amount of aid that is declared incompatible but not recovered." (Lawyer)

A few of the respondents from the companies, Member State ministries and national competition authorities suggested that DG Competition should make more effort to check whether its decisions are adhered to in the market and whether local competition law is following European law. However, there was some doubt whether it has the resources to do this.

"I think possibly they could do more in terms of following up... in terms of making sure the aid is being correctly used." (Member State ministry)

"The Commission, I think, given its particular position in the scheme of things, should be more active in intervening to make sure law is developed in a coherent, consistent and correct way." (National competition authority)

A minority of company respondents stressed that DG Competition should also focus on the impact of the Commission's decisions on the markets after enforcement.

5.5 Deterrent effect of fines

- The high level of fines at present was generally seen as an effective deterrent. There were mixed views on whether other sanctions, especially the criminalisation of individual offenders, should be introduced -

Fines were recognised by the majority of respondents across most of the stakeholder groups as being an effective deterrent, particularly as they have become so high. Only the respondents from the consumer associations explicitly expressed that they consider fines an inadequate punishment. Most of the respondents from the business associations felt unable to express a point of view.

"The higher level fines we have seen in recent years are more impactful." (Economic consultancy)

"15 years ago none of our companies took competition legislation seriously but now, due to the big fines and increased awareness, they respect a lot more." (Lawyer)

"I do not know whether they are deterrent, but they are high enough to prevent one from taking the risk." (Member State ministry)

Some of the respondents from the companies and the national competition authorities feel that the fine itself is not the only deterrent at work, as the surrounding negative publicity can also have a negative impact on a company's reputation and ultimately its value.

"We frequently find that, for the company, the bad image and having their name in the press as a sanctioned company is more worrying than the fine itself; the so called 'press-penalty'."
(National competition authority)

A significant minority of lawyers feel that the size of fines has reached excessive levels. They feel that the deterrent effect of the fines is not increasing proportionately with the level of the fines and that they have reached their maximum acceptable level. A few lawyers also felt that the high level of fines may deter companies from being cooperative with DG Competition.

"I think the fines are too high. They were already a deterrent when they were much lower. There is a point beyond which you don't deter people any more. You can only execute somebody once."
(Lawyer)

The potential to obtain exemption from fines through the Leniency policy is viewed as a problem by a minority of respondents from companies. They feel that the concept of leniency contradicts the purpose of competition rules because the reporting company does not have to pay but still benefits from the anti-competitive conduct.

Interestingly, a quarter of the respondents from the companies felt that, while fines are an effective deterrent, they are not the only tool available to DG Competition. They believe that the high fines do not always foster increased market competition and that competition could be improved if DG Competition applied other sanctions as well as or instead of simply applying a hefty fine.

"Fines are a very crude instrument whilst there is a myriad of [other] sanctions that could be used against companies."
(Company)

There were mixed views about whether individual criminal liability should be introduced as an additional deterrent. Some respondents from the companies, consumer associations and national competition authorities believe that fines are no longer a sufficient deterrent and that it is time for the introduction of individual criminal liability as well.

"The ability to sentence to prison would have a preventative effect and also aid the authority in their investigations. As it is now, the remedies of DG Competition are rather limited." (National competition authority)

"They should be sending the directors off to jail." (Consumer association)

"If employees break the law and company policies then they should have to pay. I think they should go to jail but you can't bring this in Europe because it's a civil regime." (Company)

However, almost all of the respondents from the economic consultancies were concerned about the concept of one individual being held accountable for the illegal actions of others in the company. They felt there could be any number of reasons why members of a company may succumb to dishonest activities. In addition, they felt there was potential for executives to be bribed to take the punishment on behalf of the company.

"I don't like those games. I'm not sure that the person who ends up in jail is the one responsible. Prison is prison and we can't joke with this kind of thing." (Economic consultancy)

Additional sanctions suggested as an alternative to fines or as further deterrents included:

- Respondents from the business associations and companies suggested that affected directors could be disqualified.

"Fines are very scary and make a lot of noise. But infringements still happen, so perhaps fines are not sufficient. I approve of disqualification of directors. Why not a combination of both?" (Business association)

- A minority of lawyers suggested the publication of individual companies' wrongdoings.
- A minority of business associations stressed that the focus should be on 'encouragement' as opposed to 'enforcement' and that DG Competition should be taking companies' compliance programmes into account.
- Respondents from the consumer associations felt that consumers should receive compensation and suggested that the company should pay compensation to the consumers affected by its behaviour.

"At present, the company is simply ordered to pay a fine and then it soon disappears from the media limelight. If consumers themselves had the possibility to claim compensation, this 'shaming' would, in my opinion, be a much more significant component." (Consumer association)

5.6 Response to the financial and economic crisis

- Most stakeholders praised DG Competition's response to the financial and economic crisis; the views of consumer associations and economic consultancies were more mixed -

The respondents from the business associations, companies, law firms, Member State ministries and national competition authorities commented

positively about DG Competition's reaction to the financial and economic crisis and felt that it was very responsive. They described DG Competition as responding quickly and appropriately.

"Within a few weeks, by mid-December, they had adopted the temporary framework for State aid and it was cleared before the end of December. Fantastic." (Business association)

"The overall handling of the crisis was a remarkable success for the European Commission." (Lawyer)

"When there truly was a crisis, DG Competition could mobilise resources, they understood what was needed, they took responsibility, they took management, they were clear and available. They acted in an exemplary fashion." (Member State ministry)

In particular, both lawyers and respondents from Member State ministries acknowledged that DG Competition was able to mobilise resources over weekends and make decisions more quickly.

In contrast, the respondents from the economic consultancies were mixed in their opinions of DG Competition's response to the crisis. Whilst some were positive about its response, others were non-committal. They felt that DG Competition had been 'too invisible' during the crisis, particularly in relation to State aid.

"I didn't see the Commission doing enough there." (Economic consultancy)

The reaction from the respondents from the consumer associations was also mixed because they were concerned that the Commission made decisions too quickly and they felt that the Commission's position was weakened during the crisis. They believe that governments were likely to give State aid during the crisis irrespective of any regulations that DG Competition tried to impose.

"We are in agreement that banks should be saved, but we also think that this has been handled in a very quick and non-transparent manner." (Consumer association)

There were some additional criticisms and concerns mentioned individually by a few respondents:

- It was felt that efforts were focussed on the banking sector and that the other sectors were not included in the special measures.

"With banks, they had instructions; with all other sectors, they carried on as usual. Yet they should have adjusted to an atypical situation, so that was disappointing." (Company)

- DG Competition was perceived by some as agreeing to whatever the Member States proposed.

"They didn't do anything. They simply said, 'yes,' to everything that the Member States decided. But I don't know what else they should have done." (Company)

- One national competition authority felt DG Competition's speed of response was too quick, with the concern that the long-term impact of the decisions had not been considered.
- Some respondents from the business associations also commented that DG Competition's sector enquiries were adversely affected due to the deployment of staff to help deal with the financial crisis.
- Several respondents from business associations, consumer associations, law firms, Member State ministries and national competition authorities are concerned about how DG Competition is going to return to its pre-crisis stance on competition and they are watching closely to see what DG Competition's strategy is going to be when the crisis is over.

"They had to open their rules, now they have to return to the former situation. That is the main challenge for the new Commissioner." (Business association)

"I think they are still in the battle as far as the crisis concerned. I don't see an exit strategy." (Lawyer)

"The big question is how we are going to go forward now and to what extent removing the support will damage any movement towards recovery or stabilisation? So, genuine coordination with the political authorities must continue." (National competition authority)

"We are concerned that the temporary rules will become permanent, that it won't be possible to go back. We all have to agree that the crisis is over and we are afraid that people will say that times are not normal yet; the crisis is not over yet. If that happens, DG Competition has weakened the strict rules." (Member State ministry)

6 External communication

6.1 Clarity and comprehensibility of external communications

- Overall, stakeholders perceive DG Competitions' external communication as clear and understandable but they request that it also target the wider, non-technical audience -

The majority of respondents from each of the seven stakeholder groups view the clarity and comprehensibility of DG Competition's external communications positively. The respondents referred to press releases, speeches, DG Competition's website and informal communication with DG Competition when they spoke about external communications. Most of the respondents in each stakeholder group felt that DG Competition's communication was clear.

"Generally speaking the Commission is good at communication, I don't think things are hidden away too much, the websites are relatively easy to navigate around these days." (Company)

A majority of the national competition authorities said that, instead of using the publicly available communication channels, they preferred to deal with DG Competition via email or telephone; they found that personal contact was most effective. In this regard, half of the respondents from consumer associations praised the personnel at DG Competition. They feel it would be of benefit to have this contact on all cases.

"The informal communication channels give us our biggest advantage. We can get the information we need quickly and on time." (National competition authority)

The main criticism of DG Competition's communication mentioned by respondents from all of the stakeholder groups, apart from those from the business associations, was that it was not suitable for a broader audience. While the communication was felt to be clear and understandable for the core stakeholders, they felt that it was open to misinterpretation or too technical for the broader public. Consumer associations suggested information brochures in 'consumer friendly' language should be available in local languages. They also suggested that DG Competition could provide a summary of the main points of decisions and actions, explaining the impact on the consumer and the company.

6.2 *Timeliness of communication*

- **Overall, current time frames were viewed as appropriate by most. Pre-notification to parties before the official announcement of decisions and speedier translations were suggested as areas for improvement -**

The majority of respondents from each stakeholder group were of the opinion that DG Competition's communication is delivered within an appropriate time frame.

"Their press service is very quick; when a decision is taken you'll find something quickly on the website." (Company)

"Once they have decided to tell you about things they are pretty quick in then telling you." (Economic consultancy)

Apart from this general positive view, there were a number of points on which stakeholders expressed the need for further improvement:

- A significant minority of the respondents from companies, law firms, Member State ministries and national competition authorities were critical about the speed with which decisions are released. They would prefer to get a pre-warning before the public and media are notified.

"If DG Comp takes a decision at 12 o'clock, [at] 5 minutes past 12 they make a public announcement considering that decision. It often happens that the minister involved asks us why he/she did not know anything about the final official decision." (Member State ministry)

"It would help us very much if they would inform us, let's say, three hours before they inform the public." (Company)

"They should give the parties the time to read the decision and prepare a reaction. I think the interests of the public are still served if you give the parties six hours advance notice." (Lawyer)

- A small minority of lawyers criticised leaks to the press that sometimes happen before a decision is adopted. There is a perception that this practice is deliberate and needs to be addressed.

"You can read on a Friday what the Commission will decide on the following Wednesday. That is entirely unacceptable." (Lawyer)

- A small minority of respondents from the national competition authorities and a minority of the respondents from the companies

and consumer associations criticised the time it takes for translations to be made available.

“Press releases are available immediately in English, but it takes another three days to get them in French or German. It's the same with translations of decisions: sometimes there is no translation, or it takes a long time, or the communication can only be in English. They need to look at how quickly translations are made available. What is more, the website home pages are almost exclusively in English; it's a blunder in terms of communication.” (National competition authority)

A small minority of lawyers and respondents from companies, Member State ministries and national competition authorities felt that decisions are sometimes published too slowly; in particular the publication in full of final decisions. One respondent from a company recalled a State aid decision that was published 15 months after the decision was taken. Another respondent expressed the view that the publication of the DG Competition newsletter is too slow.

6.3 Choice of communication and media channels

- DG Competition's choice of channels is felt to be appropriate for professionals; the website has almost universal appeal-

There was consensus amongst the respondents that DG Competition's choice of channels is appropriate, the website receiving the most praise in each stakeholder group.

“The website is fantastic and you get everything you need, it's clear and you know where to look. It's also in different languages and that's excellent.” (Economic consultancy)

“They have a very good website, which is an asset to us. It's always possible to search for decisions, reports, reviews and so on.” (Member State ministry)

“Well, the website is very good, in my view. You can get really good information there about other cases and it is very up-to-date. That is, in fact, the only thing that I use.” (Company)

Stakeholders made the following suggestions for the improvement of the website:

- The search engine received criticism from a minority of lawyers and respondents from the national competition authorities. The lawyers specified that the function needs to be improved so that cartels, mergers and state aid databases can be integrated and searches can be performed on the full database.

- In addition, a few respondents from the consumer associations and Member State ministries find the website difficult to navigate and not user-friendly.

"People complain about the complexity of the DG Competition website, it can be quite difficult to track down information on the website." (Member State ministry)

Respondents from each of the stakeholder groups also referred positively to a variety of other communication channels such as press releases and newsletters.

Conferences were also referred to positively as a communication channel by respondents from the companies, economic consultancies, law firms and national competition authorities, although a minority of the respondents from the companies felt that there could be more dialogue at the conferences, the perception being that the communication process is largely one way. The respondents from the Member State ministries, law firms and national competition authorities also referred positively to the use of simulcast to facilitate broader communication of these conferences.

"It's good insight into their thinking and minds." (Economic consultancy)

"There was a recent conference about public aid which was simulcast online so those who couldn't be there could watch it on the Internet, that's a good approach." (National competition authority)

Finally, although it was felt that the communication channels are suitable for the stakeholders, there was a perception amongst a minority of the respondents from the business associations, consumer associations and national competition authorities that DG Competition needed to appeal to a broader audience, in terms of the channels and language it uses.

"I think that sometimes they do great things that consumers don't hear about." (Consumer association)

"The web page is designed for professional users rather than the general public. If the Commission makes a decision it will be there within the day. Nevertheless, someone with limited knowledge of competition would have trouble finding the information they are looking for." (National competition authority)

In addition, companies suggested making DG Competitions' external communication more interactive, for example by using platforms like YouTube; business associations suggested further improving the readability of press releases.

6.4 Targeting of communications

- DG Competition's communications are believed to be appropriately targeted at stakeholders but not at consumers -

The majority of respondents felt that DG Competition is targeting communication appropriately.

"The balancing act of providing information suitable for specialists as well as for the interested 'man in the street' is achieved very well." (Consumer association)

"We are not familiar with the way they spread information in the sense of company targeting and similar. From our point of view it is being done correctly." (National competition authority)

However, a minority of respondents across all the stakeholder groups, apart from the economic consultancies, felt that DG Competition's current communication strategy is too technical and not appropriate for consumers and is therefore not targeting them effectively. For example, national competition authorities expressed the view that communication with consumers should be coordinated with each national competition authority in order to ensure consumers in each Member State are targeted appropriately.

"Most of what they do is on the side of the consumer, but very little is presented in a way that captures Daily Mail readers. It should be all about reducing prices; DG Comp gets the story in the FT but not in the popular press." (Lawyer)

"Indicate the ways in which the goods and services received by European consumers are being influenced positively, e.g. 'thanks to our action, transactions using payment cards have become x% cheaper'." (Company)

"When giving speeches, their phrasings are rather long and tortuous and most 'regular' folks lose interest rather quickly. They ought to think more about exactly what they want people to understand and focus more on getting the message through." (National competition authority)

Some respondents from companies, however, felt that this is not an area on which DG Competition should focus since they feel consumers will not be interested and there is too much focus on the consumer perspective already.

"There is no need to waste taxpayers' money on something they won't read." (Company)

"The consumerism aspect of their communication is too strong." (Company)

A minority of respondents from the Member State ministries (particularly those from the Eastern European Member States) suggested that DG Competition could offer more seminars to inform interested parties on relevant topics, accompanying this with an open discussion which would enable participants to gain a better understanding of DG Competition's policies and mindset.

"Maybe it has to happen through special courses. The needs of the people who would attend are specific. We have all different levels of experience and different rules may apply to different sectors."
(Member State ministry)

6.5 Promotion of competition culture

- Views are mixed about how effectively DG Competition promotes a culture of competition and whether it should target consumers -

There are mixed opinions among respondents about how well DG Competition is promoting a culture of competition.

The majority of respondents from business associations, companies, economic consultancies and national competition authorities felt that DG Competition has been effective at promoting a competition culture among stakeholders.

In particular, half of the respondents from the business association felt that DG Competition's effective promotion was attributable to the previous commissioner. They praised her for making competition culture more accessible, the consistent line she took and the clarity of her overall objectives.

"[She was] very good at communicating the effects of decisions on ordinary people, rather than the legal jargon; good at communicating in a language people can understand." (Business association)

There were mixed views as to whether it is DG Competition's responsibility to promote competition at all to this wider audience. Some lawyers and respondents from companies, consumer associations, Member State ministries and national competition authorities felt that a competition culture should be promoted amongst the general public and that DG Competition is currently not proactive in targeting a non-technical audience.

"It is really not clear to citizens what benefits they derive from competition policies. There is a lot of emphasis put on the fact that all these consumer protection measures are in the citizen's interest but I think that people perceive consumer protection as a very general term and not in the sense that 'this protects me, as an

individual citizen, from paying prices that are too high or from choices that are too restricted, etc.' I believe that this message is not really getting across." (Consumer association)

"They could be more proactive in bringing this complicated professional issue to non-professionals, ordinary people, consumers." (National competition authority)

However, a few respondents from the economic consultancies, law firms and national competition authorities felt that promoting competition to consumers was outside of the remit of DG Competition and was the responsibility of national authorities. Some national competition authorities expressed the view that they have local knowledge and cultural understanding about how to communicate with consumers in their countries and so they feel they are the best positioned to promote competition within their countries.

"The national authorities might be better placed to do that, [DG COMP] can't do everything." (Economic consultancies)

Views among consumer association representatives and lawyers tended to be more negative than among the other stakeholder groups. Half the consumer association respondents felt that DG Competition could be doing better at promoting competition culture and amongst the lawyers there was little consensus, with some feeling it has some good initiatives to increase awareness of competition and others seeing room for improvement.

The following comments and suggestions were made by respondents from different stakeholder groups:

- About a quarter of respondents from the companies were of the opinion that there is no communication on the 'pro-competition' aspects - the benefits of healthy competitive markets and case studies of companies behaving within the law and succeeding. A minority regretted that the emphasis on abuse of the rules is felt to ignore the efforts of those that do obey them.

"It should be explained that ultimately these rules are good because they benefit the company and society as a whole." (Company)

- There is a perception that giving high profile coverage to cases with large fines has promoted a culture of 'sanction and fear' rather than a culture of competition. (Companies)
- Efforts to promote competition culture are perceived to have been limited to the area of consumer protection, possibly for political reasons. There is a feeling that the communications agenda should be much broader than this. (Companies)

"The buzzword 'consumer protection' is mentioned ever more frequently, particularly by the Commission. But, in my opinion, competition is something different." (Company)

- In order to increase awareness about the effects of negative competition on society, it was suggested that DG Competition talk more to complainants and potential victims. (Lawyers)
- It was also suggested that DG Competition include a general public section on the main website or launch a separate website for the general public, giving the basic details of competition policy in a format adapted to the general public. (Lawyers)
- Senior staff at DG Competition should communicate about competition culture consistently and a more 'balanced' competition should be promoted (taking more account of smaller companies and smaller countries). (Business associations)
- DG Competition could offer training to trade unions and provide information of a less technical sort to daily newspapers for consumers, to increase awareness of the benefits of competition. (National competition authorities)
- The respondents from the Member State ministries (especially those from the Eastern European Member States) wanted more information from DG Competition in order to clarify how policy decisions are related to competition.

"The Commission has occasional [educational activities], but usually they are without considerable added value in the sense that you can go to listen, but your knowledge will not increase." (Member State ministry)

6.5.1 Rating: promotion of competition culture

Mean score = 4.7

DG Competition's activities promoting competition culture are very poor quality						DG Competition's activities promoting competition culture are very good quality
1	2	3	4	5	6	7
3	9	2	18	34	23	5

Scores by stakeholder type:

Stakeholder Type	Lawyer	Economic consultant	Business assoc.	Consumer assoc.	Company	NCA	MS ministry
Mean	4.9	4.5	5.4	4.0	4.3	4.9	5.0

ANNEX - Interview topic guide

5735 DG COMP Stakeholder Survey

Discussion Guide

All questions should be asked of all respondents but we have indicated at each main question which types of respondent we expect to be more likely to have views on a particular topic:

L = lawyers

C = companies

EC = economic consultancies

BA = business associations

CA = consumer associations

NCA = national competition authorities

MSM = Member State ministries

Introduction

The purpose of this first section of the discussion is to understand the respondent, the organization they work for and their role within it and to begin to build a rapport. We will also investigate the nature of their contact / relationship with DG Comp and start to understand their underlying views about it.

Moderator

- TNS
- Independent
- Impartial

Process

- Open discussion
- No right or wrong answers
- Interested in all views and opinions
- Audio-recording
- Confidentiality

DG COMP is the branch of the European Commission responsible for ensuring a competitive market, for businesses and consumers alike.

DG COMP has several key activity areas of competition policy enforcement – these are related to antitrust, cartel enforcement, merger policy and state aid control. You should have

had experiences of dealing with DG COMP on at least one of these four key topics, and we would like to ask you about your experiences and opinions about working with DG COMP (and, where appropriate, obtain constructive feedback on how DG COMP may further improve).

This interview will cover four broad topic areas about DG COMP. These are:

- 1) The soundness of their legal and economic analysis
- 2) Their level of integrity
- 3) Their economic effectiveness
- 4) Their communication

Respondent Background Information

First of all, ask the respondents for some background information about themselves. Probe for:

- Position
- Responsibilities

Ask the following information from Lawyers and Companies

Please note, for lawyers, they should answer the following background questions based on the opinions of both themselves and the companies that they have represented in cases with DG COMP. Lawyers should also give information on the types of cases that they have handled.

- Company's main activities / markets
- Countries that company mainly operates in (mainly within own country / EU-wide / world-wide)

Ask the following information to all groups

- When first had contact with DG COMP
- Amount of contact they have had with DG COMP

- Size of company / organization (*this question is applicable to all groups with the exception of Member States ministries*).

A. Soundness of Legal and Economic Analysis

I want to start by thinking about the legal and economic analysis of DG COMP when preparing decisions on cases. We will discuss the technical and economic soundness of DG COMP's analysis, and the decisions that the Commission makes based on this analysis.

A1. How clear and understandable have the Commission's decisions been?

(L, C)

- Why did you give this answer?
- What experiences do you have which caused you to have this opinion?
- Was the reasoning behind the Commission's decision (clarity of the legal motivation) clear and understandable?
- Do you refer to final or also intermediate decisions?
- **How could DG COMP improve in this area?**

A2. Do you consider that the Commission's decisions have been predictable based on the existing legislation/rules?

(L, C, EC, NCA, MSM)

- Why did you give this answer?
- What experiences do you have which caused you to have this opinion? (thinking about both final decisions and other decisions relating to cases)
- Did the outcomes correspond with your expectations?
- Is there consistency in **the Commission's** decisions?
- **How could DG COMP improve the predictability of the Commission's decisions?**

A3. Where the decision has involved the imposition of a fine by DG COMP, has the amount of the fine been predictable?

(L, C)

- Why do you give this answer?
- Please give examples of what size of fine you expected, and then what actually happened.

A4. Taking into account the issues we have discussed so far, please can you indicate on this scale, based on your own experience, how legally sound have the Commission's decisions been?

(L, C, NCA, MSM)

SHOW CARD 1

The Commission's decisions were not legally sound							the Commission's decisions were very legally sound
---	--	--	--	--	--	--	--

1	2	3	4	5	6	7
---	---	---	---	---	---	---

- Why did you give this score?
- What other comments do you have about the legal soundness of **the Commission's** decisions?

I would now like to think about DG Comp's understanding of the markets in which **the Commission** is making decisions.

A5. To what extent do you believe that DG COMP understands the markets in which the Commission makes decisions? (READ OUT IF REQUIRED: Their understanding of the markets can be shown in the legal and economic analysis included in Commission decisions)

(C, EC)

- Why did you give this answer?
- What experiences do you have which caused you to have this opinion?
- What impact do you think this has?
- **Do you have any suggestions about how DG COMP could further improve in this field?**

Based on your views, how would you rate DG COMP's market knowledge on the scale shown here?

SHOW CARD 2

DG COMP do not know the markets at all						DG COMP know the markets very well
1	2	3	4	5	6	7

- Why did you give this score?
- What other comments do you have about DG COMP's market knowledge?

A6. What is your impression of the technical quality of the economic analysis on which the Commission's decisions are based?

(C, EC, NCA)

- Why did you give this answer?
- What experiences do you have which caused you to have this opinion?
- **Do you have any suggestions about how DG COMP could further improve in this field?**

A7. Based on your own opinions and experiences, do you feel that DG COMP is focusing its enforcement activities on the correct sectors?

(EC, BA, CA, NCA)

- Why did you give this answer?
- What experiences do you have which caused you to have this opinion?
- **Is there any sector you would like to see more in the focus of DG COMP's activities?** Why?
- **Is there any sector where you feel that DG COMP is 'over-active'?** Why?

A8. Summarising what has been discussed in this section above, how would you rate the quality of DG COMP's economic analysis?

(C, EC, BA, NCA, MSM)

SHOW CARD 3

DG COMP's economic analysis is very poor						DG COMP's economic analysis is very good
1	2	3	4	5	6	7

- Why did you give this score?
- What other comments do you have about DG COMP's economic analysis?

B. Integrity

The following section discusses the integrity of DG COMP within its activities. In particular, this section is interested in how DG COMP deals with and consults with stakeholders and the procedural rules that DG COMP follows as part of these processes.

Do you think that DG COMP is working in a transparent manner?

For example:

B1. To what extent do you feel that DG COMP is listening to stakeholders and informing them in a timely manner about the different procedural steps of its enforcement activities and/or the reasons behind the Commission's intermediate decisions, etc.?

(All)

- Why did you give this answer?
- What experiences do you have which caused you to have this opinion? Can you give examples of when DG COMP has / has not kept you informed in a timely manner, etc?
- **Do you have any suggestions about how DG COMP could further improve in this field?**

Based on your views, how would you rate DG COMP's performance on the scale shown here?

SHOW CARD 4

DG COMP has not at all informed me in a timely manner						DG COMP has informed me in a very timely manner
1	2	3	4	5	6	7

- Why did you give this score?

B2. To what extent do you feel that DG COMP has involved you in their stakeholder consultations on the creation of new rules?

(All, especially BA, CA)

- Why did you give this answer?
- What experiences do you have which caused you to have this opinion?
- In what ways have they involved you / not involved you?
- (if they have not involved you in the creation of new rules) **Have you received information about these new rules? Why not?**

Based on your views, how would you rate DG COMP's performance on the scale shown here?

SHOW CARD 5

DG COMP has not involved me at all in the creation of new rules						DG COMP has involved me very much in the creation of new rules
1	2	3	4	5	6	7

- Why did you give this score?

B3. Based on your experience, do you consider that DG COMP duly observes the procedural rules?

(All)

- Why did you give this answer?
- What experiences do you have which caused you to have this opinion?
- PROBE FOR:
 - Handling and protection of sensitive / confidential information
 - Rights of access to file (documents – STATE AID)
 - Parties given due hearing during the process, including oral hearings

B4. Do you think that DG COMP’s investigation work and/or consultations have been carried out in such a way that it placed the minimum necessary burden on the businesses (Member State ministries, national competition authorities) involved?

(C, NCA, MSM)

- Why did you give this answer?
- What experiences do you have which caused you to have this opinion?
- **Thinking of your own experiences, what improvements could DG COMP have made in order to reduce the burden for you?**
- **Do you have any further suggestions to reduce the burden of investigations?**

C. Economic Effectiveness

This next section is looking at the impact that DG COMP’s work has had. It looks at the decisions that the Commission has taken so far, and discusses the level of success that DG COMP have had in imposing these decisions.

C1. What do you think of the effectiveness of DG COMP’s detection policy?

(L, C)

- Why did you give this answer?
- What experiences do you have which caused you to have this opinion?
- Do you consider that DG COMP is finding and working on the most appropriate / relevant cases?
- How effective is their use of the complaints procedure and leniency applications etc.?
- **How could DG COMP improve the effectiveness of their detection approach / policy?**

C2. What impact do you think DG COMP’s work has had on the markets? (READ OUT IF REQUIRED: Please consider all the work that DG COMP has done, including case work, policy and regulatory work)

(All)

- Why did you give this answer?
- What experiences do you have which caused you to have this opinion?
- **Can you identify any concrete actions or policies that DG COMP could take to increase its impact on the markets to promote competition?**

Based on your views, how would you rate DG COMP’s performance on the scale shown here?

SHOW CARD 6

Not at all effective at creating better						Very effective at creating better
---	--	--	--	--	--	-----------------------------------

working competition in the markets						working competition in the markets
1	2	3	4	5	6	7

- Why did you give this score?

C3. Do you consider that the Commission’s decisions are processed within a reasonable time span to have a strong impact on the markets?

(All)

- Why did you give this answer?
- What experiences do you have which caused you to have this opinion?
- PROBE FOR:
 - Timeliness in terms of impact on an individual company’s activities (i.e. procedural speed)
 - Timeliness in terms of the desired economic effect on the relevant market
- **What suggestions do you have to improve the processes?**

Based on your views, how would you rate DG COMP’s performance on the scale shown here?

SHOW CARD 7

The Commission’s decisions are not made in a timely manner						the Commission’s decisions are made in a very timely manner
1	2	3	4	5	6	7

- Why did you give this score?

C4. What is your view on DG COMP’s ability to sufficiently enforce Commission decisions?

(All)

- Why did you give this answer?
- What experiences do you have to support this viewpoint?
- Based on these experiences, did the enforcement decisions have the foreseen effects on the markets?
- PROBE FOR:
 - Company / Member State compliance with decisions
 - Economic effectiveness in increasing competition in the market

C5. Do you think that DG COMP’s policy of using fines is an effective deterrent?

(All)

- Why did you give this answer?
- What experiences do you have which caused you to have this opinion?
- Can you think of any other policies (other than fines) that may be more effective?

C6. Do you feel that DG COMP reacted in a timely and effective way to the financial and economic crisis?

(C, EC, MSM)

- Why did you give this answer?
- What experiences do you have to support this viewpoint?
- What (else) would you have expected DG Comp to do?
- How did their actual responses match up to your / the markets' expectations?

D. External communication

This last section looks at the external communication activities that DG COMP currently have with businesses and organizations, and what they can do to improve communication with the different groups of stakeholders in the future. Please note that this section is more focused on general/external communications about competition than on the communication that occurs during a case.

D1. Do you feel that DG COMP's external communications are understandable and clear?

(C, BA, CA)

- Why did you give this answer?
- What are your best / worst experiences of communicating with DG COMP?
- What is the best way for DG COMP to communicate with you / organizations like yours? What recommendations do you suggest?

D2. How do you rate the timeliness of DG COMP's communication?

(L, C)

- Why did you give this answer?
- What experiences do you have which caused you to have this opinion?
- PROBE FOR:
 - Speed with which non-confidential versions of decisions are published

D3. What do you think of DG COMP's choice of communication and media channels?

(C, EC, BA, CA)

- Why did you give this answer?
- Through which media channels are you aware of communications from DG COMP?

- Are these the best channels to reach the audiences DG COMP is aiming at?
 - How well does DG COMP use new and emerging media channels
- NB: (DG COMP use press releases, press conferences, their website, videos and conferences / workshops to communicate)*

D4. Do you consider that DG COMP is correctly targeting their communications? (Do they understand the needs / interests of their target audiences)

(All)

- Why did you give this answer?
- What experiences do you have which caused you to have this opinion?
- How can they improve this?

D5. What do you think of the quality of DG COMP's activities aimed at promoting competition culture and educating people about competition culture? (We are interested here in more general communications about competition policy etc.)

(All)

- Why did you give this answer?
- Are their activities well targeted, sufficient and effective?
- What experiences do you have which caused you to have this opinion?
- How can they improve these communications activities?

Based on your views, how would you rate DG COMP's performance on the scale shown here?

SHOW CARD 8

DG COMP's activities promoting competition culture are very poor quality						DG COMP's activities promoting competition culture are very good quality
1	2	3	4	5	6	7

- Why did you give this score?

CLOSING REMARKS

Are there any other issues relating to DG COMP that we have not discussed?

- Anything you would like to add?

OUTLINE NEXT STEPS:

Production of aggregate report in Q1 '10

DG Competition Stakeholder Study - Aggregate Report

Check preparedness for:

- a) The name of their organization being included in a 'list' of contributors to the report
- b) Verbatim quotes in the report being attributed with their organization's name

Thank respondent and close interview