



Qualitative Study



European
Commission

DG COMPETITION STAKEHOLDER STUDY

Stakeholder Report - Companies August 2010

Qualitative study – TNS Qual+

This survey was requested by Directorate General for Competition and coordinated by Directorate General Press and Communication

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.

CONTENTS

1	Background and Research Method	3
1.1	Background and objectives	3
1.2	Methodology and sampling	4
1.3	Respondent context	6
2	Soundness of Legal and Economic Analysis	7
2.1	Clarity and comprehensibility of decisions	7
2.2	Predictability of decisions	9
2.3	Predictability of fines imposed	12
2.3.1	Rating: legal soundness of decisions	14
2.4	Technical quality of economic analysis	14
2.5	Understanding of the markets	16
2.5.1	Rating: market knowledge	19
2.6	Focus of enforcement activities	20
2.6.1	Rating: quality of economic analysis	21
3	Integrity	22
3.1	Transparency - listening and informing in a timely manner	22
3.1.1	Rating: informing in a timely manner	24
3.2	Transparency - stakeholder consultation on new rules	24
3.2.1	Rating: stakeholder consultation on new rules	25
3.3	Observance of procedural rules	25
3.4	Burden on businesses	27
4	Economic Effectiveness	29
4.1	Effectiveness of detection policy	29
4.2	Impact on the markets	30
4.2.1	Rating: impact on the markets	31
4.3	Timeliness of decisions	31
4.3.1	Rating: timeliness of decisions	32
4.4	Ability to enforce decisions	32
4.5	Deterrent effect of fines	33
4.6	Response to the financial and economic crisis	34
5	External communication	36
5.1	Clarity and comprehensibility of external communications	36
5.2	Timeliness of communication	37
5.3	Choice of communication and media channels	37
5.4	Targeting of communications	38
5.5	Promotion of competition culture	39
5.5.1	Rating: promotion of competition culture	41

1 Background and Research Method

1.1 *Background and objectives*

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

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

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

- Integrating better a wider institutional policy context into its daily activities
- Measuring its performance in a number of fields related to the quality and impact of its work, including the effectiveness of its advocacy and communication activities
- The management and prioritisation of its projects, contributing to a more dynamic communication and interaction with stakeholders allowing DG Competition's actions to achieve a greater impact

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) and policy and advocacy activities. The study targeted DG Competition's professional stakeholders who are knowledgeable about its work, either by concrete involvement in case work as part of DG Competition's enforcement activities or indirectly, by having influenced or benefited from policy work.

This report focuses on the views of Companies. Further reports cover the views of:

- Lawyers
- Economic consultancies
- Business associations
- Consumer associations
- National competition authorities

- Member state ministries

1.2 Methodology and sampling

The study consisted of in-depth interviews (IDIs) lasting 90 minutes. Interviews were conducted face to face wherever possible, at the respondent's place of work or another suitable location. 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+.

This report is based on 40 interviews, conducted across the EU and in Switzerland. The detailed breakdown of interviews is included below:

Country	Interviews
Belgium	7
Switzerland	1
Germany	8
Spain	4
Finland	1
France	5
Hungary	1
Ireland	1
Luxembourg	1
Netherlands	4
Denmark	1
Sweden	1
United Kingdom	5
<i>TOTAL</i>	<i>40</i>

Interviews were conducted between December 2009 and February 2010.

Potential target organisations were carefully selected to provide, as far as possible, a balanced view on the quality of DG Competition's work.

The following companies participated in this study:

- SABAM
- Westinghouse Electric Company
- IBERDROLA
- General Electric Company
- Unilever
- Nestlé
- A. P. Moller - Maersk A/S
- Hispasat, S.A.
- Repsol YPF
- IBERIA LAE
- Cableuropa, S.A.U. (ONO)
- Nokia Corporation
- AIR FRANCE KLM

- Sanofi Aventis
- Total
- Saint Gobain
- MOL Plc
- Ryanair
- Glasvezelnet Amsterdam CV
- Vattenfall AB
- Google
- Easy Jet
- Shell International Ltd.

Other participating companies requested to remain anonymous.

The intention was to interview companies involved in different kinds of activities; as complainants, recipients of prohibition decisions or fines and by being beneficiaries of decisions, while in many cases companies feature in multiple roles.

A representative sample of companies with relevant experience of DG Competition's activities in the different competition policy instruments' fields was selected by DG Competition, taking the following parameters into consideration:

- The selection was based on cases closed between 2006 and 2008 (although some the companies might also be involved in cases opened during the preparatory work for the study).
- Only companies located in the EU Member States (and Switzerland) or with EU regional headquarters were included. Although there were more companies selected from the larger Member States, efforts were made, where possible, to include companies from smaller Member States. For example, complainants or State aid beneficiaries.
- In order to cover all DG Competition's activities, the sampling process aimed at a broad coverage of the different possible parties involved in competition proceedings. This was partly achieved by selecting large companies that had been involved in cases relating to different competition policy instruments and procedures (i.e. companies that had been involved in mergers and antitrust investigations, either as a party, notifying and intervening parties or as a third party/complainant) and sectors.
- The invitation to participate was also issued to a number of small and medium sized companies that typically had the role of a complainant (including complainants whose complaints have been rejected). Also, DG Competition included companies that had been involved as third parties in their procedures and investigations; moreover, they targeted a number of beneficiaries of decisions (with particular relevance for cartel and antitrust cases).

- Where possible the sample was selected to provide coverage of a broad range of sectors, in accordance with DG Competition's policy priorities over the last three years. Priority sectors are:
 - 1) Energy and environment
 - 2) Basic industries, manufacturing and agriculture
 - 3) Health, transport, post and other services
 - 4) Financial services
 - 5) Information, communication and media

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. So, 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 and should not necessarily be taken as an indication that other issue was not of concern to them.

Verbatim quotations from respondents have been included in this report. They are written *in italics*. For anonymity's sake, they have not been attributed to particular individuals or companies.

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 plus an overall mean based on the number of respondents rating each aspect are included within the report.

1.3 Respondent context

Respondents were all played key roles in the companies with relation to competition issues, either at a senior executive level, in the legal department or monitoring competition. They had all personal experience of direct contact with DG Competition. Most had backgrounds either in law or management / economics.

The majority of the companies included in the study have irregular contact with DG Competition. Most of them will be in more frequent communication with the competition authorities in their own countries.

Frequency of contacts varied from occasionally (once or twice a year) to several times a week. Some had not been in recent touch with DG Competition, not having had a reason to be. Others had been involved in one or several cases for any length of time (up to 10 years or more).

2 Soundness of Legal and Economic Analysis

2.1 Clarity and comprehensibility of decisions

- The Commission is overall perceived to deliver clear and understandable decisions although a few criticisms were made -

About three quarters of respondents have had positive experiences with the clarity of Commission decisions even if, on occasion, they disagreed with the decision itself.

“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.”

For these respondents, clarity comes from the robustness and rigour of the legal and economic arguments presented; decisions appear both legally and economically founded.

“I can't detect any fault in the system.”

“The framework in which DG Competition's activity is developed is controlled, stable and regulated.”

These respondents perceive that Commission decision are of such a high standard because they are based on the work of professional, knowledgeable and hard working teams at DG Competition. Dealing with such a high calibre organisation leads, they believe, to more trust and better collaboration in the long run, making decisions, when they are delivered, far more likely to be clear and making it easier for companies to understand them.

Some respondents also refer positively to the transparency and ease they find in communicating with DG Competition. They view DG Competition teams as responsive and flexible.

“We can discuss our problems with them.”

A small minority of respondents spontaneously mention that clarity has been increasing in recent years, and attribute this to the arrival of a new Chief Economist and to the overall improvement of DG Competition's economic analysis.

About a quarter of companies did express criticisms or concerns. Almost all of these mention occasional situations where they have disagreed with DG Competition on the interpretation of important aspects of a particular case. A minority amongst these complaints were that decisions lacked

clarity. Criticisms included that decisions were opaque, lacking in consistency and in continuity.

Only two respondents confessed to struggling somewhat with the legal terminology used during proceedings and, as a result, to sometimes feeling overwhelmed by a case and not in control. These respondents did not have a legal background.

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

A significant minority of companies were left with a feeling that they had been treated unfairly, being unable to understand the rationale for a Commission decision.

As a result these companies questioned DG Competition's legal reasoning, suggesting it was weak in these cases.

"The way it's written is clear and understandable, well documented. But, in terms of contents, the ideas are well structured but the interpretation can vary."

"There are some very clear parts and others where we are on a border area and it is difficult to interpret. The interpretation has shadows."

Most of the respondents mentioning this issue had been through several cases and expressed the view that clarity seemed to vary from one case to another.

Such criticism arises primarily from complex cases which are considered, by their nature, to be prone to conflict. Examples quoted included some sector inquiries, cartel proceedings and merger control proceedings which are in the public eye or which have political implications. However, there was also a feeling, expressed again by a minority, that more technical and politically sensitive cases get more attention and can be clearer compared with more 'banal' cases. It is suggested that this may be because such cases are dealt with more rigorously and within stricter deadlines.

Over half the respondents mentioned timeliness as being an issue for clarity; the context of the case evolves as time passes and it is felt to be more difficult to focus on a logical outcome. Besides, long proceedings are felt to mean a lot of extra work for companies; about a quarter of respondents expressing a degree of anger about this issue. For them, the necessity for such long proceedings was not understood and should be clarified.

"You ask yourself why such an enormous administrative operation was necessary to arrive at this result."

About one third of those interviewed expressed the view that not all cases are handled with the same 'quality', simply because cases are often

different, as are the team members that investigate them. A number of specific points were made about case teams:

- About a quarter of respondents had the feeling they had seen high staff turnover in the teams handling their cases, over the years. They felt that a lack of continuity in teams from one case to another also led to expertise and clarity being lost. They mentioned a significant level of variability in the seniority, experience and market knowledge of DG Competition case team members.

"People who have developed an expertise end up leaving."

- The 'national mix' within the team is sometimes felt to play a role in how a case proceeds, with the assumption that DG Competition staff may have different views according to the country they grew up or studied in. Hence a balanced 'mix' was mentioned as being preferable.

In a couple of instances, strong scepticism was voiced about the soundness of the legal procedures employed by DG Competition:

"They decide what they want to do and work backwards from there!"

2.2 Predictability of decisions

- In the majority of cases Commission decisions are felt to be predictable -

For all respondents, clarity and predictability go together; if the company reaches the same conclusions as the Commission it is seen as evidence that DG Competition has operated with clarity and transparency. For about two thirds of respondents this is usually felt to be the case.

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

"In our case, I think the decisions they made were the ones we thought they would."

"Normally, you prepare yourself for approximately what then comes in the end."

About a quarter of respondents mentioned spontaneously that, provided communication with the team is open, if decisions are not predictable from the start, the discussions with the team lead to predictability.

There were many examples provided by respondents of decisions which met their expectations. However, only about a third of respondents found decisions to always be predictable, whilst the remainder felt they were

usually predictable but that some decisions had been different from what had been anticipated.

For about one third of respondents, with experience of decisions that were not as anticipated, dissatisfaction with the predictability of decisions was accompanied by questioning and even criticism of the procedures followed. In some instances disagreement was even expressed with the rules themselves. A small minority expressed the view that that DG Competition's processes lacked the involvement of an independent third party, which would enhance transparency.

"The case team are judge and jury."

About one quarter of respondents felt that the rules had been applied too strictly, which, in their opinion, undermined the idea of healthy competition.

"I think, if I have a criticism, it is that their remedies don't necessarily reflect the economic theory that they put out."

There is a feeling expressed by about a quarter of respondents that the Commission can sometimes seem a little too able to 'do as it pleases', manifested in apparently pre-determined decisions.

"They make up their mind too quickly; they just don't weigh the evidence. Somehow, that must have to do with the fact it's all become politicised."

"DG Competition were really looking for reasons on which they could fine us."

A small minority of respondents referred to a perceived degree of political influence having an impact on some Commission decisions. They expressed 'suspicions' that decisions are influenced by pressures from Member States in certain cases, rather than strictly applying the law. They acknowledged that this is something which is difficult to avoid, particularly in some 'consumer sensitive' areas (e.g. petrol, airlines, and pharmaceuticals).

"Sometimes, and it must be a complicated situation, we do notice a certain correlation between what the national authorities say and what DG Competition do."

It was felt that in apparently similar cases, different positions had been held by different DG Competition and, in some instances, such variability is attributed to political influences.

"On political influences, it depends on individuals, as to how they can resist various pressures. But, in theory, they should at least guarantee internal consistency on the decisions they take."

There was a suspicion expressed by a couple of these respondents that certain decisions are more prone to political influences, particularly where the media are more active or where lobbying and competitors' interventions would be more likely. One respondent cited an example of a merger control case where it was felt such pressure had led to a change in DG Competition's position.

"[After we had executed the changes required by DG Competition], we received a letter stating that, 'we have revised our opinion, and we consider that it must be registered, you must notify.' Well, that is a clearly an issue which calls into question the reliability, legal certainty, and predictability of a procedure."

About a quarter of respondents expressed the view that there was a correlation between lack of predictability and the complexity of the case; more complex cases can sometimes have unpredictable decisions at the end of them. This is, in part tied into the issue of case length mentioned in section 3.2

There was a general view that, where there is precedence or prior experience, Commission decisions tend to be more predictable.

- About two thirds of companies feel that, to some extent, they understand its procedures, assumptions, rules and formulas, which helps them predict the outcome of a case (even if they are not happy with that outcome).

"I think the Commission has been fairly consistent in the way they have been implementing the legislation."

"They are predictable but sometimes based on repeatedly inappropriate bases."

"It's not that they define it confusingly, I just think they are wrong. We do not agree with the basics they used."

- However, when there is hardly any jurisprudence (in particular with fast moving sectors), companies sometimes feel extremely exposed; one respondent compared an investigation of this sort to a 'black box'.
- A small minority expressed the view that DG Competition's teams tend to rely too readily on past decisions, in fast evolving sectors. They feel there is a danger of assuming that cases which look similar are the same because, in actual fact, the market may have moved on.

"The same ruler, used for different situations, does not give the same results."

2.3 Predictability of fines imposed

- Views on the predictability of fines are extremely mixed; about a third of respondents think there is room for improvement -

About a third of respondents could not answer this question, not having been in a situation where they had to pay a fine and with no other source of information on the subject.

Of those who felt able to express a view, about half felt that there is a clear scale for various types of competition infringement, which makes fine levels relatively predictable. As a result, they also feel that where there is disagreement about the size of a fine, it is possible to challenge it and for it to be modified. The other half of those able to express a view felt that the predictability of fines is a major issue of concern and a point on which they criticise the Commission and DG Competition.

Although the deterrent effect of fines is discussed in section 5.6 it is important to note here, by way of context, that the general feeling, from all interviewees, is that fines have become very high and that this is a significant cause for concern.

“When you hear the amounts Microsoft has to pay, you are shocked!”

“Throughout last year, there were repeated sanctions in several sectors, sanctions that have gone overboard in the chemical sectors; amounts that, in some cases, the offender has said he could not pay.”

Amongst those who have had to pay fines, opinions on the predictability of the amounts levied are highly polarised. It is difficult to generalise in this area since the differences in views appear to occur on a case by case and market by market basis. However, companies distinguish clearly between fines in ‘clearly proven’ cartel cases and proceedings that are regarded as being in a ‘grey area.’ The example that is repeatedly cited here is the Microsoft case.

About a quarter of the respondents say they find fines very predictable and feel they have become more so over the years. Criteria are felt to be more strictly defined than in the past, for instance in the automotive sector. Even if final amounts are not given, at least it is clear how the calculations are made.

“It has become more transparent, but also more expensive!”

However, about half the respondents feel that predictability of fines is an issue and, for some, it was a constant theme within the interviews. This tended to be either because the amount they had been fined was not what they had expected or because, although they were led to foresee it, companies feel the level of fine imposed was unfair.

“Well, it is predictable in the sense that it is extremely high. I do not think it is transparent. I do not even think that it is predictable at all and I do not consider it transparent either. I believe that there is also a political objective to ensure that the amount that comes out at the end, if you get caught, cannot already be priced-in at the outset.”

Most of these respondents are familiar with the formal framework which exists and which, most believe, DG Competition adheres to. However, specific conditions may be very complex and references were made to:

- Aggravating circumstances, such as cases of recidivism, which influence the fines calculation.
- Mitigating circumstances, including cooperation with DG Competition, also influences the fine calculation.
- In one case, the distinction between parent company and subsidiaries was mentioned: to what extent should parent companies pay for subsidiaries' faults?

A minority expressed the view that, although the guidelines should help predictability, they do not, in fact, do so, because they contain several variables which could heavily influence the final outcome. A number of factors came up during these discussions:

- The guidelines indicate maximum and minimum amounts but the spectrum is very wide and it is difficult to estimate for certain the amount of the sanctions that can be applied.
- There were complaints that the '10% rule' is not put into practice; that the amount of a fine was sometimes felt to be chosen 'randomly' from less than 3% up to 15% of the business value.

There was also a feeling, expressed by a minority, that the calculations can be too complex to allow prediction; the fines are based on complex, data heavy analysis and the parameters are broad. Therefore assessing the analysis is not only complex, but time consuming. In addition data is not always available to companies in order to check their own calculations against DG Competition's.

“There is no official catalogue of fines which you could look into and you would know what the punishment will be. But [obviously] it cannot work like that in DG Competition cases.”

To an extent, as the previous quote shows, some respondents show an understanding for this but, in the majority of cases, it causes resentment.

“Weighting factors are included in the formula [so] ultimately the Commission decides, using its discretion, about the factors that should be taken into consideration.”

It was suggested by one or two respondents that making it difficult to predict fines might be intentional on DG Competition’s part, to ensure that companies were not able to offset the potential fine against the potential revenue generated by joining a cartel, for example.

“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.”

2.3.1 Rating: legal soundness of decisions

Mean score¹ = 4.5

Commission decisions were not legally sound							Commission decisions were very legally sound
	1	2	3	4	5	6	7
	-	4	3	8	9	10	-

2.4 Technical quality of economic analysis

- The quality of DG Competition’s economic analysis is seen as high or satisfactory by the majority but as very questionable by a few -

Overall, the vast majority of the respondents were positive about the greater role being played by economic analysis in Commission decisions and expressed praise for the quality of the work being carried out by those economists working within DG Competition. The principle of employing economic analysis as part of the case process receives mixed reactions but about two thirds of respondents see it as a positive move, which enhances transparency. There were some reservations expressed by only by a minority of respondents.

About a quarter of the respondents felt they were not in a position to judge the technical quality of DG Competition’s economic analysis (explaining they came from legal rather than economic backgrounds).

“I don’t really want to say anything about that. I am not an economist and so I have a lot of difficulty with this.”

“I must say, to be quite honest, that I do not feel capable of making any particularly reliable evaluation about this.”

¹ Four respondents gave scores of 5.5 which are represented by 2 x 5 and 2 x 6 in the table.

But a few amongst these stated they trusted DG Competition 'a priori'. They know there are rules and assume that the economic analysis is done according to these rules.

"We know they work with reliable parties."

"In the end, there is a conclusion about the characteristics of the market, about the competition problems that could arise in this market, which are based on an economic analysis that is duly supported."

For the vast majority of respondents economic analysis represents a powerful tool, which gives investigations strong credibility, based on technical know-how rather than more subjective approaches.

"What is good is that it is meant to be based on economic analysis, not politics."

For this majority of respondents, the increasing significance of economic analysis is seen as a relatively new development. One essential factor contributing to this is the appointment of a Chief Economist.

For a minority of these respondents economic analysis is felt to be what accounts for the greatest part in DG Competition's credibility. About a quarter of respondents also noted, explicitly, that standards had improved, and analysis had become more predictable (possibly more so in mergers than in cartels).

"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."

However, for a minority (less than a quarter of all respondents) the greater value now attributed to the economic dimension was an irritation because most of the respondents ranked themselves as 'laymen' in this field.

"When I hear economists, I am fascinated to see what can be deduced from data. But I have serious doubts whether it really corresponds to the reality in every case."

"It gets very complicated sometimes; so it's not easy to follow if you're not an economist."

There was also criticism of DG Competition's economic analysis from about a quarter of respondents. In many cases the issues arise from a perceived variation on the quality of case teams, with some teams lacking in economic expertise, the ability to make informed judgements or market knowledge.

“They have to learn the peculiarities of the different sectors in order to have a clear focus and avoid interpretation disagreements later.”

These critical respondents tended to feel that DG Competition's economic analysis did not take the market context sufficiently in consideration; it was too standardised. A minority felt that DG Competition had failed to take into account the most meaningful criteria.

“With XY, the analysis was of very bad quality. DG Competition's analysis was based upon (consumer's) attitudes, but that analysis turned out to be bad. We even called in an economist who demonstrated the analysis was bad.”

Ultimately, a minority made suggestions of ways in which they felt DG Competition could improve the quality of its economic analysis:

- Some respondents thought that having no direct access to the legal services or the economists was a major procedural weakness. There was a view that it would be much better to allow the company's economists to speak directly to DG Competition's economists, rather than having to communicate through lawyers and the case team.
- Others thought that conducting open analysis would help to improve economic analysis in the future. Better transparency of economic analysis, for example a separate economists' annex to a decision, would be beneficial for other parties, in a similar market, to see the type of analysis conducted on other decisions.

2.5 Understanding of the markets

- Market knowledge is usually considered good, or sufficient, except in a few cases where this is reported to have had serious consequences -

As already discussed, the soundness of Commission decisions is seen as closely connected, in many cases, with the investigating team's market knowledge. On the subject of 'market knowledge' opinions are polarised.

The responding companies were divided into three roughly equally-sized groups:

- About one third praise DG Competition's market knowledge.
- One third find competencies are acceptable but tend to vary from one case to the next.
- The remaining third think DG Competition lacks insight into their market.

The views of these three groups are covered in turn below.

Those who have **high regard for DG Competition's market knowledge** tend to perceive there to have been an improvement in DG Competition's market knowledge in recent years, leading to a greater level of perceived neutrality in case decisions. DG Competition was seen to investigate market conditions very closely, far more so than some Member State competition authorities.

"Knowledge of the market and the industry is not important, it is decisive. And in my opinion, there has been a change in this respect. In our experience, the Commission is very well informed and as it deals with more and more cases it acquires a very good knowledge of the market, if it did not already have that at the beginning."

Knowledge is considered to be good in the automotive and electric goods sectors. Insufficient specific comments were made for it to be possible to give a clear view on other sectors.

A minority mention that the introduction of a sector based structure to case teams has led to a greater degree of professionalism within DG Competition, in their opinion. These teams are often perceived to have a good level of market knowledge at the start of a case and, if uncertain, they work intensively so that their decisions are backed by the most complete possible information, calling on specialists if necessary.

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

Those who perceive **variability in DG Competition's market knowledge** tend to feel that its approach to markets is 'fairly good'. However, it is sometimes thought that this may not be enough.

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

In some fast-moving technological sectors, such as in cable or satellite broadcasting, it was recognised that, even though market knowledge was insufficient at the beginning, this was to some extent compensated with an intense learning phase by the case team.

However, once again, the view was expressed that there was variability between case teams; based in part on their seniority level and their experience in that market.

"It's very dependent on who it is. So, if you get a case worker who has worked on this type of case before, they are very qualified, but otherwise you start all over again."

“If you are unlucky, your merger notification may be investigated by people who have been in this job a couple of months, previously having done agriculture.”

In addition, the teams are reported by a minority to sometimes lack the ‘insider’s’ knowledge.

“I have not seen them make an objective analysis comparing one sector to another. Their approach is so micro economical that it can prevent their global understanding of stakes.”

Those with **poor perceptions of DG Competition’s market knowledge** indicated that they felt it lacked relevant knowledge about specific industry sectors and the mechanisms that operate within certain parts of a market. This is felt to lead to an inability to really grasp the dynamics and issues relevant to a specific sector; evaluations are felt to be based upon incorrect premises which can lead to unfair or incorrect decisions.

A minority of respondents, about a quarter, felt that whilst they had been able to express their point of view on their market, they were simply ‘not believed’. There were even suspicions expressed that DG Competition had ignored some evidence, when that evidence did not support a preconceived conclusion.

Some knowledge deficiencies were reported amongst teams working in the airline sector, petroleum, pharmaceuticals, and in the FMCG sector (food, home care). In some cases these criticisms were not universal from those operating in the sector.

“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.”

“It was quite evident at the beginning of the Sector Inquiry that their knowledge of the market was only very rudimentary.”

“We discovered some alarming deficiencies in the Commission’s competence as far as an understanding of our specific market is concerned. Enormous deficiencies. The first thing that we had to do was to provide extensive preliminary information about the mechanisms that govern this market.”

However, about a quarter of all the respondents acknowledged that it is not reasonable to expect DG Competition to have such complete knowledge prior to an investigation.

“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.”

“The financial market is very specific and banks can't easily be compared with each other.”

Most of these who feel it is unreasonable to expect full knowledge at the start of an investigation also recognise that, where DG Competition’s initial market knowledge is insufficient, an intense learning process brings it to an adequate level.

“They are aware of their own shortcomings and are prepared to listen.”

“They do investigate seriously by interviewing third parties.”

“We spend considerable time with DG Competition officials explaining what we are doing.”

It was suggested that greater efforts could be made to grow and keep experience within sector teams. Educating someone on a particular market should be a long term process, they feel. Several types of comment supported this view:

- The desire for a higher degree of continuity amongst personnel (high turn over was perceived by about a quarter of respondents).
- Requests for a more standardized process for the accumulation of knowledge within DG Competition, so that new and inexperienced case team members don't have to start from scratch every time.
- The call for expert teams within a certain field; at least for key industry sectors. Such teams would be able to more fully understand the situation at hand and thus could be connected to and consulted in each case.

“I believe that if they developed industry-specific Core Competency Centres with continuity of personnel, it would help a great deal.”

2.5.1 Rating: market knowledge

Mean score = 4.3

DG COMP do not know the markets at all

DG COMP know the markets very well

1	2	3	4	5	6	7
-	2	9	7	11	5	1

2.6 Focus of enforcement activities

- **DG Competition appears to concentrate its activities in the right sectors. This gives the organisation strong legitimacy -**

At an overall level, DG Competition is felt to focus its enforcement activities in the most appropriate sectors and a minority of respondents acknowledged that its activities are beneficial to industry as a whole.

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

However, this was considered a 'tricky' question by some, who were not fully aware of the scope of DG Competition's actions. Because it appears impossible to many for DG Competition to analyse and 'police' all the markets and possible infractions, they assume DG Competition uses tools that bring them information, leading to an investigation of certain cases in particular sectors.

Overall, however, the majority has positive views of DG Competition's policy in this area.

"When I look overall at the activities of the Commission, it is understandable why the fields are selected. One can be of different opinions about the results but a great deal of effort is being made to spot the problem areas and to find appropriate solutions."

"I certainly think that it is sensible to examine more closely the industrial areas which the Commission has selected. It is fair to say, I want to know exactly how things work in the specific area A or B. I have not been able to notice that there have been any particular deficits."

A minority of respondents expressed opinions about which sectors they felt DG Competition is, should (or should not) be focussing on:

- Some mentioned consumer goods sectors as one key sector to be focusing on, considering the economic impact and consequences that these have on consumers.
- DG Competition is felt to focus on sectors for which there is little public sympathy (energy, financial and pharmaceuticals) and some company representatives 'warned' that DG Competition should not become 'obsessed' with these sectors.
- DG Competition is also perceived to focus (rightly) on those sectors where there are more risks of anti-competitive behaviour; those having had cartels in the past (e.g. chemicals). The attention can also be explained because of the fact that many companies applied for leniency.

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

“They are highly active in the telecom, IT and pharmaceutical sectors, but in my view, that’s justified.”

- DG Competition was in a couple of cases criticised for concentrating too much on sectors that have more impact in the eyes of the media and public opinion, such as IT, airlines, banks, telecoms, energy and food.
- A small minority voiced the opinion that some industries are ‘in the sights’ of DG Competition for political reasons and this is why they are subject to greater scrutiny than others.

“It was our perception, for example, that our industry was being monitored because it was, in a sense, the Commission’s high-emphasis field. That may have had something to do with complaints that the Commission had received at that time, or it may also simply have been a political objective.”

“Naturally you notice that, in a way, the Commission also has a political orientation.”

2.6.1 Rating: quality of economic analysis

Mean score = 4.4

DG COMP's economic analysis is very poor						DG COMP's economic analysis is very good
1	2	3	4	5	6	7
1	2	4	7	9	7	-

3 Integrity

3.1 Transparency - listening and informing in a timely manner

- Views on the transparency and smoothness of communication are polarised –

Although all respondents agree that transparency is essential in DG Competition's dealings with companies during a case, a wide range of experiences were reported: just above half of the respondents praise the quality and ease of communication whereas about a third report unsatisfactory incidents and communication difficulties.

Good communication with companies under investigation is seen as essential. About three quarters of respondents felt there was adequate communication, although it is acknowledged that the human factor is, to some extent, unavoidably subjective.

"There's always going to be a certain element of unpredictability just down to personnel, who you happen to get staffed on your case."

However, a minority mentioned getting very little or no feedback during an investigation, which made predicting the outcome very difficult.

"We do not know during the investigation whether we are moving in [our predicted] direction. Feedback only takes place at the very end of the decision."

It was widely mentioned as a very positive factor that DG Competition is, in many cases, prepared to listen to the concerns and positions of companies. This is felt to be essential in developing and strengthening DG Competition's credibility and in facilitating good working relationships.

"They are open, you can talk 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."

In about three quarters of our interviews, DG Competition's integrity was not questioned. Companies' representatives are aware of the procedures and they feel DG Competition adheres to them.

"Ultimately, the major milestones are prescribed by the law. I am of the opinion that, by and large, everything is done correctly."

However, perceptions do vary. Two thirds of respondents are overall satisfied, while one third is quite critical.

Amongst the reasons for criticism, mentioned by a minority, was the view that communications are easier when a company is directly involved in a case. In such instances, the company has a clear contact point. This means the company will be contacted proactively by the case handler, meetings will be organised and emails exchanged.

“Knowing that there is a case handler appointed to the project, makes me feel secure.”

However, when a company is not directly involved in a case, information is harder to obtain; the company has to take the initiative in the communication process. In these instances DG Competition may seem more distant.

“I never know in advance who is responsible for a proceedings, I cannot look it up in a directory, the Task Forces are composed on an ad hoc basis, who the members are is not transparent at all, not for me at least. To this extent, the Commission is a Black Box.”

About one third of respondents complained that DG Competition’s structures are not transparent enough, and that, while the companies are listened to as part of the general opinion-forming process, their positions are not reflected in the subsequent regulatory steps.

Lack of feedback during procedures is seen as a threat to companies because decisions become unpredictable. A minority of respondents expressed a feeling of being under threat; they see DG Competition has having every means and information to use against a company, whereas the company can be in a position of total ignorance on the files.

“They have such an immense degree of power that I think there’s a view that they don’t have to tell us what’s going on, maybe even shouldn’t.”

Companies tend to feel 'on their own' when they are subject to complaints from competitors, access to even the type of complaint and arguments against them being denied. Yet, this is when they feel DG Competition would be very helpful to them, a view stated by a small minority of respondents.

“There was an investigation in the company over three days and documents were taken away. We are still not aware that we are guilty of anything... To date we have heard nothing, what is supposed to be wrong and what is going on. There is absolutely no transparency whatsoever and we are very dissatisfied with the situation.”

Again, there is a sense (expressed by just under a quarter of respondents) that, in some way, ‘political’ factors influence communication and clarity:

“Sometimes you think that a particular research also has a political objective instead of the economic objective which is communicated. Although we cannot say this for sure, we sometimes do have the feeling.”

“You never quite get over the feeling that the result is in fact already decided at the outset and then the hearings come after that, so that sometimes you have the feeling that perhaps they are no longer able to take any account of what is presented to them in the way they might wish.”

A small minority expressed the view that communication is more transparent for mergers than in anti-trust cases:

“Our three merger-control proceedings they were certainly transparent.”

3.1.1 Rating: informing in a timely manner

Mean score = 4.3

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	
-	7	2	7	9	6	1	

3.2 Transparency - stakeholder consultation on new rules

- Views on both the involvement of companies in consultations and the extent to which their views are heard was very mixed -

Roughly three quarters of respondents confirmed that they had been consulted where appropriate regarding the formulation of policy and rules.

“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.”

However, about a third expressed reservations about the extent to which their points of view were adequately heard and used or had any real influence.

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

“Naturally, we had the opportunity to comment on the development of new rules; of course, there were hearings at which individual companies and associations as well as law firms were able to

present their points of view on the matter. Whether that had any shaping influence simply cannot be ascertained."

A few of these respondents stressed the opinion that companies' views are not wilfully ignored but that they feel DG Competition lacks sufficient resources to fully process all the submissions it receives. They also felt that the stakeholder groups which are more geared towards providing information tend to have more influence.

"They do consult us, but I think most of their answers come from law firms who have financial and human means to answer their questions."

Finally, a small minority of respondents said they had not been involved in consultations. In some instances they felt that they should have been.

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

3.2.1 Rating: stakeholder consultation on new rules

Mean score = 4.1

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
5	3	1	10	3	9	1

3.3 Observance of procedural rules

- **The majority of companies acknowledge that all rules had been observed in cases in which they had been involved -**

The great majority of representatives of the companies 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 give an example. If they don't do it, nobody will. After all, it's their own made rules they have to live by."

Data is felt to be treated with confidentiality and professionalism and DG Competition's team is often praised for being open to dialogue.

"There has been tremendous integrity there."

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

What was, however, recurrently criticised (by about a quarter of respondents) is that rules relating to mergers in particular are sometimes applied too strictly, which seriously limits companies' development.

Amongst those criticising the rules on mergers, a minority expressed frustration that DG Competition can fail to see things from the company's point of view. These respondents feel there is a gap between the legal theory of competition regulation and the reality of businesses trying to develop and grow.

"DG Competition needs to change its view of the market... to be more realistic and consistent with how we see our sector."

"Their approach is so micro-economic that it can prevent their global understanding of the stakes."

Whilst there were very few criticisms of DG Competition's compliance with procedures there were some criticisms made of the procedures themselves:

- Two respondents felt that observance of the rules was made extremely easy by the fact that there are relatively few rules.
- Another comment made by a small minority of respondents suggested that they felt the procedures were 'unfair'; that they lack the objectivity of a third party to take decisions (the Commission was said to be 'judge and jury' at the same time.)

"Do they follow the procedures? Yes; but do you get procedural fairness? No you do not. You can't blame DG Competition for that; it's a system that was imposed on them in 1958. So, if they're really interested in how they could improve it, they should look at procedural fairness."

"When procedural rules exist, then you figure out they observe them. But often, the situation is a bit blurred."

Finally, there were perceived breaches of confidentiality mentioned by two respondents, who reported that confidential information seemed to have been circulated. Thus, in rare instances, leaks in cases were referred to and, for some, the fact that information on companies has been published while an investigation is underway was perceived as evidence of a breach of confidentiality and a process failure.

3.4 Burden on businesses

- **The information burden on companies is felt to be extremely high and all would welcome a lessening in frequency and scope of information requests -**

There was a consistently expressed view amongst nearly all the respondents that the extra workload imposed on companies by investigations and / or inquiries is extremely unwelcome. Unsurprisingly this was the focus of extensive criticism.

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

“I would relate that very strongly to the Sector Inquiry and there the burden is very high indeed.”

In only a few instances (less than a quarter of respondents) was it been reported that there was not an unreasonable extra burden.

The main complaints, from the vast majority of respondents, focus on the amount of information requested and the short notice periods given for merger-control and cartel proceedings. Even for large companies, these activities take up substantial personnel resources and cost a great deal of money (particularly for companies which have a very slim legal department and, for this reason, collaborate extensively with external law firms).

“It requires a great quantity of data, time, energy, full time staff. You wonder how smaller organisations cope because DG Competition don't seem to differentiate between smaller and bigger companies.”

A minority of respondents expressed the view that case teams sometimes seem to have only a very rudimentary knowledge of the market, particularly at the outset of an investigation.

“It was very much a ‘ping-pong’, question, answer, back and forth, without it being clear what the point was. Although, along the way, the questions became more targeted and easier to manage”.

As a result, companies are asked for large volumes of information, much of which may not really be necessary, which leads to great additional burden.

“I am not even sure whether it is clear to the Commission how much trouble the sector inquiry has caused within the company. The procurement of the information, the checking of the information; we also want to know what we are presenting to the Commission, it was all extremely troublesome.”

“This wall, for example, it was full of lever-arch files. And that is what irritated us so much about these proceedings: it really went to the limits of what can be tolerated. And then it is so much more annoying when you read the decision afterwards and see that only 5% of the information which you supplied was actually included in the considerations and the rest of it obviously served for training purposes or was thrown in the dustbin.”

These companies also feel that the process is also too repetitive from one case to the next.

Roughly a quarter of respondents raised a particular negative issue around sector inquiries and the way in which ‘a mass’ of enquiries are sent to a single company. This leads some to the impression that companies which are particularly co-operative are subjected to this burden inequitably and are thus being ‘penalised’ for their helpfulness with extra work.

Questionnaires, in particular, are heavily criticised by about a quarter of respondents; it is felt that they could be trimmed down. In addition, some questions can be difficult to interpret or irrelevant, giving the impression that there is a lack of market knowledge on the part of those preparing the questionnaires.

“If it’s just a question that pops up saying, you know, some weird question about substitutability, then it’s hard to contextualize. If you know what the argument is, then you can respond better; but I think the best would be if they just touch base with people in the know beforehand, to draft an effective questionnaire.”

“The quality of certain studies has not been good. The questions were formulated by people who did not have knowledge of the industry.”

Ultimately, a small minority of respondents suggested DG Competition should be working towards the establishment of sector focussed competence. This would in turn help develop a better knowledge retention / sharing system.

“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.”

It should also be noted that a minority of respondents acknowledged that, in their view, some amount of extra work can't be avoided for the sake of the soundness of the eventual decision. In cartel cases, for example, it is understood that there needs to be significant input from companies to ensure that DG Competition decision is based on the best possible understanding of the market. There is also understanding for the tight schedules and wide scope of data collection required by DG Competition.

4 Economic Effectiveness

4.1 Effectiveness of detection policy

- The effectiveness of DG Competition's detection policy is generally regarded as high -

About three quarters of company representatives feel that DG Competition's detection policy is probably both appropriate and effective.

"[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."

A minority went slightly further and pointed out that, when DG Competition has searched for anti-competitive behaviours in a sector, it has usually found them. They feel this suggests that suitable criteria for detection are being used.

The leniency policy is regarded as a particularly efficient instrument, to help in the detection of cartels (mentioned by about a quarter of respondents).

"The leniency policy really provides support, and significant support, for what the Commission is trying to achieve. It is often the case, in fact, that the cartel is only detected at all thanks to the action of the whistleblower."

Despite these generally positive views of the leniency programme, a small number expressed concern about the credibility of some leniency applications, suggesting that some companies might provide information of questionable quality in order to try and ensure a reduction in the level of fine they are given.

"With leniency applicants DG Competition... have 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."

A further minority expressed some reservations about the extent of DG Competition's proactive detection policy.

"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."

Finally, a minority feels that, on occasion, investigations are stopped due to local political influences and lobbies.

“None of the Member States will ever let their national airline go bankrupt.”

“Lobbies cause compromises and this is not good for the market.”

4.2 Impact on the markets

- DG Competition’s activities are felt to have a positive impact on markets but there is concern that its actions may become too draconian -**

The impact of DG Competition’s activities on the markets is considered to be positive by about two thirds of respondents. A minority, about a quarter, feel the impact should be even greater. Others are not sure how much impact is achieved.

The majority thinks that DG Competition's activities have been effective in regulating the markets. The control of cartels is often seen as having had an important and positive impact.

“The outcome has been that competition is less on the wild side.”

“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].”

About half of the respondents express the view that, when anti-competitive behaviour is stopped by DG Competition, this strengthens competition in the affected market.

“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.”

However, a minority expressed the view that DG Competition's investigations, decisions and the fines imposed should not become too overwhelming for companies. In some sectors, e.g. financial markets and pharmaceuticals DG Competition’s involvement is already felt by some to be verging on the overwhelming.

“Impact differs from market to market. If I look at my own market, the pharmaceuticals and healthcare market, it is the one market out of all industrial markets that is the most strictly regulated and not only by DG Competition.”

About a quarter of respondents stated that DG Competition’s impact should not just be measured in terms of law enforcement and cartel deterrence; respondents felt that the wider-ranging consequences for the market should be analysed, something they feel is not currently being done.

“Every administrative penalty proceedings that the Commission completes must actually lead to a positive effect for the market and for competition on the whole.”

4.2.1 Rating: impact on the markets

Mean score = 4.6

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
	-	2	5	7	8	6	2

4.3 Timeliness of decisions

- Many of DG Competition’s anti-trust cases are felt to take too long, with the risk that their impact is diluted -

In merger cases, timings are not criticised; decisions are described as quick. However, in state aid, anti-trust and cartel cases where there is less clarity over time limits, cases are often felt to take too long. In these instances the length is also felt to be difficult to predict. For about two thirds of respondents, this is seen as one of the biggest challenges for DG Competition.

“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.”

A minority express the understanding that the length of time required by DG Competition is because it is trying to achieve a reliable record of data and substantiate evidence.

“I don't think they are wasting time. If they want to provide good analysis, they need this much time. A good solution is due to time spent. Then again, maybe the situation can be corrected a bit, because the sooner the results are available, the better, of course.”

“It's long, but not shockingly so; it might be dangerous to take hasty decisions.”

Nevertheless, respondents think proceedings risk losing some of their impact if they extend over a period of years; the market situation at the end of the investigation could be quite different to the one that existed at the beginning, merely as a result of technological developments. The examples of the Intel and Microsoft cases were quoted in this context.

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

“In 2006 there was the sector enquiry and the search. Then there were the proceedings. Now they are being concluded. And then we have to wait a bit to see when the dust has settled whether it was really worth all the trouble.”

It was perceived by about a quarter of respondents that DG Competition's teams are overworked, which could be a reason for some particularly long timings. There is, again, a feeling that a better use of accumulated knowledge might speed up some of the procedures; this would benefit both DG Competition and the companies.

“To be effective you have to be faster.”

4.3.1 Rating: timeliness of decisions

Mean score = 3.9

Commission decisions are not made in a timely manner

1	2	3	4	5	6
-	5	8	5	6	4

Commission decisions are made in a very timely manner

7
-

4.4 Ability to enforce decisions

- Companies expressed the unanimous opinion that the Commission's ability to enforce its decisions is very high -

With the large fines that can be imposed the Commission is perceived to have the ability to make a huge impact on a market. As a result, there is no question in respondents' minds that it can enforce its decisions. They also believe that there are enforcement processes in place.

“They make sure their decisions are enforced; they have it checked by a third party.”

A minority expressed the view that DG Competition's strength lies in the fact that it holds the power both to steer and to control companies and markets.

However, a minority expressed doubts about whether all decisions are actually enforced. They distinguish between decisions on anti-trust or state aid and decisions on merger cases.

- In merger cases, procedures are firmly set (often by governmental authorities). In these cases companies cannot try to escape the execution of the decision.
- In cases of anti-trust or state-aid, procedures are less precise. It is felt that following up the execution of a decision is less systematic: a case was mentioned where a company was obliged to increase capacity but this decision was somehow never enforced and nothing changed.

This minority feels that enforcement is more likely to happen and be carefully checked when the case refers to an area where the issues are the subject of political or lobbying pressures.

Finally, a minority of respondents discussed the need to focus not just on enforcement but on the impact of the decision on the market thereafter.

4.5 Deterrent effect of fines

- Companies are of the opinion that fines, especially at current levels, are an effective deterrent -

It is clear from the views expressed by the business representatives that fines are an effective deterrent, especially when combined with an efficient detection process and DG Competition's leniency policy. A majority of respondents commented on developments over the last ten years, which have brought a steep rise in the amounts of fines; inevitably increasing their deterrent effect.

It was also suggested by about a quarter of respondents that fines are not a very 'constructive' approach to improving competition.

"Fines are a very crude instrument; whilst there is a myriad of sanctions that could be used against companies."

"It's too much based on setting an example on everybody else."

One respondent suggested that negotiations could also be an option in cartel and anti-trust cases; the company could be asked to comply with a number of requirements in exchange of a fine reduction. This would also mean that there was a system in which companies' efforts are taken into consideration.

Another respondent said that, for some offences, fines could be complemented by individual penalties including imprisonment and director disqualification orders.

“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.”

When considering the issue of fines there appear to be three fundamental aspects which contribute to their effectiveness as a deterrent:

- The **amount of the fine** imposed is seen as the most deterrent aspect: fine levels have reached the point where it is felt that they can do real harm to a company and put them in a position where they have to justify themselves to their shareholders.

“Applying very heavy sanctions, this is frightening and acts as a deterrent, I think it is the right thing to do because if two companies are selling under the cost price and the profit.”

- The **impact on a company’s image** was mentioned by a minority: for those companies operating in mass markets (e.g. coffee, cars, software etc.) media coverage of punishment for anti-competitive practices and the resulting damage to the company’s reputation are important factors.
- **Follow-on lawsuits** were only quoted by a small minority: the financial consequences of subsequent lawsuits filed by third parties are regarded as an increasing danger. The decisive factor here is that the financial consequences are even less predictable than they are in competition proceedings.

Some fines, particularly when such large amounts are involved as to endanger a company’s existence, are perceived by some as excessive.

That those who report others could be exempt from being fined is seen as a problem by a minority; ultimately the informant benefits from the competitive situation. If one company doesn’t have to pay a fine while others do, some feel it defeats the whole purpose of the competition regulations.

4.6 Response to the financial and economic crisis

- **Most companies feel that DG Competition’s response to the economic and financial crisis was good and appropriate -**

The respondents from companies identified a number of actions taken by DG Competition in response to the financial crisis. These actions were felt to be appropriate.

- DG Competition was quick to consult economic experts and approve state aid to ensure the markets would not collapse.
- DG Competition was very reactive in the way it helped banks.

However, this is presented by about half those interviewed as a 'layman's judgement' from legal professionals who do not necessarily feel well equipped to express an informed opinion in the field of economics.

A few respondents were more critical of DG Competition's responses. A minority feels that DG Competition did not do very much for the sectors indirectly affected by the crisis.

"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."

"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."

5 External communication

5.1 Clarity and comprehensibility of external communications

- DG Competition's external communication activities are generally considered to be good, open and constructive -

DG Competition's external communication is described by almost all respondents as understandable and clear, expressed in language they can understand and well thought through.

"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."

"It's technical, but I do have the background to understand it."

Because there is a lot of communication, a minority commented it could be better prioritised so recipients could find the information that is most important or relevant for them in the volume of material available.

"They have to find a way to create more attention for the larger cases and less attention for the smaller cases."

When considering DG Competition's communications with the 'competition' community, reactions are positive in a majority of cases. DG Competition's communication team was specifically praised by a small minority of respondents, one of whom described it as 'very skilled' and another who said that communication was 'really one of DG Competition's strong points'.

Although the overall view of DG Competition's external communications is positive, some criticisms were made by a minority of respondents about DG Competition's mass audience communications. They explained that many of the cases that DG Competition deals with are complex and technical, making it unsuitable for communication to a broad target.

A minority mention companies' concerns about the way in which their organisations are portrayed in communications. In particular, in sensitive situations, such as in cartel cases, it is desirable for a company to know DG Competition's decision and the size of any fine before external parties and the public do. This is not always currently the case.

"Sometimes it looks like the press gets more information than we do."

"Give companies the chance to take a look at a draft version of the press release."

5.2 Timeliness of communication

- Communications are felt to be generally timely and delivered quickly -

DG Competition's communication is felt by the majority to be speedy and up-to-date.

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

As noted in the previous section there are occasions when the communication to the press precedes that made to the company and, in such situations, communication is felt to be too fast.

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

A minority mention that communication is quicker with non-confidential versions of statements, as would be anticipated. In the case of long investigations, communication can take a long time but it is usually felt this cannot be avoided.

Nonetheless, a small minority mention instances where they felt communication took too long. One respondent recalled a state aid decision that was published 15 months after the decision was taken and another expressed the view that even the DG Competition newsletter is too slow.

"Sometimes it comes 'after the fact'. The Newsletters are a bit out of date."

Finally, it was mentioned by a minority that the translation process tends to take too long, although this has improved.

5.3 Choice of communication and media channels

- The mix of communications channels employed by DG Competition is felt to be well balanced and appropriate -

The channels of communication chosen by DG Competition are considered to be appropriate by all respondents. The fact that information is available, via a number of channels, on any aspect of interest within the scope of European competition law, policy and enforcement is very welcome. The information is also deemed to be 'very accessible'.

Two channels were frequently singled out for positive comments:

The internet:

- DG Competition's website was praised by the vast majority of respondents who feel that it has developed into a valuable source of basic specialised information. A large minority mentions making daily use of the internet to read press communications and new decisions.
- Although site navigation is sometimes described as difficult to get used to, the positive evaluations for the content and the up-to-date quality of the information clearly outweigh the criticisms.

"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."

"The website is well made, organised, exhaustive; you find everything you want in any format you want."

Conferences and congresses:

- Positive comments were made by a minority about the fact that DG Competition is represented at relevant events, mostly by high-ranking and very competent staff members. It was voiced on a couple of occasions that the companies would like these senior officers who represent DG Competition on such occasions to be more explicit about their standpoint, to enable the companies to better understand DG Competition's position.

There were suggestions that communication could still be more interactive; with a minority expressing the view that communication is still largely one way, with companies not having sufficient opportunities to ask questions or defend their position during a case.

One respondent suggested the idea of a dedicated YouTube channel, similar to those that the commission and parliament have, as it would be useful to be able to watch or listen to press conferences in real-time.

"I think that there is a lot of scope for development here. Other institutions make use of that kind of thing or at least have started to."

There was one suggestion that DG Competition should publish its own magazine.

5.4 Targeting of communications

- **The targeting of communications is felt to be appropriate** -

Overall the respondents felt that DG Competition is targeting its communications at the correct audiences but about half felt unable to comment with any depth of insight.

“Sufficiently targeted? It is all right. I do not have any particularly negative example, but nothing positive either. It is all right.”

About one third of respondents suggested that DG Competition should target consumers even more. A minority stated that it is important for DG Competition to be seen and recognised, even by the general public since, in general, consumers will have better services and products when DG Competition is there to ‘protect’ them.

In particular, it is felt it would be of greater assistance to companies if DG Competition researched and communicated, at regular intervals, on the degree to which their actions have an impact on citizens.

“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’.”

However, about a third of respondents expressed the view spontaneously that there is no need for DG Competition to invest in communication beyond the professional circle. A minority find communication already too consumer focused and not targeting stakeholders enough.

“There is no need to waste taxpayers’ money on something they won’t read.”

“The consumerism aspect of their communication is too strong.”

5.5 Promotion of competition culture

- It is felt that more could be done to promote the positive aspects of competition culture -

It appears from the ways in which respondents answered this question that ‘competition culture’ was understood in two ways:

- Regulating competition: in which case, DG Competition is felt to be doing a good job.
- Defending the ideology of competition: this was usually not felt to be part of DG Competition's current role but some respondents felt it could be a positive communication development.

There were felt to be two target audiences for the promotion of competition culture:

- The stakeholders: promotion here would cover in depth information, reminding stakeholders what is allowed or not, what is being done and to what effect.
- The 'public': communication targeting the wider public and particularly consumers, to give them at least a basic understanding of the rules that companies have to comply with. For some, this would also be a way for companies to be seen in a more favourable light.

The majority feel that DG Competition handles adequately communication targeted at stakeholders and competition professionals. All agree that DG Competition's primary focus should be fighting anti-competitive behavior but a minority feels this should be the full extent of its role.

"There should not be such a thing as a competition culture, but just rules to respect. In this the last Commissioner said she would be very strict."

There is, however, a view expressed by a larger group that DG Competition could go further in promoting competition culture. A minority expressed the view that it is not actually promoting competition at present; not communicating about the necessity of competition in the Europe and that there is a gap to fill.

"They don't promote competition culture, and they should."

About a quarter of respondents suggested 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.

Efforts to promote competition culture are perceived to have been limited to the area of consumer protection, possibly for political reasons. They feel that the communications agenda should be much broader than this.

"(They should explain) competition is at the basis of our economic system."

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

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

Giving high profile coverage to cases which involve large fines was described by one respondent as promoting not a competition culture but a culture of sanction and 'fear'.

However, it was acknowledged that DG Competition does promote respect towards the rules of competition. This, for a minority, is what DG Competition should stick to.

5.5.1 Rating: promotion of competition culture

Mean score = 4.3

DG COMP's
activities promoting
competition culture
are very poor
quality

1	2	3	4	5	6
1	4	2	8	6	6

DG COMP's
activities promoting
competition culture
are very good
quality

7
1