



Qualitative Study



European
Commission

DG COMPETITION STAKEHOLDER STUDY

Stakeholder Report – Member State Ministries 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.

Qualitative Eurobarometer

DG COMPETITION STAKEHOLDER STUDY

Stakeholder Report –
Member State Ministries

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

Survey co-ordinated by Directorate General
Communication

TNS Qual+
Avenue Herrmann Debroux, 40
1160 Brussels
Belgium

CONTENTS

1	Background and Research Method	4
1.1	Background and objectives	4
1.2	Methodology and sampling	5
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	8
2.3	Predictability of fines imposed	10
2.3.1	Rating: legal soundness of decisions	11
2.4	Technical quality of economic analysis	11
2.5	Understanding of the markets	12
2.5.1	Rating: market knowledge	14
2.6	Focus of enforcement activities	14
2.6.1	Rating: quality of economic analysis	15
3	Integrity	16
3.1	Transparency - listening and informing in a timely manner	16
3.1.1	Rating: informing in a timely manner	18
3.2	Transparency - stakeholder consultation on new rules	18
3.2.1	Rating: stakeholder consultation on new rules	19
3.3	Observance of procedural rules	19
3.4	Burden on Member State ministries	20
4	Economic Effectiveness	22
4.1	Effectiveness of detection policy	22
4.2	Impact on the markets	22
4.2.1	Rating: impact on the markets	23
4.3	Timeliness of decisions	23
4.3.1	Rating: timeliness of decisions	24
4.4	Ability to enforce decisions	25
4.5	Deterrent effect of fines	25
4.6	Response to the financial and economic crisis	26
5	External communication	28
5.1	Clarity and comprehensibility of external communications	28
5.2	Timeliness of communication	28
5.3	Choice of communication and media channels	29
5.4	Targeting of communications	30
5.5	Promotion of competition culture	30
5.5.1	Rating: promotion of competition culture	32

1 Background and Research Method

1.1 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 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 benefitted from policy work.

This report focuses on the views of Member State ministries. Further reports cover the views of:

- Lawyers
- Economic consultancies
- Business associations
- Consumer associations
- Companies

- National competition authorities

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+.

Interviews were conducted between December 2009 and February 2010.

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

This report is based on 9 interviews, conducted across the EU. Representatives of the following Member State Ministries contributed their views to this report:

- UK, MSM, department for Business, Innovation and Skills
- Sweden, Ministry of Enterprise, Energy and Communications
- Finland, Ministry of Employment and the Economy
- Netherlands, Ministry of Economic Affairs
- France, SGAE (Secretary for European Affairs)
- Hungary, Ministry of Finance
- Austria, Ministry of Economy, Family and Youth

Two further Member State Ministries wished to make their contributions anonymously.

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 another issue was of no 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 Ministries.

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

The respondents were clearly very familiar with the legal aspect of EU competition laws; many of those interviewed function as intermediaries between their country and the European Commission for competition matters. Most are also involved in the attribution of state aid, whilst a few deal with issues relating to mergers and cartels. Specific responsibilities included:

- providing advice and guidance on state aid rules to national, regional and local government and government agencies;
- co-ordinating and advising on complaint cases, court cases and formal investigations;
- acting as consultants and coordinators between their Ministry and the EC on all state aid cases;
- controlling the call for tenders and their compliance to regulations; being the channel through which notifications seeking EC approval for state aid must be routed; providing state aid awareness-raising and training to those in government agencies;
- providing reports on state aid in their country to the Commission;
- working on the application of regulations on mergers and anticompetitive practices.

The respondents are all in personal contact with DG Competition on a frequent basis. It appears that most are keen to 'keep up' with regulatory changes and, more generally, all matters about which DG Competition communicates.

Most respondents had a representative role at some Brussels meetings but did not have authority; rather, they attended in a consultant capacity.

2 Soundness of Legal and Economic Analysis

2.1 Clarity and comprehensibility of decisions

- Decisions are generally considered to be very clear and, in most cases, understandable -

More than half of the respondents feel that the Commission takes great care to be precise in its decisions, which are long, reasoned and also informative. However a significant minority feel there is still room for improvement since, in occasional cases, although the decision is clear, the rationale is not felt to be satisfactorily explained.

Overall, the legal soundness of the Commission's proceedings is fully recognised; even when things can be looked upon from divergent points of view our respondents feel there is never a doubt about DG Competition's application of the rules.

"We have never made an appeal, we have not received complaints and there haven't been any misunderstandings, but there are cases when our opinion has been different from the Commissions'."

It is also positively noted, by about half of respondents, that DG Competition has taken a more economic rather than a legal approach to cases. This, it is felt, probably leads to more objectivity; decisions appear clearer where they are based on figures.

"I would say it was really clear... occasionally it could be clearer, where they have taken a more legalistic approach rather than an economic approach."

The economic analysis was also reported to have become more transparent, less open to question.

"The economic analysis is clear and they put a lot of effort into ensuring it is clear, otherwise they could be challenged."

However, it is felt that analysis involved in state aid cases has also become more complex, requiring time and skills which some authorities may lack. It is stressed by almost half of respondents that there is now more pressure on the Member States to demonstrate more economic effects, to show the impact of state aid on companies' behaviour. There is a greater pressure on both ministries and companies which are applying for the aid. For a minority, this complexity eventually creates a sense of opacity.

On occasional decisions, the Commission has not been seen to apply the rules in the clearest way, but the majority feels this seldom happens. When it does occur it is felt to be in situations requiring some degree of subjective interpretation. Three of our respondents, including two from

Eastern European Member States, expressed the view that there was a level of subjectivity that could be directly connected to a level of misunderstanding of national cultures and behaviour on DG Competition's part.

"There are decisions that are clear, and then there are decisions, that are interpretations. For example, now we have had a case, and we had to ask DG Competition what they meant."

"In particular cases we disagree. We agree on the decision, but it is not properly justified."

"97-98% of their decisions are clear and comprehensible if a legal framework exists. In the past there were one or two decisions in the field of culture which were not quite clear."

Overall, it is claimed that in cases of misunderstanding, agreement between DG Competition and the state aid Department / Ministry is usually reached, particularly thanks to DG Competition staff openness. Questions are usually simply solved through informal electronic communication and consultation with responsible case-handlers.

Differences can be discerned between the needs and attitudes of the ministries in different Member State's.

- The ministries from smaller Member States feel the system is of an overwhelming complexity with regards to their needs. They also feel they have less power to negotiate than larger Member States.

"We are a small Member State, so it does not even come to our mind to criticise DG Competition's decisions. The larger Member States usually question their decisions; in addition the conferences indicate huge problems that the regulations are too strict."

- The respondents from Ministries in the Eastern European Member States sometimes feel they are 'behind' those in the Member States which have been part of the EU for longer. One respondent mentioned a lack of experience in his country but did feel that such gaps were disappearing.

2.2 Predictability of decisions

- Overall, decisions are deemed to be predictable -

Almost all the respondents from Member State ministries feel that the Commission's decisions are predictable in almost all cases.

"Yes by and large they are clear."

However, two respondents feel that decisions tend to not be predictable enough.

Those who feel predictability is high say they have, to a large extent, similar views to DG Competition's about what competition rules do or do not allow. They feel this helps them foresee decisions.

“DG Competition's decisions are completely predictable, I don't know about any decisions that were unexpected or inconsistent. Basically the Committee has a strict view. That is the reason why we always think they will take the most stringent regulation.”

A minority mentioned that clarity is such that they feel they can predict not only the Commission's decisions, but also possible problems or queries which might occur before the decision is reached. This conveniently enables them to draw the attention of State aid providers and applicants to possible problems or the likely prolongation of cases, even before the application is presented.

“We draw applicants' attention in advance to that point in their application which will cause a problem and that it might prolong the whole process [of preliminary examination] from the date of application up to the date of issuing the final decision.”

The two respondents who felt decision were not predictable enough based this assertion on having occasionally received differing opinions from DG Competition on the interpretation of rules on different occasions. They felt that such inconsistency made it more difficult for them to foresee DG Competition's viewpoint on a case and, therefore, less able to advise providers and applicants. They feel that predictability of decisions is lower when:

- The case is 'out of the ordinary' or has not occurred before
- The case goes beyond the terms of the existing guidelines and has to be dealt with directly from the Treaty
- The case is complex in its nature and DG Competition's analysis is overly technical and difficult to understand.

“Sometimes, it's hard to follow these decisions because, in certain cases, they are based on these very detailed analyses and you don't get the chance to read these analyses... They sort of represent a black box where you can't always say what the outcome is going to be like.”

Both of these respondents felt that the analysis leading to a decision can sometimes lack a precise and 'logical' chain of arguments; how the final conclusion is reached is not always clear to the aid applicant.

“There must be a little more argumentation. There cannot just be the stating of facts and the conclusion. We have concluded that argumentation is missing in cases where it is really necessary.”

Also, in longer cases, key rules or key factors may change which makes the outcome more difficult to predict.

“The state aid law in particular is changing quite rapidly and one can therefore never be sure what the outcome of... a [longer] case is going to be.”

Again, the question of different mindsets (between DG Competition and Member State ministries) was raised by three respondents; it was mentioned that it is necessary to adjust to DG Competition's 'train of thought' and to learn which are the areas where DG Competition tends to place greater emphasis. With such knowledge and awareness, the Commission's decisions are felt to become more predictable and communication easier.

“In other words, we know that DG Competition demands that the effect should be shown, but it is not predictable for us how the effect should be shown.”

“They look at [cases] from the side of competition and the functionality of the common markets, whereas on a national level the view is slightly different. But I think they [the decisions] are in line, I think they pay attention to accurate matters.”

2.3 Predictability of fines imposed

- Very few have experience of fines. Those who do, feel overall that levels are predictable -

The majority of respondents do not have strong views on the subject of fines, having never been directly involved with cases involving fines.

“I can't really comment on that because we've never been fined. In state aid, you don't get fined... fines are at the extreme end in the UK and it has never happened to us.”

However, the general expectation was expressed that, in this area, as in others, the Commission would not act in a way that is totally unpredictable; decisions are seen as overall thoroughly justified and based on very precise case law.

Three of the respondents have had experience of cases involving fines and they feel the amounts involved are predictable because they are stated in the guidelines, which allow a fairly accurate estimation. The guidelines are acknowledged to mention precise points, such as affected sales, which are factual elements; this makes the amount of any fine more or less predictable.

The only situation in which one respondent could envisage an exception would be in the case of a new infringement which had not yet been taken into account in the guidelines.

2.3.1 Rating: legal soundness of decisions

Mean score = 6

The Commission's decisions were not legally sound						The Commission's decisions were very legally sound
1	2	3	4	5	6	7
-	-	-	-	3	3	3

2.4 Technical quality of economic analysis

- There is a very positive view of DG Competition's economic analysis -

Almost all the respondents expressed a very high opinion of the level of economic analysis undertaken by DG Competition. All the respondents who had experience of cases involving economic analysis said they found it to be of a high quality. However, a minority felt that this was a difficult question to answer since, for many state aid cases, economic analysis is not perceived to be the basis of decisions.

Two respondents in particular mentioned the relative unimportance of economic analysis in state aid cases in smaller Members States.

"Economic analysis is absolutely of minor importance for us; it appears in the projects of big investments, but we have never had any."

Even for those without direct experience, the fact that DG Competition is focusing on economic rather than merely legal arguments is seen as a positive development because it gives a clearer sense of consequences on the market, whether positive or negative.

It was clear that our respondents welcomed DG Competition placing more emphasis on economic rather than legal analysis, especially when measuring the effect of decisions on the economy.

"I think that otherwise they can drift into a more legalistic approach; which the courts like but it may actually cause damage and it can make them appear that they are taking an unreasonable decision."

When considering the quality of DG Competition's economic analysis a number of specific points were made, each by one or two respondents:

- Some respondents expressed the view that, in order to ensure quality, DG Competition uses highly specialised staff in each sector, so as to use the best approach.
- DG Competition is also perceived to be asking for (and obtaining) sufficient information from the Member States to produce sound analysis.
- It is also felt that DG Competition welcomes comments from the Member States; communication is never one way.
- The high technical quality of DG Competition's economic analysis is therefore seen to be the result of mutual co-operation and dialogue between the Member State and DG Competition.

"The quality is good. DG Competition is open to our comments and explanations. The Member State has a variety of opportunities to argue its stand."

"It is a very close relationship with the administrator, with the recipient or whoever is affected by the decision. It is daily contact through emails, which is really extensive."

A minority mentioned that applying for state aid has become more complex and burdening for both Member State ministries and companies. One example was given, in the field of research and development in new energies. Parts of the application are felt to be so complex that it may require companies to hire an expert. However, such extra effort was felt to be justified by the resultant benefits.

2.5 Understanding of the markets

- DG Competition is perceived to have a very good knowledge about the markets in which it makes decisions -

Two thirds of respondents think that DG Competition's market knowledge is good to very good, some even stressing this is one aspect on which DG Competition should be praised. Amongst this majority, half stated that, even when it is not clear how much is known initially, DG Competition teams develop appropriate knowledge in the course of an investigation.

Only two respondents expressed the view that DG Competition's market knowledge could be better.

Amongst those with a positive view of DG Competition's market knowledge, reference was made to two specific aspects:

- DG Competition demonstrates knowledge not just on different sectors but also on different case types and issues, whether anti-

trust procedures, mergers or state aid. This expertise is felt to be reflected in the decisions the Commission makes, which display attention to the matters which are most critical in each market.

“They have expertise in different sectors; they know the operations, what it is like.”

- DG Competition is able to challenge the view points of the different parties involved.

“I do not know how they do it, but I think they do it. There have been cases when the applicant provided the market analysis and DG Competition raised an objection. They had different information, so, logically, this means they must have their own sources.”

As already noted, if DG Competition’s market knowledge is lacking at the start of a case, it is perceived by a majority of respondents that the case teams have the means to learn in an effective way. This is deemed very professional. It is explicitly acknowledged by half of respondents that it would be unrealistic to expect case team members to know everything of relevance to a case at the start.

“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.”

Despite the strength of DG Competition’s overall sector knowledge, a minority of respondents stress that, in their view, the real challenge lies in adapting this understanding from the context in one Member State to another; from one culture to another. It is felt that the Commission’s decisions do not always take account of the particular priorities of individual Member States.

“I don’t think they sometimes know the differences between particularities relevant to a Member State.”

“There must be an understanding how the market operates in definite places, what is the market situation in that country.”

This view tends to be voiced particularly (but not only) by respondents from Eastern European Member States. One example of a particularly sensitive area is where citizen welfare issues are concerned (e.g. social security and pensions). It is felt that there could be a stronger focus on these aspects by DG Competition so as to get a better understanding of the market context in any one country.

“We are out of line with everybody else in some things and historically we do things very differently; I think they do need to make an effort to understand.”

2.5.1 Rating: market knowledge

Mean score = 6

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

2.6 Focus of enforcement activities

- This question is not felt to be very relevant in the case of state aid. However, it is assumed that the appropriate sectors are the focus of DG Competition’s activities -

The majority of our respondents expressed the view that DG Competition was covering the right sectors and the remaining small minority felt that, because they had only been involved in a 'case by case' approach and where not aware of DG Competition’s global strategy, it was difficult for them to form a view on this topic.

The minority of respondents who deal with cartels and mergers feel it is possible to see a strategic line in DG Competition's enforcement activities:

- Firstly, DG Competition is concentrating on the most trans-national markets, or on markets which are more likely to have a significant impact on the European economy as a whole.
- Secondly, DG Competition pays attention, rightly so, to sectors where cartel practices are seen to be the most serious and damaging for consumers; it is also reported to check sectors where there is lack of competition and a strong cooperation, such as the pharmaceutical and banking sectors.
- Thirdly, there is a focus on emerging markets: this is understandable since they could potentially generate significant added value for consumers and because they are quickly evolving.

When considering state aid, the view was expressed that DG Competition’s investigations on a case by case basis are generally adequate. However, one respondent felt that DG Competition was going too far in the sectors it investigated:

“Many things nowadays fall under the term 'state aid' and I personally believe some of these things simply go a little bit too far. For example I can't really see what certain aspects of the cultural or sports sectors have to do with state aid.”

2.6.1 Rating: quality of economic analysis

Mean score = 5.5

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

3 Integrity

3.1 Transparency - listening and informing in a timely manner

- DG Competition is perceived to be very transparent and open when communicating. However timings are often felt to be too long -

In answering this question respondents tended to consider two separate dimensions and gave contrasting views for each.

- In terms of listening and informing, DG Competition is perceived to be doing a good job by almost all respondents.
- In terms of timeliness, however, it is felt by a small majority that procedures take longer than would be wished.

We will look in detail at each of these issues in turn.

Listening and informing

DG Competition is generally praised for its great openness. Even when a case is complex, DG Competition is felt to be 'helpful and not dogmatic.'

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

Such cooperative and communicative behaviour is felt to continue throughout a case investigation.

"This is not a problem. DG Competition sends out plenty of signals before opening the formal investigation procedure or starting another action / procedure against the member state."

DG Competition is particularly praised by respondents in a significant minority of countries for its flexibility in trying to understand different cultures at Member State levels:

- There was mention of a case where DG Competition had gone 'out of its way' to be generally helpful and accommodating and was willing to accept points made as to how things are different in one particular Member State.
- The respondent from another Member State said that DG Competition had been initially challenged by some aspects of the national culture, particularly when it came to helping develop environmentally friendly behaviour. However, DG Competition had clearly been keen to learn and understand. The case team listened carefully in order to assess the purpose of projects under discussion

and to translate the situation into the perspective of EU law. Although this process had required a lot of extra work and energy from the Member State ministry concerned it was felt to have been a positive experience.

"I think they do listen to us, looking at case work and policy separately. They do listen to us and give us a very fair hearing."

Timeliness

When it comes to communicating information, notifications are felt to be very good. However, when ongoing communication is necessary, such as an investigation relating to a particular case, DG Competition is not felt to be as effective.

Half the respondents spontaneously remark that they would want timings to get shorter. At its best, DG Competition is felt to comply with procedural rules on case timings but, at its worst, it is suspected of being responsible for exaggeratedly long timings.

When there is a perceived lack of communication or slowing of the progress in state aid cases, this is felt to put pressure on the Member State ministries and, they report, is stressful for the businesses involved.

Timeliness issues were illustrated through the following examples:

- Typically, when a Ministry is asked to provide DG Competition with advice on complaint cases, roughly half the respondents feel that communication is too slow; long 'periods of silence' and a lack of communication from DG Competition about case progress are mentioned specifically.

"If someone writes in to the Commission, saying we think this is illegal, the Commission is legally obliged to write to us and ask what's going on. We send information back which says it's all ok and then we get radio silence. We have no idea what's going on; it can go on for a year and this is simply not satisfactory because we don't know what's happening."

- One respondent stressed that not all relevant parties are informed of the final decision on a case, or are informed belatedly. It was suggested DG Competition should send the decision directly to all involved parties and authorities.
- Another perceived reason for long delays, mentioned by three respondents, is language issues. Timings may sometimes double in cases where documents are delivered to DG Competition in the Member State's language; as, the respondents point out, is their right. The issue appears to be that translations take considerable time.

- Finally, one respondent mentioned procedures taking longer when two DGs are involved in the same case, particularly if there are questions of jurisdiction (such as, for example, DG AGRI and DG Competition). Such situations are felt to lead to considerable delays since jurisdictions can overlap and several perspectives may exist on a single issue.

"[Delays are happening] just because two directorates couldn't make an agreement between themselves regarding the jurisdiction."

3.1.1 Rating: informing in a timely manner

Mean score = 5.6

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
-	-	-	2	-	4	1

3.2 Transparency - stakeholder consultation on new rules

- DG Competition is acknowledged to be very good at consulting stakeholders on new rules -

All but one of our respondents felt that there was appropriate consultation on new rules. Only one felt that the dialogue around the creation of new guidelines should be improved.

There is felt to be an obvious effort on DG Competition's part to conduct broad consultations and to give businesses, competition authorities and consumers' associations an opportunity to present their respective views on future competition regulations.

With regard to state aid, the Member State ministry representatives report that they are fully involved in the consultation on new documents, proposals for new legal frameworks and new state aid rules.

"Surely yes... definitely regarding new rules [legal frameworks]. It is a discussion in an expert meeting; the Advisory Committee on state aid composed of experts / representatives of Member States and dealing with discussions on new documents, new EU legislation, submitting the proposals, comments."

With regard to cartels and mergers, which only a minority are involved in, the respondents feel that DG Competition publishes new regulation drafts with a long consultation period to enable all the businesses concerned to

respond. A majority felt that DG Competition usually takes notice of the contributions and occasionally amends its initial drafts where appropriate.

Overall, a majority feel that DG Competition listens seriously to what Member State ministries have to say. Two respondents felt that their suggestions were heard and that, if a different route was taken, DG Competition provided an explanation. A small minority, however, expressed the view that their comments did not always appear to be taken into consideration.

The accessibility of the results is felt to be good. They are put on the DG Competition website and can be consulted by all interested stakeholders.

However, in some instances and for those respondents who are particularly involved in creating new rules, the timeline to act is felt to be very short, particularly when further clarifications are needed in the course of regulation changes: this puts extreme pressure on timings to the point that it is difficult for Member State ministries to react.

"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."

3.2.1 Rating: stakeholder consultation on new rules

Mean score = 6

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
-	-	-	1	-	5	2

3.3 Observance of procedural rules

- Procedural rules are felt to be strictly observed -

It is felt unanimously that DG Competition observes procedural rules and sticks to regulation, whether for surveys, investigations or the decision-making process.

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

With regards to the handling and protection of sensitive and confidential information, confidentiality is also perceived by all to be strictly enforced.

This was mentioned by two respondents in terms of the rights of access to files, this is also satisfied. However, two respondents expressed the view that timings can be very short, particularly when several authorisations are needed.

"We have cases where the customers request all the documents but we can't give them all without the Commission's agreement. So they ask the Commission for the documents and then the Commission gets back to us to ask us to deliver them."

"We are sometimes only given a short amount of time to say it's ok to release them."

3.4 Burden on Member State ministries

- The burden DG Competition places on Member State ministries is not felt to be unnecessarily high -

For the majority of respondents, even if there is felt to be a burden at times, particularly around the time of the requesting of information, it is understood that this cannot be avoided and that DG Competition is not placing more burden on Member State ministries than is necessary.

"We do have a lot to write, comment on, justify."

"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."

"If there is notification, then the aid giver knows that they are going to have to provide information, and the company should also know that there is going to have to be information."

The respondents feel that, although they are expected to provide a lot of information to DG Competition, which needs to be correct and accurate, often having to deliver under significant time pressure, this is part of their normal job. Indeed, three respondents specifically made the point that it is their primary role to provide DG Competition with information. To them this is simply their 'normal work', and they can't consider DG Competition's demands as too burdensome because they are organised to deal with them.

A minority of respondents expressed the view that DG Competition actively facilitates the work of its contacts in Member State ministries; it provides full information and a guide to assessing its importance. Hence, requests are seen as entirely relevant and, in most cases, fully justified. It

was also acknowledged that, whilst time frames can be tight, it is possible to get an extension.

However, two respondents feel that the burden is rather too high. They perceived that there was a lack of feedback as to how the information is used. As a result they sometimes struggle to understand why they are being asked for particular information, which can contribute to the feeling that they are over-burdened with information demands.

4 Economic Effectiveness

4.1 Effectiveness of detection policy

- It is assumed that DG Competition's detection policy is effective -

The majority of respondents feel they are not competent to comment on this issue. Most simply assume that DG Competition's detection policy is effective, not having heard anything to the contrary.

"I don't know exactly because it is not my job. But seeing that the Commissioner's last speech summarised the past five years, analysed the crisis support rules arrangements, I have to say it was really successful."

However, a significant minority of respondents expressed the view that the detection policy is effective, based on their direct experiences. They think DG Competition's approach to detection is well conceived, with well-defined policies and well-trained staff. These respondents stressed that DG Competition had several sources from which to gather information, such as sector surveys, complaints and requests for leniency. It was mentioned positively that in the case of cartels, DG Comp did not wait for requests for leniency but was developing a genuinely proactive approach.

4.2 Impact on the markets

- DG Competition's actions are definitely felt to have a strong impact on markets, particularly through state aid -

The general view, amongst all but two of the respondents from Member State ministries, was that DG Competition's policies and the way in which these are acted upon has a beneficial impact on the markets. For instance, DG Competition cases in sectors such as energy and telecoms are felt to have had a profound impact on the markets and improved the consumers' position.

In the case of state aid, where the whole purpose of the aid is to have an impact on the market, it is felt that DG Competition's impact is extremely clear; where state aid is made available it helps develop new companies and sectors, which has a tangible positive effect on the growth of the European market.

With other instruments, such as cartel, fines are felt to be an effective way to keep a market on the right track and companies observing the rules.

"I think it can send a very strong signal, for example General Motors and the action on banks."

However, two respondents were more cautious in their comments, stressing that they did not have any specific evidence for the impact of DG Competition’s activities on the markets or whether this impact was indeed positive.

“We act according to the terms, which are in the notification decision and hope that the terms are such that the functioning of the markets will be as free as possible. But we haven’t done any research to measure the impact.”

DG Competition’s impact on markets is thought to have increased in recent years as a result of policy changes, in particular the switching of its focus from smaller to larger cases, and the allowing of more state aid in R & D.

“If you have less than 200,000 euro’s aid within three years, it is allowed. This is a good thing.”

4.2.1 Rating: impact on the markets

Mean score = 5.3

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	2	3	-

4.3 Timeliness of decisions

- Timeliness of decisions is felt to be one of the most significant challenges for DG Competition -

Two thirds of respondents think that the timeliness of the Commission’s decisions should be improved. Two feel that the current situation is acceptable and one felt unable to express a view on the matter.

There is a general feeling that the timeliness of decisions is a matter requiring very careful handling and that there is a delicate balance to be maintained between speed and quality.

A majority of respondents are convinced that DG Competition tries its best to keep matters within reasonable timing but there is still the view that things take too long. At the heart of the issue is the tension between the recognition that, on the one hand, it is clear that making rash decisions is

not desirable but, on the other hand, reacting too slowly can defeat the aim of the whole exercise since the situation may have changed by the time the decision is reached.

“A situation where it takes a year to get standard approval isn't actually that great.”

In state aid situations, for example, the goal of the Member State ministries is to give aid as quickly as possible to remedy a weakness or problem in a market.

“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.”

This is why many feel that timeliness should be improved. It was suggested by one respondent that state aid cases completely corresponding to the guidelines should be 'noddled through' more quickly. Situations that are in some way 'outside' the framework should be where DG Competition spends the most time.

In other cases, such as investigations around cartels or mergers, it was perceived that some cases can take 'years' to investigate. One respondent made the point that, in these instances, because the market has changed during the course of the case, the decision and its effect may become irrelevant.

One issue that was mentioned by several respondents, including those from ministries in some Eastern European Member States, is translation. They expressed regret that, because they are not yet able to work in English, procedures take longer, slowed down by the need to translate each step of a case.

4.3.1 Rating: timeliness of decisions

Mean score = 4.5

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
-	-	-	3	3	-	-

4.4 Ability to enforce decisions

- The Commission is seen to be effective in following up on its decisions -

Despite the perceived issues with timings, about half of the respondents retained a positive attitude, feeling that, even if decisions take a long time, they have an effect on the market in the way they set an example and provide precedence and limits and, where required, a strong deterrent to anti-competitive behaviour.

Nearly half of the respondents think that the Commission is very good at following up on its decisions, pointing out that, in the case of illegal state aid, legal action against a Member State could be sought and that the Commission has the right to stop monetary aid in some cases.

A third of respondents did not hold strong views in this area but they were not aware of any cases in which the Commission's decision had not been enforced. However, their view was expressed that, in some state aid cases the Commission should do more to check that the aid was being correctly used.

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

The remaining two respondents felt that decisions could be enforced better. They suspected that DG Competition lacked sufficient resources to follow up fully on all the Commission's decisions.

4.5 Deterrent effect of fines

- Fines are presumed to be an effective deterrent -

Since fines do not play a role in state aid decisions, the majority of respondents felt unable to provide a fully informed view in response to this question and three felt unable to comment at all.

However, the general view, expressed by two thirds of the respondents, is that fines are a powerful deterrent, particularly since they are so high.

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

In principle, respondents are entirely in favour of deterrent measures for establishing authority and ensuring that regulations are respected. However, the view was expressed by one respondent that fines might be even more effective as a deterrent in combination with other measures, for example greater emphasis on the personal liability of a company's directors and possible sanctions for those in breach of competition law.

4.6 Response to the financial and economic crisis

- DG Competition's response during the financial crisis is highly praised -

It was clear that the majority of respondents were very impressed by DG Competition's performance in response to the financial crisis. It is considered that DG Competition's attitude was appropriate and made it very responsive, whilst remaining sufficiently firm where necessary.

Considering the scale of the crisis and the pressure this put on the Commission, it is felt to be very impressive that DG Competition was able to mobilize as much resource as it did. Respondents acknowledged both the way in which decisions were made over weekends and the quality of those decisions. It is felt that DG Competition realised that new solutions were needed quickly and they organised discussions to find these solutions.

"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."

On state aid policy, DG Competition was felt to have fully grasped the impact of the crisis, responding with real flexibility. As a result, a lot of different actions were facilitated within a short time.

"We asked for a special measure to exempt state aid up to 500,000 instead of 200,000, which is normal. DG Competition gave this exemption within 3 weeks."

As for the treatment of competition infringements and merger control, most feel that DG Competition adopted a very healthy approach of firmness; safeguarding an optimal degree of competition, with a view to preparing for a more tranquil post-crisis period and a successful re-launch of damaged economic sectors.

Doubts were expressed by two respondents. It was felt that, at times, DG Competition gave companies too much flexibility, and may have set precedents which could be difficult to reverse.

"I think they did react in a timely way. I think the flexibility measures they put in place were helpful, but possibly... gave too much flexibility."

"We are concerned that the temporary rules will be 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."

5 External communication

5.1 Clarity and comprehensibility of external communications

- **The information published by DG Competition is felt to be plentiful and of good quality -**

The majority of respondents are very satisfied with the way communication is handled and find it very clear. However, two respondents expressed the view that information is sometimes delivered in a way that is complex and not user-friendly enough.

A minority remarked specifically on the way that DG Competition is always careful to draft press releases in a way which is both clear and easily understood.

This was underlined as particularly important in Eastern European Member States where press releases are seen as having an 'educational' role for the media. In fact, one respondent felt that sometimes, press releases should be even more straightforward.

"What we are seeing is stories in the news about things that we understand clearly; they are unambiguous, but which journalists often misinterpret. We don't want the journalists to misinterpret these [issues], so we often beg that we can make changes so it [press release] is more understandable for everyone."

5.2 Timeliness of communication

- **DG Competition's communications are felt to be delivered in a timely manner -**

Two thirds of respondents felt communication is delivered within the right time frame. The remaining respondents commented that there was still room for improvement, feeling that communication can, on occasion, be either too quick or too slow.

The main concern is that announcements can be made public through the media before the affected parties are aware of the decision. It is felt that it would be a significant improvement if the involved parties were informed before the media.

"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."

One other negative comment concerned the length of time before full decisions are published in the Official Journal.

"We get the decision on the same day or the following one, which is what matters most, but the process before the decision is published in the Official Journal is quite lengthy."

5.3 Choice of communication and media channels

- DG Competition is felt to make appropriate use of all relevant media channels -

All respondents commented positively on this aspect of DG Competition's performance, unable to identify any major issues or concerns.

The respondents value the opportunity to access reports on decisions or speeches on the Internet, as this is felt to improve clarity and transparency. Another facility which received positive comments is the fact that Commission meetings can be followed live on the website.

DG Competition's website is viewed by all as the key channel for information and is generally well perceived by respondents. They use it to communicate with DG Competition and to access news and specific information.

A minority expressed reservations around the introduction of the site; sometimes felt to have been complex at first.

"It demanded additional work from national administrations; how to launch the system, how to form electronic system of e-mails, who works with it, who administrates it."

However, now that the system is running, it is felt by most to be very effective.

"They have a very good website, which is an asset to us. It's always possible to search for decisions, custom, reports, reviews and so on."

"The website is perfect."

However, two respondents felt that the website was complex and not very user-friendly.

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

Respondents commented on a range of other media channels which were of value:

- Memos, which are helpful in understanding the information in press releases.

- FAQs when a subject requires more detail.
- DG Competition's readiness to take part in seminars; officials are viewed as extremely receptive.

5.4 Targeting of communications

- DG Competition is perceived to communicate effectively focusing on the appropriate key points -

The majority of respondents perceived DG Competition's communications targeting policy as effective and reasoned, whilst the remainder did not hold a clear view on the subject.

The official web site of the European Commission and DG Competition's section of it are both found to be useful and suitable for the needs of the respondents. It is presumed to be targeting decision makers, institutions, and lawyers.

A minority of respondents (particularly those from the Eastern European Member States) would be interested in receiving even more information from DG Competition. It was suggested that it 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 understand of DG Competition's policies and mindset.

One suggested example related to some form of educational seminar as a follow up after new rules have been adopted. It was suggested that DG Competition could explain the idea behind the rules, what will be required of Member States to implement them; what types of analysis they expect and what should be included in the analysis.

"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."

5.5 Promotion of competition culture

- The involvement of DG Competition in the wider communication of competition issues and related public debate is very welcome -

The respondents responded very favourably to the idea of DG Competition being involved in communicating with a broader audience, which most feel is both new and positive. However, this does, of course, suggest that respondents were unaware of any such activity prior to the interview.

It is felt that educating the public about competition, including state aid and its effects, is a positive move. DG Competition is perceived to be a 'serious' and sound organisation and would be a credible agent of such communication.

"In general it is a bit unclear what these EU rules involving competition and state aid are and why there are such rules. I know this, but if you think about the citizens in general, I don't think they do."

It is suggested that DG Competition should participate more in public debate. However, it was observed that this could be quite challenging, since competition is such a technical subject and DG Competition's communications can be very technical.

"On state aid it is such a technical subject that there isn't a great clamor for discussions. They do get it right but sometimes they can speak very technically."

But even before reaching out to inform a wider audience, reactions to this question make it clear that there are still a lot of areas where DG Competition's thinking and policy is not totally mastered at a Member State ministry level. It was clear that a number of our respondents would welcome more 'insider' information, particularly (but not limited to) those from the Eastern European Member States.

There is felt to be a need for more knowledge regarding specific sectors (e.g. the transport sector, environmental politics and the telecom sector) where competition plays an important role. It is felt that DG Competition could make it more understandable why it sometimes intervenes and in what way such interventions are related to competition.

The respondents from the Eastern European Member States expressed a desire for greater levels of personal contact with DG Competition. They would, for example, welcome visits from DG Competition representatives who could facilitate training sessions on new rules and other aspects of DG Competition and its work. This is an area where DG Competition's current activities are not felt to be delivering the sort of benefits these respondents are looking for.

"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."

In these countries the language issue was also mentioned several times; if DG Competition's representatives spoke the local language one barrier would be removed.

"We would appreciate it if they came and explained new rules to the expert audience in person, to share experience of DG Competition about relevant cases."

5.5.1 Rating: promotion of competition culture

Mean score = 5

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
-	-	-	2	4	2	-