



Qualitative Study



European  
Commission

## DG COMPETITION STAKEHOLDER STUDY

### Stakeholder Report – National Competition Authorities August 2010

Qualitative study – TNS Qual+

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

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# 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 benefitted from policy work.

This report focuses on the views of representatives of the National Competition Authorities. Further reports cover the views of:

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

- 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+.

Each Member State's competition authority was included in the original sample. In Member States with more than one competition authority the one with the most comprehensive knowledge about DG Competition's activities was selected, with the exception of the UK where two organisations were included.

This report is based on 22 interviews, conducted across the EU. The organisations included in the report are:

- Belgian Competition Authority
- Czech Competition Authority
- German Competition Authority
- Danish Competition Authority
- Hellenic Competition Commission
- Comision Nacional de la Competencia
- Finnish Competition Authority
- Autorité de la Concurrence de la République Française
- Gazdasági Versenyhivatal (GVH)
- Irish Competition Authority
- Competition Council of the Republic of Lithuania
- Competition Council of Latvia
- Consumer and Competition Division
- Netherlands Competition Authority
- Competition Council of Romania
- Swedish Competition Authority
- Competition Protection Office Slovenia
- Antimonopoly Office of the Slovak Republic
- UK Competition Commission

Three further national competition authorities asked not to be specifically identified.

Interviews were conducted between 22 December 2009 and 5 March 2010.

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 so the fact that some respondents did not mention an issue spontaneously should not necessarily be taken as an indication that the issue was of no concern to them. .

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 competition authorities.

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 are almost exclusively senior employees within the national competition authority in their countries. They occupy positions such as Director General, Chairperson, Head of Department and Director/Vice Director. The respondents are in contact with DG Competition directly themselves and indirectly through their employees.

## 2 Soundness of Legal and Economic Analysis

### 2.1 Clarity and comprehensibility of decisions

**- Most feel that the Commission decisions are clear and understandable although lengthy -**

Overall, the respondents from the National Competition Authorities have a very positive perception of DG Competition. It is clear that, although they feel there are areas where DG Competition could improve what it does, the National Competition Authorities view DG Competition as a operating with integrity and professionalism.

Most of the respondents expressed the view that the decisions communicated to them by DG Competition are clear and the underlying rationale of the decision is understandable. Several respondents mentioned that the supporting documentation could be very lengthy, which whilst legally necessary and useful for those involved in the case, makes such documents less digestible for the layman or those with a passing interest. Improvements suggested by a few respondents include providing an executive summary for a technical audience and explanations of decisions for citizens to understand.

*“As for reading, it’s longer and longer, but it’s clear and understandable, and the standard is always the same.”*

*“Decisions should be shorter, more concise.”*

Only a few of the National Competition Authorities (NCAs) felt that Commission decisions were unclear. Each of the following points was raised by a single respondent:

- DG Competition sometimes fails to include all the details pertaining to the circumstances of a case in cartel decisions. Such details can form a crucial part of the decision and not including them in full may render the reasoning of the decision more difficult to understand.
- One respondent expressed the view that Commission decisions would be unclear if there was not the opportunity to discuss the draft with DG Competition in consultations.

*“The decisions themselves are never totally clear. It is good if there are consultations where we may find out why they reach that verdict.”*

- Another feels that Commission decisions relating to companies are clearer than its decisions relating to Member States. As a consequence of this disparity, the respondent believes that Commission decisions impacting on Member States are often

misunderstood at a local level and are therefore inappropriately applied in local law.

- The issue of decisions apparently changing quite late in the process was also raised, one respondent pointing out that the text of decisions can sometimes reveal that such a change took place. In such instances the respondent feels that the final document is not reflective of the rationale for the Commission's decision.

*"Sometimes decisions can change at the last minute so that you can read a decision that was clearly heading towards prohibition and the legal service will come in at the last minute and say, you can't possibly prohibit... a decision can change quite late."*

- Finally, one respondent expressed the view that, if DG Competition provided a better explanation of its reasons for reviewing current legislation the actual process of review with the NCAs and the public consultations would become easier.

Only one respondent suggested that DG Competition's legal justification of decisions may be overly scrupulous and that there are cases where this is unnecessary.

*"From what I have read, I always feel that everything is so very detailed there and it gets more and more detailed."*

## **2.2 Predictability of decisions**

### **- On the whole, the decisions made by the Commission are predictable as they follow the appropriate legislation –**

Since DG Competition is following predefined criteria laid down in legislation and / or rules, the decisions it prepares are universally recognised as being predictable.

*"They follow the rules based on absolute consistency and rigour, so their decisions are inevitably predictable"*

Most of the NCAs work quite closely with DG Competition and have extensive experience of its decision making processes. They explained that because of their involvement and observation of this process they see Commission decisions as predictable.

*"If somebody reads just a single decision it can seem as though it doesn't make sense. But when you read all of them, it's like when all the pieces of a puzzle fit together."*

Two respondents felt that it was not necessary for all Commission decisions to be predictable; the interpretation of the legislative guidelines for each case may differ.

*“The beauty of the field we are working in is that, despite the rules being given, the interpretation is made from one case to the other. That’s because the situations we are talking about are quite complex.”*

Only one respondent criticised the predictability of decisions, expressing the view that Commission decisions about cartels are predictable but in situations of abuse of dominant position decisions are less predictable.

In terms of possible improvements:

- Two respondents would like additional information to be provided about cases:

*“We have access to individual cases but it would help us if we could get hold of concrete background data of the sector studies concerning our national market.”*

- One respondent felt that senior, more experienced staff should be involved earlier on in cases. It was the respondent’s perception that junior staff were working unsupported on cases and were being allowed to make decisions during the course of a case which might effect its outcome. Under such circumstances decisions could become unpredictable.

*“If people run with a case for too long at a more junior level then all sorts of bad things can happen... I think it suffers a bit by the fact that a large amount of work is done by quite junior people.”*

### **2.3 Predictability of fines imposed**

- **Most fines imposed can be predicted as they are based on published EU guidelines –**

Most respondents from the national competition authorities believe that the fines imposed by the Commission are predictable and follow the legislative guidelines.

*“For a company that violates the competition rules it should not come as a total surprise when they are fined for a violation. They should know these things, because the procedures are transparent.”*

Some respondents feel that, while the basic amount of the fine may be predictable, the weighting of the factors applied to that basic amount to increase or reduce it are unknown. As a consequence, there seem to be large discrepancies in the levels of fines between cases.

One respondent feels that it is positive if there is some unpredictability about the fines, expressing the view that the offending companies should not be able to calculate the fine themselves and make the decision about whether to offend or not based on the fine.

*“The value of the fine shouldn’t necessarily be predictable. Of course, we try to be predictable in the sense that the regulations that establish the fines should be clear and well known because this is the principle of the law. However, the fine shouldn’t be too predictable because then the economic agents make their own calculations to break the law and say, ‘all right, I can break it’.”*

### 2.3.1 Rating: legal soundness of decisions

Mean score = 6

Commission decisions were not legally sound						Commission decisions were very legally sound
1	2	3	4	5	6	7
-	-	-	1	3	13	4

## 2.4 Technical quality of economic analysis

**- DG Competition’s economic analysis is perceived positively but with experience it is expected to improve -**

Most of those who felt able to express a view commented very positively on the quality of economic analysis being undertaken by DG Competition. The increase in the number of economists on DG Competition’s staff was welcomed in particular.

*“Before, in DG Competition, there was a majority of lawyers but now, with the arrival of more economists, things are improving.”*

However, several respondents with legal expertise or a legal focus felt unable to comment on the quality of economic analysis on which Commission decisions are based.

Overall, DG Competition is perceived as being thoroughly competent in terms of economic analysis. However, because economic analysis is a relatively new discipline within DG Competition, it is felt that its application will improve over time with experience.

*“I can’t say that DG Competition does a bad job but, unfortunately, they don’t yet have the solid base which comes from experience and which would allow me to say that their approach is really good.”*

While many expressed positive views about DG Competition's economic analysis capability some negative comments made:

- A few respondents were concerned about the application of economic analysis to decisions, maintaining that in practice it should be secondary to the use of legal arguments; they would like to be sure that decisions are based on legal justification alone.
- A few respondents felt that State aid decisions could benefit from more economic analysis. Their perception is that these decisions do not currently include such analyses.

*"It would be possible to improve the State authorities work if we could use the same methodologies."*

- Two respondents raised concerns about the quality of DG Competition's economic analysis; one felt that the quality is dependent on the personnel assigned to the case; the other felt that some economic analysis is unsubstantiated and is insufficient for legislative evidence in their country.

*"It seems to us that there are cases where, even with an economic analysis, the effect of these practices is not proved, there is the presumption of that effect but there is no concrete evidence."*

- Finally, one respondent felt the methods of economic analysis used by DG Competition were not 'best in class' and suggested that DG Competition communicate with economic and / or financial institutions for advice on methodological definitions.

*"Quite often the analysis methodologies are not the best. We do not know if it is due to lack of technical expertise of the European Commission or if it is due to the fact that when they outsource the conduct of a study there is no ability to draw up better methodology."*

## **2.5 Understanding of the markets**

- **Most believe DG Competition understands the markets well or has the resources to obtain an understanding -**

Most respondents felt that DG Competition either understands the markets well or is knowledgeable about how to obtain the required information through the appropriate experts, surveys or other sources to ensure that it is suitably informed when making decisions.

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

*“It’s a very disciplined and highly professional body. Not that it is infallible, but it is a very sophisticated body.”*

Many respondents discussed spontaneously that it is unreasonable to expect DG Competition to have a complete understanding of all markets and that it is more realistic to expect it to be able to source information and expert opinions as required.

*“It is not an easy problem to solve because you can’t have a specialist in everything.”*

Two respondents feel that DG Competition needs more sector knowledge; one specifying the need for DG Competition to improve its knowledge of emerging markets within the telecommunications industry.

*“I think we all know about the electricity market but there is always innovation going on in the telecommunications market.”*

A small minority of respondents referred to the problems associated with gathering information from a sample of larger countries within the 27 Member States and making assumptions about the other smaller, Member States. In order to overcome this, one respondent expressed his willingness to co-operate with DG Competition and provide specific market information. Another respondent felt that comparisons between countries with common borders would be more appropriate than comparing small, remote countries with one another. This respondent further suggested gathering regular information across all Member States to build a source of information.

*“It would be good if information would be gathered on a regular basis from all countries and if certain attention would be paid also to the remote economies outside of ‘large-scale’ activities.”*

### 2.5.1 Rating: market knowledge

Mean score = 5.3

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

### 2.6 Focus of enforcement activities

**- DG Competition’s enforcement activities are appropriately focussed, including the increasing focus on pharmaceuticals -**

Most respondents feel that DG Competition is correctly focussing its activities on the sectors that have greatest impact across the EU. It is recognised that the priorities of DG Competition are not the same as those of the national competition authorities since its priorities need to have cross border relevance, which may or may not have local priority.

A few recalled the recent activity of DG Competition in the pharmaceutical sector and suspected that this could be a sector of increasing activity in future years.

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

Two respondents referred to the energy sector being under-scrutinised, one explaining that they feel there are competition issues to be resolved in his country since there is only one gas supplier and there are restrictions preventing other players entering the market. Another respondent felt that the energy market in his country came under scrutiny ‘too late’.

Other suggestions regarding sectors on which DG Competition could focus its enforcement activities were each made by one respondent:

- Ready-made consumer goods
- Intermediate goods
- Food
- Banking
- Online trading
- ‘Free professions’ – such as lawyers and notaries
- ‘Professional bodies’
- Patent legislation and implementation

### 2.6.1 Rating: quality of economic analysis

Mean score = 5.6

DG Competition’s economic analysis is very poor						DG Competition’s economic analysis is very good
1	2	3	4	5	6	7
-	-	-	2	5	14	-

### 3 Integrity

#### 3.1 Transparency - listening and informing in a timely manner

**- DG Competition is held in high regard though processes are lengthy and pre-meeting documents are often received late -**

The vast majority of respondents hold DG Competition in high regard in this area, despite some criticism of its ability to inform stakeholders in a timely manner.

*“The integrity of DG Competition is not in question; we do not have any doubts that it is an extremely upright entity.”*

There is a perception among about a third of respondents that the procedures involved in obtaining a response from DG Competition take a long time. One respondent felt that this was even worse if holidays fall into the period when the response is expected; it is a then ‘a given’ that the response will take even longer.

*“Nothing can be agreed upon quickly with the Commission, forget about that.”*

Several respondents mentioned that DG Competition does not provide documents for meetings in sufficient time to allow them to read them and prepare a response. It was difficult for them to be specific about how long before meetings these documents should be provided because the nature of the documents themselves varies.

*“The documentation that is necessary for the meetings and for the [country meeting] always arrives late. Often we receive the documentation on the eve of the meetings.”*

*“I can’t say how long before a meeting the materials should arrive because it depends on whether you’re supposed to read a four-page brief or a thousand-page report.”*

Transparency was discussed in terms of both procedural transparency and information transparency. DG Competition is felt to be transparent in terms of the processes it follows. Most feel that DG Competition is also transparent in terms of the information that it provides to the NCA, yet some criticisms and suggestions were voiced as regards the transparency of information:

- Two respondents felt that DG Competition is not open with the NCAs and should be more open in the information that it shares with them.
- One respondent felt that it would be useful to be informed about what DG Competition is working on. The respondent felt that local

competition authorities would then be better positioned to respond when asked to participate in an advisory capacity.

- One respondent believes that DG Competition does not communicate when it has started proceedings, which impacts negatively on everyone involved.
- One respondent made specific reference to DG Competition making positive use of its website to keep stakeholders updated. However, this respondent is concerned that some stakeholders may not have access to the Internet and so suggested that including additional means of providing updates may be appropriate.

While many respondents have a consistently positive relationship with personnel at DG Competition, one respondent does not, feeling that the approach of DG Competition varies depending on the type of case. This respondent feels that DG Competition listens and informs adequately in anti-trust and merger cases but with State aid cases the respondent described a lack of timely communication, either written or informal, from DG Competition. In State aid cases the respondent felt Commission decisions were published before being shared with relevant NCA teams.

*“In the case of State aid, relations take place via the written word and there can be a complete silence from DG Comp about your case for several months. Then you learn later that a decision taken has been circulated without even a telephone call: that would be considered unacceptable if it happened to a business and quite right too! It's very unsatisfactory, because the teams are very reluctant to have informal discussions, there's a refusal to discuss, and so the amount of information remains poor.”*

### 3.1.1 Rating: informing in a timely manner

Mean score = 5

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

### 3.2 Transparency - stakeholder consultation on new rules

- Most NCAs feel involved in the formation of new rules; those from a few of the smaller Member States feel less involved -

Overall opinion about whether NCAs are consulted about new rules is positive. Respondents said that DG Competition makes effective use of vehicles such as conferences, workgroups and advisory boards to ensure that all interested parties have an opportunity to express their opinion on new proposals.

*“Even when we don’t have a strong opinion on a given matter, we try to send someone to take part. That person can listen to others’ opinions and report back on how the situation looks, how it is developing, what we can expect to be passed and how it might affect us.”*

Some respondents felt that any limitations are on the part of the NCAs because of a lack of resources that can be dedicated to the consultations or because the topic concerned is not of local interest.

The consultation process is recognised as providing every NCA with an opportunity to voice its opinion. A few respondents recognised that the end result has to be a compromise, taking into account the perspective of the NCAs in all 27 Member States.

*“God knows, we are not in agreement with everything, but that is the way it is in a community of 27 members. But I believe that, relatively speaking, our views are represented.”*

Several respondents again raised the impact of DG Competition not providing documentation in a timely fashion and the NCAs consequently feeling inadequately prepared. However, one respondent felt that this had improved recently.

Two respondents felt that they were not provided with enough information about the content of some proposals. One respondent referred specifically to the proposal of the directive based on the White Paper on antitrust damages actions prepared by the Commission. This regulation was of particular interest because it might later be transposed to local law.

One respondent feels that DG Competition’s involvement of NCAs in consultations is inconsistent. On the one hand the respondent had been heavily involved in a draft directive that had been the subject of substantial debate between the local NCA and DG Competition. Conversely, the respondent felt the NCAs were insufficiently involved in the drafting of Article 82 guidelines; the respondent recalled a two year gap between the initial announcement and the appearance of the draft guidelines after which the NCAs had only a brief period to prepare submissions.

Respondents from NCAs in some of the smaller countries feel that DG Competition is unreceptive to their opinions and that their countries tend not to be taken into account in rulings. One respondent expressed the view that DG Competition is not fully engaged in the process of consultation.

*“It seems clear that DG Competition has its own agenda when going through the consultation exercise.”*

One respondent feels that DG Competition listens more to NCAs from the old Member States than it does to the NCAs from the new Member States.

### 3.2.1 Rating: stakeholder consultation on new rules

Mean score = 5.9

DG Competition has not involved me at all in the creation of new rules						DG Competition has involved me very much in the creation of new rules
1	2	3	4	5	6	7
-	-	1	2	5	5	9

### 3.3 Observance of procedural rules

**- Most feel that DG Competition adheres to procedure; the main suggested area for improvement is in providing documents to the NCAs on schedule -**

On the whole DG Competition is perceived to be adhering to the relevant procedural rules. Many respondents were unaware of DG Competition breaching any procedural rules and they explained that they had no problems with DG Competition in this respect.

*“The system is in place and there are no problems.”*

A small minority of respondents felt it was inappropriate to comment on how well DG Competition observes procedural rules as they are not involved in all of DG Competition’s processes. One respondent explained that their experience of DG Competition’s procedures is mainly limited to consultation in decision making.

*“Only a very small segment of these rules directly affect us.”*

On the whole, the perception is that DG Competition handles sensitive data seriously and appropriately. In addition, there was no concern about the rights of access to file, although one respondent mentioned that it can sometimes take a long time to retrieve files.

One respondent believes that procedures differ by case type, feeling that there are visible procedures in anti-trust and merger cases but that there are no such procedures present in State aid cases.

*"In anti-trusts and mergers there are binding deadlines and an auditor is brought in. In the case of State aid, there are no binding deadlines and no auditor."*

Some respondents discussed areas for possible improvement, in particular around adhering to time schedules and information confidentiality.

- Several respondents mentioned receiving information from DG Competition later than scheduled and the detrimental impact this has on their preparation time.
- One respondent mentioned specifically that DG Competition does not always respond to inquiries in the period stated in the legal documents, which can hinder processes in local countries.
- Another discussed the leaking of draft documents into the public domain earlier than expected.

*"The Commission certainly has a problem in that its draft documents and its intentions find their way into the public domain faster than is the case with us. But I think the Commission itself is perfectly aware of this."*

The 'leak' of a draft directive to private companies before it was sent to the other NCAs was discussed as a breach of procedural rules by one respondent. However, the respondent then explained that, at the time, DG Competition had acknowledged the mistake and expressed satisfaction that by designating an authorised disclosure officer in each NCA, every effort had been made to ensure it would not happen again.

One respondent criticised DG Competition for drawing up legislative documents under a tight schedule, in order to complete them before the end of the term of the European Commission. As a consequence, the policy decision and documentation seemed rushed, which compromised the quality and clarity of the decision and supporting documentation. The respondent feels that the credibility of DG Competition in these situations is weakened as a result.

*"Documents regarding important matters such as the case of SEPA or the Block Exemption Regulations have been or run the risk of becoming rush documents. Why? Because these documents were drawn up under a very tight schedule to satisfy the needs for approval before the end of term of the European Commission. This has implications for the technical quality and the clarity of the text as well as the legal and economic grounds. It seems there is the need to make a policy decision rather than to draw up a document that is based on the jurisprudential analysis of the Court of Justice and on the economic analysis of the Chief Economist Team. There is the risk of losing technical rigour in order to meet the schedule."*

### **3.4 Burden on national competition authorities**

#### **- Some NCAs are coping with the demands made by DG Competition but others feel it is unmanageable and could be improved -**

Opinion is somewhat divided as to the burden DG Competition places on the NCAs. Some feel that the burden is manageable whilst others feel the situation could be significantly improved.

Those who see the burden as manageable feel that the nature of investigations / consultations is such that detailed evidence is inevitably required and, consequently, these respondents do not see DG Competition's requests as unreasonable.

The areas of possible improvement suggested by respondents were mainly focussed around streamlining information requests and providing deadlines that allow sufficient time for the collection of the information.

A couple of respondents pointed out that there are limited resources available within their NCAs to provide DG Competition with information. Consequently, the respondents felt it is important for DG Competition to ask only for the information it really needs.

A few respondents perceive that some of the information DG Competition requests is irrelevant or could be obtained by DG Competition from other sources (such as the Internet or from another regulatory body). It was suggested that questionnaires could be streamlined and simplified so that only the pertinent information is asked, which would make the task less arduous for the NCA and would provide a clearer overview to DG Competition on receipt of the completed questionnaires.

*"Wherever possible there should be questions with 'yes / no' answers."*

A couple of respondents felt that unrealistic deadlines meant that the time the NCA had to respond to requests was too short. This meant that often the NCAs did not have time to complete the questionnaires. Added to which, one respondent felt that several requests are often sent at the same time from the various departments at DG Competition which added to the burden.

One respondent suggested that it would help ease their burden if the NCAs knew more about DG Competition's underlying motivations for requests. Currently, there is a feeling that data provided may not be used by DG Competition. This is mainly because the NCAs are not aware of how previous information has been used, which is also frustrating for those involved in the provision of the information.

*“They are famous for issuing requests without explaining why the data is needed and without clear information about how they are going to use it and often don’t do anything with it... it’s frustrating.”*

One respondent felt that the investigation process is time consuming and aggravating because of the number of documents sent by DG Competition. However, the respondent cannot see any way to improve the pace or reduce the number of documents without compromising the transparency of the process.

Only one respondent referred to meetings in Brussels as being burdensome. They expressed the view that there is little notice given for these meetings and that they are liable to cancellation at the last minute for ‘avoidable’ reasons (e.g. lack of meeting rooms). The respondent suggested that these meetings could be arranged well ahead of time, so that people could ensure they are available to attend them and to reduce the risk of cancellation because of lack of resource availability.

## 4 Economic Effectiveness

### 4.1 Effectiveness of detection policy

#### **- Leniency policy was seen as an effective detection tool and independent detection is recognised as difficult -**

It was recognised that, in most cases, DG Competition and the NCAs are reliant on whistleblowers and complaints in order to detect new cases. Overall, the leniency policy is perceived as the most positive detection tool available to DG Competition.

*“When you get these parties coming of their own will and asking for leniency, it is a clear indication that they are afraid of being caught. And the number of leniency applications is increasing. You can see that it works well and that it is an effective tool.”*

*“The most important cartels which have been broken up recently have been broken up as a result of this system. We have been using it for almost two years and lots of cartels have been detected.”*

The only negative comment made about the leniency policy was with respect to the seemingly ‘mild’ treatment received by those who came forward.

*“If there is anything to criticise about the leniency policy, it is always the mildness shown to the individuals... who take advantage of the policy, and that this is unjust and unreasonable.”*

Many respondents feel that independent detection of cartels or other illegal activities by companies is difficult and some respondents believe that there is no separate entity within DG Competition investigating such activities.

*“The intelligence activity belongs to the cartel activity. But we do not have intelligence. I remember that we do not have a case that would be based on our own exploration since 1998.”*

However, a couple of respondents suggested that DG Competition should be exploring other sectors pro-actively for potential cases. Conversely, another respondent felt that independent detection was the responsibility of sectoral DGs and not DG Competition.

Only one respondent was clearly negative about DG Competition’s detection capabilities. This respondent felt that DG Competition had failed to put in place systematic surveillance to monitor cross-border shopping, online trading, parallel imports and selective trading systems and, as a consequence, is missing detection opportunities. The respondent’s view was that DG Competition was failing to monitor cross-border company

activity because it appears to be uninterested in local company offences and that it should be responsible for coordinating knowledge of local offences and the creation of a forum between NCAs to enable them to share knowledge about offences and, as a consequence, facilitate the detection of cross-border activity.

There is recognition amongst some respondents that DG Competition prioritises the cases that it works on because it has limited resources. The respondents who mentioned this felt that DG Competition's prioritisation is appropriate.

## **4.2 Impact on the markets**

### **- DG Competition's actions are perceived to have benefited the market, in particular through the discovery of cartels -**

DG Competition's impact on the markets is perceived as positive.

The impact was perceived in terms of its benefit to the consumer and its influence on the attitudes of companies towards committing an offence.

*"DG Competition achieves a great impact with the way of informing the public. With this method they influence companies' consciousness. Many companies become aware that they are breaking the law."*

The uncovering of cartels by DG Competition was seen by several respondents as being a highly impactful part of its role and clearly beneficial for the economies of the countries involved.

*"Discovery of every cartel is a relief for economy."*

One respondent feels that DG Competition is inconsistent and fluctuates between being unrestrictive in the market to being too controlling; DG Competition needs to find a better balance.

*"We waver between the risk of over-regulation, that's to say transformation from an enforcement body to a regulatory one, and inaction which - because of lack of predictability and the absence of guidelines or regulation - ends up taking a more or less random approach to intervention so there is not enough intervention and the market is insufficiently regulated and balanced. It's a fine line between too much and not enough."*

One respondent felt that DG Competition should not be operating in Methods of Payment, expressing the view that regulating prices is not part of DG Competition's remit.

*"In terms of legislation it has done excellent work in some markets but, in our opinion, it is entering a dangerous market [in looking at]"*

*payment methods and their regulation. I think it is not up to DG Competition to regulate prices. The Competition Authority is not a Price Authority."*

Even though there was a feeling that DG Competition was having a positive impact on the markets within which it works, it was felt that it should be monitoring its impact more closely since some believe that it is not currently doing so. One respondent suggested more communication between DG Competition and individual Member States so that the Member States could attempt to establish the impact of DG Competition's work.

*"DG Competition should communicate with us saying - 'Look, we are going to take this decision, we are expecting that the effect will be this, that and the other. To guide you, you need to look for this, that and the other' – this would help us to know locally, where we should be looking."*

The following suggestions were made by individual respondents as ways to improve DG Competition's impact:

- Increasing sanctions in two ways; increasing the fines applied and increasing the compensation for damages.
- It was felt that improvements could still be made in the energy sector. Although attempts had been made in the past to address issues within the sector it was felt that no improvements were visible and, consequently, that there was still scope for development.
- One respondent believes that many markets are currently restricted by regulations relating to local trading and that there is a need for legislation to enable cross-border trading in Europe. This respondent would like DG Competition to place more focus on the issues surrounding the facilitation of the movement of goods across borders.

#### 4.2.1 Rating: impact on the markets

Mean score = 5.4

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	10	7	1

### 4.3 Timeliness of decisions

- **The decision process is perceived to be too long but few have any practical suggestions on how it could be shorter -**

The majority of NCAs felt that the length of time for a decision to be made was unavoidably long given the magnitude of the decisions being made. The respondents tend to have a clear and sympathetic understanding of DG Competition's procedures and processes and the issues that arise, since they have to similar protocols and issues themselves.

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

Four respondents noted specifically that the length of the process is not entirely attributable to DG Competition, with delays being caused by the other aspects of the process (such as obstacles raised by lawyers for the defendant, the nature of the case and so on).

*"Of course an immediate decision would be best. But we are well aware that it's simply not possible with all the requirements in place. So the typical term is about 3 to 5 years."*

However, a few of the respondents were less sympathetic and felt that time frames should be reduced. Some suggested that targets may help to reduce the timescale of proceedings. For example, anti-trust cases should be completed in 18 months.

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

However, one respondent felt that, although the process can be time consuming, the initiation of proceedings often causes companies to change their behaviour. The respondent expressed the view that, once a cartel case is discovered and proceedings start, members of the cartel cease their illegal activity.

Those critical of procedural speed appear to be most concerned about cases involving abuse of a dominant position. The Microsoft case was mentioned specifically by two respondents because the delay in reaching a decision allowed Intel to continue to grow in the market.

*"In this case the market has already grown from 20% to 80%. And there is no way back."*

One respondent suggested that better prioritisation of cases could help to reduce investigation time on the more urgent cases and so enable faster decisions to be made.

One respondent felt that, once the procedures on how electronic data can be handled are finalised, processes should be quicker.

*“Procedures on how to handle electronic content should be written very soon now. Once these procedures and regulations are clear, cases where this is a subject can be analysed a lot quicker.”*

### 4.3.1 Rating: timeliness of decisions

Mean score = 4.7

Commission decisions are not made in a timely manner						Commission decisions are made in a very timely manner
1	2	3	4	5	6	7
-	1	2	5	7	5	-

## 4.4 Ability to enforce decisions

### - Commission decisions are seen as legally binding and so enforceable through the court system -

Some respondents did not have relevant experience to comment on whether the Commission is able to enforce its decisions. However, among those who felt able to comment, most believed that the Commission is able to enforce its decisions.

*“In our experience the Commission has the ability to enforce its decisions because, if the company does not comply, a fine may be imposed.”*

A couple of respondents expressed the view that they had not heard of a case where a company had defaulted and this, they felt, is a reflection of the Commission’s ability to enforce its decisions.

One respondent felt that Commission decisions were having the positive impact expected in his market.

*“The enforcement decisions have the foreseen effects on the markets both regarding compliance with decisions and economic effectiveness in increasing competition in the market.”*

However, others believe that there is a need to measure the impact of Commission decisions in order to establish whether the market has changed as a consequence.

Some respondents doubt that DG Competition has the capacity to check that its decisions are being followed; one respondent felt that this could be a weakness within DG Competition.

*“The Commission, I think, given its particular position in the scheme of things, should be more active in intervening to make sure law is developed in a coherent, consistent and correct way.”*

#### **4.5 Deterrent effect of fines**

**- Most feel Commission fines are an effective deterrent, however, some feel there is also a need for criminal proceedings -**

Most feel that fines alone are sufficient penalty. These respondents believe that the damage inflicted by a fine is not only through the direct financial impact on the company; it is also as a result of the negative press associated with being sanctioned, which can subsequently damage share prices.

*“We frequently find that, for the company, the bad image and having their name in the press as a sanctioned company is more worrying than the fine itself; the so called ‘press-penalty’.”*

Some respondents believe that the effectiveness of fines is demonstrated in the growth of the leniency programme; if the fines were ineffective the leniency programme would be futile.

*“The very fact that there’s been an increase in the number of people who choose to self-report cartels in order to avoid penalties is a sign that fines work very well as a deterrent.”*

About a third of the respondents feel that fines alone are not a suitable deterrent and would like to see the introduction of individual criminal liability as an additional deterrent.

*“The ability to sentence to prison would have a preventative effect and also aid the authority in their investigations. As it is now, the remedies of DG Competition are rather limited.”*

However, one respondent expressed the belief that an individual prison sentence would not be a greater deterrent than the current fine system. The respondent explained that in their country a sentence of up to two years is liable to be suspended and so the individual would then not serve any prison time. This, they felt, would defeat the purpose; a suspended sentence would not be a greater deterrent than a fine.

#### **4.6 Response to the financial and economic crisis**

**- Most perceive DG Competition's reaction to the financial crisis as rapid and appropriately flexible -**

Almost every respondent surveyed feels very positive about DG Competition's reaction to the financial and economic crisis.

*"Regarding the performance of the Commission during the crisis, we wanted to emphasise that it was very positive."*

The respondents believe that DG Competition reacted quickly to the financial crisis.

*"They moved extraordinarily fast, because Lehman Brothers failed in the second half of September and on 13 October there came the first set of guidelines on aid to the banking sector, which was remarkable, especially since they weren't at all bad and that the first salvage operations were very well organised."*

In addition, some respondents referred to specific examples where DG Competition demonstrated flexibility. For example:

- Establishing criteria for companies unable to pay their fines because of the crisis
- Accommodating the needs of specific markets, such as the UK banking sector where mergers were permitted which, it is felt, would have been prohibited under normal conditions
- Allowing Member States to inject the necessary money into banks to keep them afloat

Two respondents criticised DG Competition for reacting too quickly; they felt it had not considered fully the long-term impact of its decisions.

A further two respondents felt that DG Competition had not reacted quickly enough to the crisis. However, one respondent questioned whether it was DG Competition's role to respond to the crisis and the other felt that it was in a difficult position, given the divergent reactions of the leaders of the three largest economies.

Only one respondent expressed concern about how DG Competition is planning to move forward:

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

## 5 External communication

### 5.1 Clarity and comprehensibility of external communications

- **Communication is generally positively perceived, but many find informal communication with DG Competition easier -**

Our respondents categorised DG Competition's external communications into three types; to NCAs, to companies and to the general public. On the whole, communication with the NCAs is positively perceived.

*"DG Competition always issues press releases and statements after the decision has been made."*

However, many expressed that they prefer to communicate with DG Competition via email or telephone rather than waiting for external communication.

*"This does not concern us much because we get the decision sooner than it is published."*

*"The informal communication channels give us our biggest advantage. We can get the information we need quickly and on time."*

Furthermore, one respondent feels that the EU guideline documents are only suitable for experts; finding the speeches made at conferences by senior DG Competition staff more useful. Another respondent finds banking documents from DG Competition particularly complicated and difficult to understand.

Two respondents expressed the view that DG Competition's communication is 'duller' than it needs to be. Although the communication is sufficient, they feel that it could be more inspiring.

*"I guess compared to other institutions within the EU, the communication of DG Comp is good enough; perhaps even a bit more efficient than some of the other institutions. However, the EU as a whole is not exactly characterized by their excellent communication skills."*

Two respondents commented on the lack of suitable communication with the general public. They felt that DG Competition's website does not communicate effectively about the organisation and its activities and that one would need to look elsewhere for information if you were researching DG Competition and its activities. One respondent suggested that a question and answer format on the website explaining the function of DG Competition, in non-technical terms, would be appropriate for the general public.

## 5.2 Timeliness of communication

### - The main issue is that translations of documents are taking too long to be made available -

Opinions are divided about the timeliness of DG Competition's communications. Just over half the respondents rated DG Competition's timeliness of communication positively and had no suggestions for improvement.

Most of the significant minority who expressed negative views about the timeliness of DG Competition's communications simply said that they want information faster but did not offer specific suggestions about how this could be achieved.

*"Here too I refer to the website, where many summaries of decisions are posted... there are publications too... the Official Gazette which the site refers to... These communications are not so timely but they are more complete... they are formal, official... Of course, it would be better if this info were also made available faster."*

Among the small minority who mentioned specific issues about DG Competition's speed in producing documentation, the main problem was the length of time it takes for translations of documents to be made available.

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

*"The translations have always been the EU's problem. Things just take too long."*

Accessing personnel was also discussed in reference to the timeliness of DG Competition's communications; two respondents referred to the difficulties experienced by NCA press officers when they want to confirm with DG Competition what information is suitable for release. They apparently found it difficult to speak to someone at DG Competition in this regard.

One respondent expressed the view that non-confidential versions of decisions are published too slowly.

One respondent felt DG Competition is particularly slow at communicating the start of preliminary investigations.

### **5.3 Choice of communication and media channels**

**- Most respondents feel that DG Competition's website is the most suitable channel for them but many feel it is not appropriate for a non-technical audience -**

Most of the respondents believe DG Competition's website is the most suitable communication channel and this is the channel they use most frequently.

*"For us the interesting information is published through the Internet. This works really well."*

As noted in section 6.1, some respondents made a distinction between the general public and more interested parties. They felt that the website is currently very complex and most suited for interested parties and that the general public's needs are not currently felt to be served by the website, either in terms of the language used or ease of navigation.

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

One respondent feels that the search engines on the website are too complicated and are ineffective for their particular use.

All of the respondents were aware of DG Competition's website but many did not recall all of the other channels used by DG Competition.

Press releases from DG Competition were discussed by some. Among those who mentioned them, the perception is that they are frequent and that they are relevant to a wider target.

Conferences and workshops were perceived positively by respondents who mentioned them. One respondent noted positively that DG Competition has adopted new technologies to facilitate the communication of these conferences.

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

One respondent suggested including the use of more interactive channels such as forums and chat rooms.

### **5.4 Targeting of communications**

**- It is perceived that most of DG Competition's communications are targeted at a technical audience -**

About a third of the respondents surveyed did not feel able to comment on whether DG Competition is correctly targeting their communications. Most of the respondents who commented about the ability of DG Competition to target its communications, feel that it is meeting the needs of NCAs with its communications.

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

Some respondents made a distinction between the communications targeted at NCAs and those targeted at consumers. The perception is that DG Competition does not understand how to communicate appropriately with consumers and, as a consequence, uses inappropriate channels and language. It was suggested that communication with consumers should be coordinated with each Member State's NCA, in order to ensure consumers in each state are targeted appropriately.

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

Other comments, each made by an individual respondent, included:

- The consumer section on DG Competition's website is useful and appropriate to communicate with consumers.
- DG Competition should listen to communication recommendations provided by each Member State to gain a better understanding of each Member State.
- DG Competition should communicate more with each Member State and specifically in their own national language. It is felt that DG Competition has been unsympathetic to local language needs in the past.

## **5.5 Promotion of competition culture**

**- It is felt that DG Competition has been effective within professional audiences and NCAs but there is still potential to educate consumers -**

Opinion about the quality of DG Competition's activities aimed at promoting and educating about competition culture was divided.

Some respondents feel that DG Competition has been effective in promoting competition culture and educating stakeholders. In particular, respondents praised DG Competition for being very active in communicating to relevant professional groups and to NCAs.

However, most assumed that DG Competition was also interested in promotion and education activities aimed at a wider, non-technical audience. Some respondents feel that this is delivered through the consumer section of DG Competition’s website. However, other respondents feel that, because this information is only available to those who actively seek it out, it is insufficient.

Those respondents who feel DG Competition’s promotion of competition culture to non-technical audiences would like to see it being more proactive. They suggested, for example, that DG Competition could offer training to trade unions and provide information of a less technical sort to daily newspapers for consumers, to increase awareness of the benefits of competition.

*“For specialists, OK, but it misses the target among real people.”*

*“They could be more proactive in bringing this complicated professional issue to non-professionals, ordinary people, consumers.”*

Some respondents said that they were not aware of any activities directed at promoting competition to the end-consumer.

*“I don’t know what DG Competition are doing, I know they organise training for magistrates. I haven’t received communications targeted at the public.”*

A few respondents believe that it is the responsibility of the NCAs to promote and educate about competition locally. The NCAs have local knowledge and cultural understanding about how to communicate with consumers in their countries and so they feel they are the best positioned to do so.

One respondent suggested the use of ‘road shows’ to target consumers in their country.

### 5.5.1 Rating: promotion of competition culture

Mean score = 4.9

DG Competition’s activities promoting competition culture are very poor quality						DG Competition’s activities promoting competition culture are very good quality
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## DG Competition Stakeholders – National Competition Authorities

1	2	3	4	5	6	7
-	3	-	4	8	2	4