



## **Eurobarometer Qualitative Study**

# **DG COMPETITION STAKEHOLDER SURVEY**

## **Business and Consumer Associations Report December 2014**

This study has been requested by the European Commission, Directorate-General for Competition and co-ordinated by Directorate-General for 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 study – TNS Qual+**

**Eurobarometer Qualitative study**

**DG Competition  
Stakeholder survey**

**Business and Consumer Associations Report**

Conducted by TNS Qual+ at the request of  
the European Commission,  
Directorate-General for Competition

Survey co-ordinated by the European Commission,  
Directorate-General for Communication  
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## **EXECUTIVE SUMMARY**

DG Competition commissioned this Qualitative Eurobarometer study in order to obtain feedback on perceptions of the quality of its activities from its most important professional stakeholders. The study covers DG Competition's enforcement, policy and advocacy activities. Feedback was sought in relation to the soundness of its legal and economic analysis; its transparency and procedural fairness; its economic effectiveness; and finally, its communication and international advocacy.

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

The study targeted DG Competition's professional stakeholders, in particular law firms, economic consultancies, business and consumer associations, companies, national competition authorities and EU Member State ministries. This specific report is based on interviews with business and consumer associations. All stakeholders were knowledgeable about DG Competition's work, either through direct involvement in case work as part of DG Competition's enforcement activities or, indirectly, by having influenced policy work or benefited from it. Twenty-one (21) in-depth interviews (IDIs) with 25 interviewees lasting on average 75 minutes were thus carried out, conducted face to face wherever possible. The interviews took place between June and July 2014. This report was finalised in December 2014.

### **SOUNDNESS OF LEGAL AND ECONOMIC ANALYSIS**

A sample of 21 business and consumer associations generally considers that Commission decisions are based on sound legal and economic analysis. Most participants believe that such decisions are taken within a clear legal framework, which makes the outcome predictable in most instances. Good communication with DG Competition also helps to prepare them.

However, some features of the decisions drew mixed reactions in the interviews. Several participants consider that decisions are not always clear. Although detailed and thorough, the underlying economic analyses are complicated. Some decisions are considered too academic and detached from business reality - which was a pervasive theme in the research findings. For example, several participants said businesses are requested to provide information in a form they consider impractical, or that economic models are too theoretical, or that it is unrealistic to expect companies to compete globally when competitors outside of the EU are not subjected to the same controls, particularly regarding State aid.

Another issue raised on a few occasions, and one that compromises the veracity of some decisions, is that some decisions (and investigations) are perceived by a small number of participants as politically motivated, rather than based on legal argument.

On the subject of fines and their predictability, these are regarded by most as less predictable - both the amount and processes determining them.

## **DG Competition Stakeholder Survey - Business and Consumer Associations Report**

With regard to understanding the markets, DG Competition is seen by most as having a better understanding of large established companies and industries than smaller ones, or emerging markets. Several identified significant deficiency in understanding market specifics and nuances, but they commended DG Competition for their willingness to learn and develop market knowledge.

Although many were unable to comment on economic analyses, several participants have seen improvements over the past five years. Some suggested that further improvements are possible if the approach becomes more individualised or targeted to specific markets.

### **TRANSPARENCY AND PROCEDURAL FAIRNESS**

This section covers DG Competition's transparency, procedural fairness and rules of engagement with stakeholders.

Views were mixed as to how transparent DG Competition is. A majority of participants consider DG Competition staff as usually very willing to listen to business and consumer associations and their members, to consult and inform, but several indicated this is likely to be more reactive than proactive.

The research participants generally recognise that transparency needs to be balanced against a number of factors such as confidentiality, how much feedback DG Competition could provide, and the amount of notice business and consumer associations and their members are given in order to adequately prepare for consultations. While views are mixed, several believe DG Competition manages the various constraints through regular communication with stakeholders.

Several participants stated that the publication of non-confidential decisions takes too long – adding that they would like to be kept up to date during the process.

With regard to consultation on new rules, most participants mentioned that they have been consulted, but a few commented that not all views are necessarily incorporated into new rules.

When it came to commenting on DG Competition observing its procedural rules, most participants consider that these are followed scrupulously and they are not aware of any particular transgressions.

In terms of investigations and consultations and being required to provide DG Competition with large amounts of information, a majority of participants regret that this creates a substantial burden on members in terms of time and resource allocation, and they suggest this could be lessened if streamlined and optimised. Some added that the burden is exacerbated when they are given very short notice. While a few considered requests for information pertaining to guidelines and market information as reasonable, they feel it is particularly onerous to supply justifications for complaints, or information for mergers that are of no relevance to them.

### **ECONOMIC EFFECTIVENESS**

When asked about the impact of DG Competition's work and its level of success in imposing decisions, participants were equivocal.

If the detection policy is to rely on complaints and leniency applications only, most participants perceive it as working well. However, DG Competition is considered to be too short-staffed to uncover infringements in any other way.

On the issue of fines, large fines are thought to be an effective deterrent but only if they are enforced – and upheld on appeal. The threat of fines or other sanctions associated with antitrust rules has led some companies to abandon or modify business transactions or plans, and to proceed more conservatively. The business and consumer associations questioned are largely unfamiliar with settlements and commitments. However, some participants highlighted their advantages as saving time and resources, but there is little support for these alternative enforcement tools. Fines are seen as a better alternative.

Several participants regret that, in cartel and antitrust cases, it is thought that the impact of DG Competition's decisions is somewhat reduced by the length of time it takes the Commission to arrive at a decision. It is considered that by the time a decision is reached, a case or application could have lost momentum. However, some participants felt that a good, appropriate decision is more important than the time it takes to arrive at a decision.

Most participants believe DG Competition focuses on the right sectors, but no conclusions could be discerned as to what are, or should be the most appropriate sectors. A few participants remarked that they believe some targeted sectors are not market driven but motivated by competitors (including other countries) with disruptive intentions.

DG Competition is considered by the majority of participants to be slow to adapt to technological changes and globalisation, especially in so far as enabling companies in the EU to compete worldwide. Hence, while its impact on the market is thought to be substantial as far as promoting competition and compliance within the EU, several participants argued that too many constraints are impeding business competitiveness internationally.

The majority of participants believe the Commission's decisions are being enforced in all areas– except, it was noted, perhaps in State aid cases. It is believed that culture of enforcement has had the intended effect on the markets, namely compliance, and the curtailment of illegal activities. This enforcement of competition policy is recognised as boosting competition and economic growth in the EU. On the other hand, inherent complexities and constraints in the system are thought to make it more difficult for EU countries to compete globally.

### **COMMUNICATION AND PROMOTION OF COMPETITION CULTURE**

Regarding the issue of promoting competition, most participants feel that DG Competition does not sufficiently project a competition culture, neither to the wider EU community, nor internationally. It is considered that it does not promote itself and its authority as a regulator. Participants are generally encouraging of more outreach and there is strong support for cooperation and policy convergence at an international level. The pervasive sentiment is that cooperation with international bodies and attempts to level the global playing field could benefit EU companies and better enable them to compete internationally.

## **DG Competition Stakeholder Survey - Business and Consumer Associations Report**

Focusing on its stakeholders, DG Competition's external communication is generally considered to be good. Notwithstanding this, clarity and comprehensibility of communications at times are regarded as being too technical. Communications are also not always thought to be well targeted – hence rendering them too general. Compounding this is the perceived volume of material generated, making it hard for the business and consumer associations questioned and their members to keep up to date.

DG Competition is perceived as using a variety of communication channels and the website in particular is viewed as useful by most of the participants. Furthermore, they mentioned being appreciative of the various face to face contacts through meetings, seminars and conferences that are offered to them by DG Competition. Additionally, DG Competition is regarded as being readily available to clarify issues and answer questions when participants are unable to obtain answers from other sources.

Given the host of communication media DG Competition is recognised as already deploying, additional social media are deemed unnecessary.



## **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 soundness of its legal and economic analysis
- Its transparency and procedural fairness
- Its economic effectiveness
- Its communication and international advocacy

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

- Have more targeted and dynamic communications and interactions with its professional stakeholders and with the general public
- Detect possible areas of improvement in its cooperation and relations with stakeholders
- Manage and prioritise its projects to achieve a greater impact on the markets
- Measure its performance in a number of fields related to the quality and impact of its work, thereby rendering performance comparable over time.

This wave is a follow-up to a previous Stakeholder survey conducted between December 2009 and March 2010, during which 113 face-to-face interviews were carried out among similar stakeholder groups.

The study focuses 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 through their practical involvement in casework as part of DG Competition's enforcement activities or indirectly by having influenced or benefited from policy work. A separate study directly addressed the general public in all EU Member States.

This report focuses on the views of the business and consumer associations questioned. Further reports cover the views of:

- Economic consultancies
- Lawyers
- Companies
- National competition authorities
- Member State ministries

### ***1.2 Methodology and sampling***

The study consisted of in-depth interviews (IDIs) lasting on average about 75 minutes. Interviews were conducted face to face wherever possible, at the participant's place of work or another suitable location.

Due to data protection considerations, potential participants 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+.

## DG Competition Stakeholder Survey - Business and Consumer Associations Report

All participants have been in working contact with DG Competition in the last three years either as a recipient of a Commission decision, a complainant, leniency applicant, etc.

This report is based on 21 interviews with business and consumer associations. Only one consumer association agreed to participate in this study (BEUC), it has been included in this report. Four interviews were attended by two interviewees.

Among the business and consumer associations surveyed in this study, the vast majority agreed to have their name mentioned in the report. One participating association requested to remain anonymous.

<b>Business and Consumer Associations</b>	<b>Location</b>
ACI Europe	Belgium
AFEP	Belgium
AIM	Belgium
BDI	Belgium
BEUC (consumer association)	Belgium
Business Europe	Belgium
CEFIC	Belgium
Czech-Moravian Guarantee and Development Bank	Czech Republic
E3G	Belgium
ECSA	Belgium
European Generics Medicines Association	Belgium
European Retail Round Table	Belgium
Eurocommerce	Belgium
EVCA	Belgium
Ferrovial	Belgium
FFII	Germany
Fooddrink Europe	Belgium
Independent Retail Europe	Belgium
UAF (Union des Aéroports Français)	France
UEAPME	Belgium

Interviews were conducted during the months of June and July 2014.

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

The reader should note that this report is based on findings obtained through qualitative research methodology. The interviews were structured around a consistent set of topics priorly agreed on with DG Competition. However each topic area was open and discursive in nature. So, while we have striven to indicate how widely held these perceptions and views are held, such information should be treated with some caution.

## DG Competition Stakeholder Survey - Business and Consumer Associations Report

It is important to remember that the issues raised by each participant 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.

It is also important to note that, although a number of participants may have referred to the same issue in the discussion, it has not always been possible to categorise their responses in a straightforward manner; some will have introduced caveats, expressed mixed views, referred to a topic only tangentially, focused on a specific aspect of an issue, etc. This can also make it difficult to state, definitively, how many people held a particular view.

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

A series of quantitative questions were included as part of the interview process, to provide an overall summary of participant views on key aspects of DG Competition's performance. Not all participants felt able to provide a rating for all the elements due to lack of personal knowledge. The data on raw scores plus an overall mean based on the number of participants rating each aspect are included within the report. As illustrated in the example below, the figures in the last line represent the number of participants who answered with the score mentioned immediately above (scale); in this case, no participant gave a score of '1', '2' or '3', while three participants gave a score of '4', 8 gave a '5', 6 gave a '6' and one participant gave the highest score of '7'.

Commission decisions were not legally sound						Commission decisions were very legally sound
1	2	3	4	5	6	7
-	-	-	<b>3</b>	<b>8</b>	<b>6</b>	<b>1</b>

### 1.3 Participant background and selection

In order to provide context for the type of business/industry sectors represented in the sample, they are broadly classified as follows:

Industry Sectors	Participants
Consumer goods and retail	6
Transport	5
Business and trade	4
Finance	2
Pharmaceuticals and chemicals	2
Energy and environment	1
Technology - computer	1
	<b>21</b>

## **DG Competition Stakeholder Survey - Business and Consumer Associations Report**

For the majority of the participants from the business and consumer associations, antitrust and State aid control were their main areas of expertise and interaction with DG Competition. About a quarter also indicated involvement in mergers or cartels. Their positions, roles and activities have included:

- Complainant
- Addressee of a decision
- Representing/defending members of their association
- Beneficiary or provider/conduit of State aid
- Involvement in cases of antitrust, mergers and damages action
- Monitoring guidelines and policies, consulting and responding on behalf of their members

Out of the 21 participants, 11 have had contacts with DG Competition for over a decade, with a couple of participants having over 20 years of experience. Most have had contact within the past few months, and for several participants this had been in the weeks prior to the research interview. Working on the new guidelines had increased their involvement with DG Competition.

DG Competitions' initial list of potential business and consumer association respondents aimed to represent various EU-wide business sectors, including SMEs. The selection was based on DG Competition's existing contacts within these organisations.

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

## 2. SOUNDNESS OF LEGAL AND ECONOMIC ANALYSIS

### ✓ Rating: legal soundness of decisions

Mean score = 5.3

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

Ten quantitative measures were taken in this predominantly qualitative research. A 7-point rating scale was used (in all but two measurements). In the ratings above, the mean score of 5.3 was the highest across all the measures.

Congruent with the quantitative ratings, interviewees are positive in the main part about the legal soundness of the decisions. A few commented that compared to other regulators, DG Competition are superior in this regard.

*"Currently DG COMP analyses have an extremely high quality, also compared to other EU sections. It has become much better..."*

Compared to an already strong base five years ago, veracity it is believed that has been maintained or improved. Where there have been improvements, this is usually attributed to greater knowledge or understanding of an industry.

*"Legal soundness of DG COMP's analysis is excellent, it has always been good and their communication has improved."*

One participant disputed some details but believes the introductions and preambles to decisions provide an *"excellent explanation of why something had changed."* Another feels the texts sometimes do not correspond to reality, but from a legal point of view they are well reasoned.

*"The legal decisions I know about have led to the case being closed. They are very well argued from a legal point of view, on the basis of texts that are not necessarily sound. But you have to say they're well-reasoned."*

However, the subject again emerged that some decisions are considered to be motivated by political agendas rather than legal arguments.

*"There are not always purely legal, but also time and political constraints."*

*"They are OK, but not the best. There often are political decisions and they often end up in court."*

### 2.1 Clarity and comprehensibility of decisions

#### - While most participants consider the actual decisions are clear, some believe the underlying arguments and analyses are complicated -

There are mixed views on the clarity of decisions. With reference to both intermediate and final decisions, half the participants believe they are factual, precise and documented in clear language that is easy to understand.

## DG Competition Stakeholder Survey - Business and Consumer Associations Report

*"Very clear and understandable in general."*

*"Our experiences are quite positive; we have no concerns about this."*

However, when referring specifically to the State aid guidelines, some judge the structure of the text to be convoluted and the vocabulary difficult to understand - especially for non-lawyers.

*"It would be better if they used less difficult language."*

Several participants regret that the decisions are sometimes contradicted by exceptions, commentaries and disputations. For the business and consumer associations questioned representing small organisations, this is thought to be especially worrying, as these small businesses often do not have the legal resources to understand the complexities with which they are expected to comply.

*"It's only for experts. It will be helpful for the EU if people could understand their decisions. They need to clarify and explain why they took an unpopular decision. What is the benefit at the end?"*

*"They use jargon that the profession does not necessarily understand. And the structure of the texts is cumbersome... Summaries at the end... That's good, but it's necessarily reductive... For these really very small organisations, it's not easy. There aren't many lawyers who specialise in these questions and it's very expensive to access them."*

Several participants commented that, although detailed and thorough, they feel the underlying economic analyses to be complicated, especially in State aid cases. Some also feel decisions are based on rigid analyses. They are seen as too theoretical with not enough attention given to the practicalities of a decision.

*"If it's possible for the economic analysis, make it less complicated for lay people."*

*"They are not always open to... understanding changes in the marketplace - and are perhaps too suspicious of those changes."*

One participant contended that the *de minimis* rule and block exceptions for State aid, instead of simplifying the process, rather increases the administrative burden.

Another participant mentioned that the perceived lack of clarity for some decisions is due to the fact that they are motivated not by sound legal and economic argument, but rather by political pressure from an influential party.

*"Political interplay with competition should be kept separate. Sometimes the legal and economic aspects disappear and it becomes what people feel."*

## 2.2 Predictability of decisions

### **- Decisions are generally considered predictable as they are believed to be based on a clear legal framework -**

Decisions are largely considered to be predictable. The expectation is that they are considered to tend towards being more restrictive than liberal. Most participants believe that decisions are based on a clear legal framework, which is thought to make them quite predictable.

## DG Competition Stakeholder Survey - Business and Consumer Associations Report

*"My experiences are quite positive, I see no major upsets."*

*"Basically, they are predictable, as I know that where there are two possible decisions and one is stricter and the other one is less strict, they usually choose the stricter one. That's my experience."*

*"They apply the articles, so the results are clear, always clear. This is also their job and they must make sure they do it well."*

However, a minority of participants shared examples of situations in which they were surprised by the decision taken by the Commission. One was related to a case of renewable energy where *"we did not anticipate the decision, and the time to reach the decision was too long as well"*. Another participant, however, mentioned a case where the decision was more favourable for them than they had expected.

*"The contents gave us surprises and sometimes pleasant surprises at that. For example, they raised the threshold ... [specific detail deleted to ensure confidentiality]. That's better for us, we were surprised."*

There were a few comments pointing out that the Commission's decisions are more predictable with regard to mergers than to other competition enforcement tools. State aid is however considered to be more vulnerable to being politicised or attracting more subjective decisions.

Some participants stated that they understand that decisions sometimes need to take an unexpected or new slant as a response to changes in market dynamics. However, a minority of participants regret that some decisions are so removed from market realities that they can never have been predicted. Furthermore, some decisions are seen by a few participants as making matters more complicated, rather than simplifying them. An example is widening the scope of companies that have to be audited regarding *de minimis*.

*"The competition has changed, and our cases have been through old and new laws. Changes in thinking are understandable because this is a dynamic process."*

*"But we just couldn't understand some basic aspects. There is a sort of disconnect between what they want to enforce and the day to day reality."*

Finally, a few participants regret that the Commission sometimes appears to slightly change the guidelines without changing the rules, which is thought to create uncertainty. These business associations would like to be informed of this and receive more explanations regarding such changes.

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

#### **- Both the amounts of the fines and the process determining them are mostly considered unpredictable -**

A number of participants could not answer this question having never been fined nor involved in a fine imposed on a member organisation.

A majority of those who expressed their views appear clearly discontented with the predictability of fines imposed by the Commission. Most of them regret the perceived lack of predictability of both the amounts of the fines and of the rationale leading up to these amounts.

## DG Competition Stakeholder Survey - Business and Consumer Associations Report

Some feel that although guidelines exist, there is too much discretion in how a fine is determined and the amount arrived at. One participant even held that the Commission appears to be determined to impose a certain level of fine and tailor its decision to justify the amount. According to the participants, more transparency is needed. It is believed that employing an external specialist to calculate amounts would instil greater confidence in the integrity of the process and outcome.

*"I have questions about this, because there is no clear grade of evaluation. Why is it a certain amount? This is not published and it is hard to follow."*

*"There are some guidelines for companies to follow, but they are not clear. Also the level of fines should be more predictable."*

*"You really can't anticipate. What you can know is whether there's a chance that proceedings will not involve a sanction. But when there is a sanction, you have no idea what the amount could be. That's a job for an experienced lawyer."*

A specific complaint was that different members of a certain cartel were fined differently. The information provided by one party was deemed more valuable than the cooperation given by the other party – which was fined more heavily.

*"Where there is a bit of a question is whether they take into account the amount of cooperation you've given them during the investigation. We felt like we did cooperate and gave all the information we could, but our information wasn't seen as being so valuable, and so the member we represent got a higher fine. That feels unpredictable."*

The amount that companies are being fined is usually considered "way too high" and it is thought that this could even put some of them in danger of insolvency.

*"When the first fines arrived in my sector, they were very high, so the companies got scared and worried about them."*

It was recommended by some participants that fines should be more in line with standards outside of Europe. For example, the USA and some emerging economies are believed to have lower fines. Comparisons with non-EU countries were a recurring theme in the interviews.

## 2.4 Understanding the markets

**- Views vary regarding DG Competition's understanding of the markets, but there is widespread recognition that members of staff are eager to learn more about the markets -**

### ✓ Rating: market knowledge

Mean score = 5.2

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



## DG Competition Stakeholder Survey - Business and Consumer Associations Report

The extent to which DG Competition is believed to understand its markets drew a range of responses and this is reflected in the scattered quantitative figures above.

Overall, most feel it has a much better understanding of larger industries and companies than of SMEs and emerging markets. Also, some participants believe DG Competition's staff is generally more knowledgeable of markets including consumer goods, services, energy, and pharmaceuticals. However, it is considered as having less understanding of the constantly evolving digital technology market and of rapidly changing markets such as the airline industry.

Understanding specific industry rules and mechanisms is considered as an area of great deficiency. DG Competition staff also at times are thought to fail to take into account local and regional dynamics. They are also criticised for not being sufficiently aligned with the "real business world".

The above views are not unanimous. Almost every criticism was counteracted with praise. Where some participants believe DG Competition does not know the digital market well, another for example contended that DG Competition understands the digital market very well; it is said to employ young, highly intelligent specialists from all parts of Europe; they are believed to combine both a technical and economic competences and to mostly adopt a liberal market philosophy.

Where some think DG Competition usually has a good grasp of the pharmaceutical industry, the opposing view is that decisions on patent settlements are made with insufficient understanding, have a "chilling effect" and cause delays in the development of generic medicines in the market. Poor understanding is believed to lead to poor decisions.

*"Their market understanding is quite good, because State aid in the aviation industry was new to them and they picked it up quickly. This has a strong impact on our industry as airports could close as a result of a decision."*

Although DG Competition is often perceived as having staff highly knowledgeable about particular sectors, a couple of participants commented that it is also strongly opinionated and rigid, or approaches business with instinctive suspicion and a tendency to assume wrongdoing.

*"There are people having a good understanding of the sector, but that also means they've got rather strong biases or preconceived ideas, compared to people who are fresher or who have worked in other parts of the Commission or other sectors. ... But getting that trade-off is tricky."*

Notwithstanding the mixed views regarding DG Competition's understanding of the markets, there is widespread acknowledgement that DG Competition staff is willing to meet and discuss with various industry sectors. They are considered to try to gain market knowledge and it is thought that there is certainly evidence of learning. Unfortunately, high staff turnover is believed to damage the overall accumulation of market knowledge within DG Competition.

*"We observe that they are willing to learn, to have the information. So, they are very open."*

*"DG COMP comes closest to understanding the markets, for instance with the food task force. I have been impressed by their willingness to learn and understand the market, before passing judgement."*

## DG Competition Stakeholder Survey - Business and Consumer Associations Report

*"They are very knowledgeable. It is difficult for them. They are not involved in the day to day processes within an industry sector. They are willing to seek advice and they speak more and more to people in the various industries day to day."*

Participants offered suggestions for improving relationships and market knowledge:

- Immerse staff in relevant companies
- Hire staff who have worked in, and therefore have experience of the sector
- Keep abreast of developments in specific markets such as digitalisation through for example site visits, attending industry conferences
- Initiate meetings with people at the coal-face of the sector, as well as experts within the sector throughout Europe
- Maintain regular contact with other Directors-General staff

### 2.5 Quality of economic analysis

**- Views are mixed regarding the quality of economic analysis, but several participants indicated that this has improved and could be further improved for certain markets -**

#### ✓ Rating: quality of economic analysis

Mean score = 4.4

DG Competition's economic analysis is very poor						DG Competition's economic analysis is very good
1	2	3	4	5	6	7
-	<b>1</b>	<b>2</b>	<b>4</b>	<b>5</b>	<b>1</b>	<b>1</b>

Several of the interviewees are unfamiliar with, or feel unqualified to assess the quality of economic analysis and this is visible in the quantitative ratings where only two-thirds (14) rated this question. The scores also show diverse opinions.

The results of the study show that it is believed that quality has improved substantially.

*"Criticism would have been more founded 15 years ago. DG Competition has made an effort to apply more economic analysis into policy making. The balance is better today."*

*"In general the economic analysis is quite good. In the cases and activities that we follow we have no issues. There seems to be sound analysis."*

However, several participants regret that some economic analyses are thought to focus on a single aspect of a market, but not the market as a whole. It was noted that at times, DG Competition *"did not pick the most relevant market aspects"*. It is also thought that it does not always differentiate sub-markets, but treats different segments alike. The participants questioned appear to be requesting a more holistic approach to obtaining analyses - with greater cognisance of context, better targeting, and individualisation within markets.

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*"Economic analysis is very good in the banking sector, which is not the case in some other sectors, where DG Competition doesn't perform enough analyses. Also, in cases of State aid, DG Competition is largely understaffed."*

*"(It) treated all players alike – airports, airlines and airport operators, and took no account of their individual rationales."*

Other criticisms and suggestions:

- The analyses are thought to be biased and participants feel the need for them to be more neutral

*"Economic understanding can be improved. The introduction of the Chief Economist has been a good thing but they should be independent, so that the work is less biased. The Chief Economist should be neutral."*

- Participants believe the emphasis should be more practical, with less reliance on models

*"I have disagreements with some of the economic arguments. They have a tendency to look at models rather than realities. A lot of their economic analysis is based on models, and then assumptions are made. The Commission tries to set levels for fees, some tests which we do not think are correct. Not enough data has been gathered to come up with better tests."*

### 3. TRANSPARENCY AND PROCEDURAL FAIRNESS

#### 3.1 Overall level of transparency of DG Competition's work

**- There are mixed views as to how transparent DG Competition is, or could be, given that some information is thought to need to be treated with discretion and managed within time constraints -**

An analysis of participants' interview transcripts indicates that transparency seems to vary with different stages of a case, and appears to be circumscribed by conditions of confidentiality, the ability or willingness on the part of DG Competition to provide feedback, and time constraints. Participants hold mixed views about how DG Competition manages these factors:

- Balancing transparency and confidentiality is felt to be positively offset by regular communication with DG Competition.

*"Transparency and confidentiality are equally important, there has to be a trade-off between the two, so there cannot be full transparency."*

*"No [DG Competition doesn't always work transparently], but the reason is there is a lot of confidential information, which makes sense during an investigation. However DG COMP is open to see us and have a dialogue with us."*

*"They [DG Competition] were constantly communicating while making new rules."*

- Some feel there is a lack of transparency in how the information they provide is used.

*"Not as much as we would like. We have submitted several issues, as well as informal information and market studies to them. They welcomed this ... but then we had no feedback from them for two years. So that is not very transparent."*

*"The DG showed us its plans and did not hesitate to conduct a consultation. Afterwards we had fewer responses on the progress of the consultation and on the importance accorded to our proposals."*

*"We didn't know how the arguments we gave them were treated. You can't say it wasn't at all transparent, but there was a lack of explanations, clarifications and means to an understanding."*

*"We would like to see the rationale behind reasoning."*

- Requests for information and responses thereto are said to occur within a time frame and a few participants feel insufficient notice is given for adequate consultation.

*"In general, they try to be transparent. However, it is not always easy to get the correct information early enough. In the field of State aid, consultations come very late, which does not give us time to respond."*

*"In the definition of State aid, which is very complex, it wasn't helpful to only have a short time to respond. Not all associations had time to respond."*

### 3.2 Listening and informing in a timely manner

- It is believed that DG Competition staff willingly provides information, but that contact has tended to be more reactive than proactive -

✓ Rating: informing in a timely manner

Mean score = 4.4

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
<b>1</b>	<b>3</b>	-	<b>2</b>	<b>6</b>	<b>2</b>	<b>2</b>

As indicated by the dispersion of ratings shown above, the business and consumer associations questioned have mixed perceptions of DG Competition’s ability to inform them in a timely manner.

On the one hand, a majority share the view that the DG Competition staff is generally willing to consult.

However, several participants regret that they feel contact tends to be more reactive than proactive: while staff is said to readily listen to business associations or their members, it is thought that they are less likely to proactively provide information or keep them up to date on the progress of an issue or case. The timeliness is also questioned by a few participants.

*"I recently had a good experience with them. They do listen to our point of view."*

*"We mostly engage with policy... and we are satisfied in this area."*

*"If we ask for a meeting, they always respond, but they do not work proactively."*

*"I think DG COMP is open to explanations from us. They do listen but are they really listening to us or are they pretending, because they have to?"*

*"We were always in contact. Talks were never suspended, but we weren't necessarily always heard."*

*"Sometimes there is no information in a timely manner. They just tell us they are working on it. It would be nice if they gave us more information."*

*"We never knew when the text would come out. It was going to be October, then December, then February."*

*"It is very difficult. We do not get informed, they only have a dialogue with companies and this is confidential."*

*"They used to have a group on competition and we would get informed and this group was discontinued without letting us know anything."*

### 3.3 Publication of non-confidential decisions

**- Several participants feel publication takes too long and more communication is required during the process -**

Many participants could not respond to this question. Among those who could, most feel that the publication of non-confidential decisions takes too long. Several participants also expressed a wish to be kept up to date along the process.

*"They [DG Competition] take their time, our members are not happy with the time frame, a shorter time frame would be appreciated."*

*"I hear from our members that some decisions don't get published rapidly enough and that they [the members] do not receive any information."*

Some feel that, because they do not know when a decision has been made by the Commission, they cannot properly assess the time between the actual decision and its publication.

A couple of participants offered specific comments on the process of redaction and publication of non-confidential decisions. One mentioned that it takes time to write the non-confidential parts of a decision and it is thought that this is not entirely under the Commission's control. Another commented that they feel English versions are published rapidly, but publication in other languages often takes longer.

### 3.4 Stakeholder consultation on new rules

**- Most participants consider they are consulted, although not all views are necessarily incorporated into new rules -**

✓ **Rating: stakeholder consultation on new rules**

Mean score = 5.1

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
<b>1</b>	<b>2</b>	<b>-</b>	<b>1</b>	<b>4</b>	<b>8</b>	<b>2</b>

Regarding the involvement of the business and consumer associations questioned in the creation of new rules, the rating scores are more oriented to the positive side of the scale than in any of the other quantitative measurements taken in this research. However, there is also wide dispersion of opinions.

On the one hand, most feel they are "definitely involved" in consultation and that it is "real".

*"In competition cases that led to a proposal for regulation, we talked with them and explained our position. We had meetings; they met the committee and spoke at our events. I can ring or e-mail them."*

*"There is constant communication; we are very involved in all the steps of preparation."*

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*"I'm quite satisfied. In the case of vertical restraints they participated in our meetings and discussions."*

However, as intimated in Section 3.3, some think it is more of a "legal obligation" and question the impact of their involvement. One participant specifically feels that DG Competition approaches members (i.e. companies) first, and that the business and consumer associations questioned are involved quite late in the process.

*"There are consultations because they need to be done. They are not looking for our input to these consultations, it's purely bureaucratic."*

*"We can be involved if we want. We are listened to, but also others are being listened to. Not all our points were taken on board, but we were recognised."*

Referring to the drafting of the State aid guidelines, one business association representative mentioned that a good dialogue with DG Competition during the process helped prepare them for the outcome.

*"We had good contacts with them. They gave us some indications that enabled us to anticipate some of the decisions or refusals regarding our proposals for the guidelines."*

### 3.5 Observance of procedural rules

#### - Participants are of the opinion that procedures are followed scrupulously -

Many could not answer this question. No business or consumer association questioned is aware of DG Competition transgressing any procedural rules.

*"They follow their own procedural rules scrupulously."*

*"I know they are very strict with themselves and of course they cannot tell us everything."*

*"Yes, absolutely, they deal with highly sensitive business secrets. Nothing can go wrong or they must pay damages."*

A few participants raised some issues about procedural observance:

- Where rules and guidelines are clear (as in mergers), procedures are followed well. In State aid it is thought that there are less clear rules for DG Competition to follow. In cartel cases, the oral hearings are not considered to be satisfactory because of DG Competition's perceived role as "judge, jury and prosecutor"
- Concern was expressed about a new rule that allows DG Competition to share confidential information with other regulators, and the participant added they had have had no consultation on this matter
- Short notice is thought to be given to the business and consumer associations questioned in terms of consultation (as previously mentioned in Section 3.3)

*"One month, it's not realistic to reply for a consultation! And it happens really often."*

### **3.6 Burden on businesses and organisations**

**- Collecting information from members is said to create a substantial burden on them, which is thought could be lessened if streamlined and optimised -**

A majority of participants regret that DG Competition is often perceived to place an "important burden" on the business and consumer associations questioned and their members for information. A few even mentioned that some of their members of staff have become ill due to stress caused by such burdens.

Several participants feel this information process could be streamlined if requests were made clearer and better targeted. One major source of burden highlighted by several of the business and consumer associations questioned is related to the perception that DG Competition asks for information to be supplied in a format that is different to the way it is collected or kept. This is thought to sometimes result in months of work, and some participants wonder how much of it is used.

*"On sector inquiries, that [request for information] is very burdensome for companies. The volume of information that is asked for is too great and then there is the format of information that they want and that is different to what companies have."*

*"They should think how to organise to improve that [request for information]: a good table, not too many questions and surely sufficient time to reply."*

*"DG Competition expects companies to provide a staggering number of written documents, some undreamed-of figures. Figures are all very well, but behind there's everything that this entails. But DG Competition doesn't understand that."*

Several participants specifically regret the burden said to be placed on them or their members for justifications in the case of complaints. Usually the requested information is considered "too precise and complex, which calls for recourse to external advisors and lawyers, all of which is expensive" – especially for small companies that have fewer in-house resources.

*"This is hard on the companies, because of the lengthy questionnaires. It takes one person 3-4 months of work. For small companies this is very hard, they suffer."*

*"Companies are afraid of potential costs and this burden takes up valuable resources."*

A few participants however consider requests for large amounts of information as "reasonable" in the context of DG Competition consulting on the guidelines or when gathering information to better understand a company or industry. In such cases, they are happy to cooperate.

*"There is a lot of work, but it must be done. DG COMP does not know everything. They need to use the business 'input' and businesses need to answer questions and provide information."*

One participant mentioned feeling that information requests for third-party mergers are also "irritating if these mergers were of little relevance or interest" to them.



## 4. ECONOMIC EFFECTIVENESS

### 4.1 Effectiveness of detection policy

**- Overall, the detection policy is considered effective, but more proactivity is thought to be called for, as DG Competition is perceived as mostly relying on allegations and complaints rather than actively detecting infringements -**

Several interviewees felt they could not comment on this question. Others dismissed it on the grounds that DG Competition is not thought to actively detect infringements (ex-officio), but merely to record complaints urging it to investigate (leniency). While the leniency application program is considered to work well at drawing out complaints, DG Competition is perceived as relying too much on it to launch an investigation.

*"DG Competition doesn't have to find anything. It acts on the basis of complaints and then it investigates. I imagine it does it well."*

*"DG Competition cannot choose cases, it reacts to complaints. Its staff often has a work overload, so they pick easy and fast cases. It is like cherry picking..."*

*"People of DG Competition find cases due to the leniency policy and it works very well. Otherwise, it would be much more difficult. They cannot detect all cases, but they handle as many cases as the staff can, with their limited resources."*

However, the overall effectiveness of DG Competition's detection policy is generally perceived as "quite good" – especially within the context of its heavy workload. The LIBOR case was raised as an example of an infringement that went undetected for a long time, until academic researchers discovered and reported anomalies.

*"I rate it [DG Competition's detection policy] quite highly: they have contacts with companies and they find the most relevant cases."*

*"I think they are good, they find the most relevant cases and the use of complaints procedure is effective."*

### 4.2 Deterrent effect of fines

**- Fines are felt to need to be both large and well enforced to act as a deterrent -**

Overall, most participants consider fines to be an effective deterrent, especially if they represent a large amount. A couple of participants stressed that fines need to be well enforced in order to be effective. Overall, most agree that large and well enforced fines appear to clearly ensure compliance with competition rules. A few participants mentioned feeling that DG Competition does not have many other tools at its disposal, dismissing more contentious reprisals such as criminal sanctions and prison for individuals.

*"It's always the size of the fine that matters."*

*"The fines are substantial and compliance is very high in my sector."*

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Conversely, a few participants remarked that some fines have been too high. And one participant mentioned feeling that the current system is not effective enough because of the possibility of appealing fines.

*"They could facilitate private damage actions including elements concerning harm for the victims. That would be more effective."*

### 4.3 Impact of existing EU antitrust rules on planned business transactions

**- Antitrust rules are felt to encourage some companies to change their plans and adopt a more cautious approach -**

Only a very few of the business and consumer associations questioned could answer this question, for they found it impossible to judge on behalf of their members.

A couple of participants mentioned having given legal advice around compliance with competition law, and that this had altered their members' plans on occasions – but they did not provide further details.

One participant suggested that European companies are more cautious when they feel they are being observed, as opposed to USA companies that *"show less respect to antitrust authorities"*.

*"Some actions lead to changes in the market such as a voluntary code of conduct with retail organisations. The companies make huge investments in compliance rules and they know what the rules are."*

*"If you're not sure, it could be an argument to stop even if you want to go through a clean merger, because there are possible obstacles."*

### 4.4 Timeliness of decisions

**- The majority of participants consider the decision-making process too lengthy, which is often thought to reduce the impact of decisions -**

✓ **Rating: timeliness of decisions**

Mean score = 4.0

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
-	<b>1</b>	<b>4</b>	<b>4</b>	<b>6</b>	-	-

The quantitative ratings, supported by participants' comments, show the decision-making process is considered too long in general. The Intel decision - which took 5-6 years - was often cited as an example. One business association mentioned having waited over four years for the verdict in a case it was involved in.

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*"The appeal on decisions is a problem, the courts take too long. In State aid, it takes too much time to decide; sometimes it takes over 10 years."*

*"We have been waiting for a decision since January 2014 - a new decision on patent settlement."*

*"The Commission tries to keep cases short and get quick decisions, e.g. by settlement policy. But it is not enough, they need to do more."*

Such a lengthy process is seen as consequently undermining the impact of a decision, especially in a highly dynamic industry such as IT.

*"In our case, it takes way too long because the online market develops very fast and it may have changed by the time a decision is taken."*

*"They are analysing State aid we provided 3 or 4 years ago! I don't see how that makes an impact on the current market. They must analyse fresher cases and trades."*

*"In complex cases, it takes time and this can have a negative impact, depending on which side you are on."*

However, some business associations do not mind the length of time for a decision and consider the process *"reasonable, not too fast and not too slow"*. Additionally, a few participants feel that a considered, appropriate decision is more important than the time it takes to make the decision.

*"It's not the speed that counts for business; it is knowing what fate has in store for them. Sometimes it's too fast if it's not appropriate to the reality. We have complaints that have dragged on for several years."*

*"In the 2007 decision against MasterCard, there was a result within one week but that did not deliver benefits on the ground to retailers."*

Suggestions to hasten the process – mentioned by individual participants - include:

- Divide cases into smaller units and handle them in parallel
- Apply stricter time frames for inquiry questionnaires
- Simplify the rules for State aid procedures
- Leave enforcement up to national courts

Several participants mentioned they would appreciate receiving a first draft of the decision.

## **4.5 Focus on the right sectors**

**- Most participants believe the focus is right; those who disagree tend to come from industries that are the recipients of more attention -**

Most participants believe DG Competition focuses on the right sectors – some views being based on lack of evidence to the contrary.

*"They are looking at digital, energy, environment, climate etc. They focus on the important sectors and also the new ones where there could be an economic impact."*

*"Overall yes, they mainly react to leniency applications or complaints. They are not proactive because they lack time and resources. They are most active in sector inquiries."*

*"There is no evidence that they focus on the wrong sectors!"*

However, several participants are not as positive. A few of the business and consumer associations questioned regret that some targets appear to be decided not for market reasons, but rather for political ones – namely when competitors (including other countries) introduce a complaint, often with disruptive intentions. Additionally, one participant said that a few successful cases in a particular sector sometimes encourages unnecessary focus on other businesses in that sector, taking the pharmaceutical sector as an example.

Opinions are diverse regarding what sectors have or have not been the focus, or should or should not be the focus. Unsurprisingly, disagreement with DG Competition's focus tends to come from those whose industries are the recipients of unfavourable attention.

*"They should focus on pharmaceuticals because we think it is an important sector. They did an inquiry but companies continue with anti-competition practices."*

*"Not sure, they focus on pharma, now this has become a bad focus."*

*"I'd like to see more focus on electronic services and e-commerce..."*

*"Of course, each industry sector will say it is focusing on the right sector. I feel they are overactive in the air transport sector and less in automotive and rail transport."*

*"When you see the attention DG Competition pays to airports while at the same time what the public authorities give the railways, it is out of all proportion... The idea of the guidelines is to ensure better management of public money. So there's an imbalance there."*

*"For IT markets they should have a close look at monopolistic structures – present and upcoming ..."*

## 4.6 Adaptability to technological changes and globalisation

### - Most participants feel that DG Competition’s adaptation to technological changes and globalisation has been slow -

DG Competition is regarded by most participants as having not really adapted well to rapid technological changes or to globalisation. Some reasoned that enforcement would normally lag changes in the market; furthermore, they consider DG Competition as being often hampered by lack of resources.

*"No, enforcement is always behind market changes. Such as changes in the payment market, such as internet payments and the use of credit cards online, this changes too rapidly for DG COMP to follow."*

*"There’s a lot going on in the Internet area. And it’s not totally clear what their position is. They’re reactive, they’re not proactive."*

*"Overall this is OK, though sometimes they forget global dimensions and focus on the EU level, whereas companies operate worldwide."*

DG Competition is also often perceived as adapting poorly to the challenges of globalisation. The argument is that it is believe that it does not take sufficient account of the different competition rules existing outside the EU. For example in the USA, it is said that there is less control of the amount of State aid to companies. These companies have competitors in Europe. Hence it is thought there is an imbalance that is unfavourable to players in the EU.

*"We’ve got airports in competition with others located in countries outside Europe, which operate with rules that are very different from ours... DG Competition doesn’t take that into account."*

*"In certain countries, there is no control at all. They must observe the external markets and be more flexible."*

*"They should have flexibility in the State aid area because competitors are in a better situation on ROI."*

## 4.7 Impact on the markets

### - The majority of participants consider DG Competition as having a strong impact on the market by promoting competition and compliance, but some think there are too many constraints -

#### ✓ Rating: impact on the markets

Mean score = 4.8

Not at all effective in making markets function better						Very effective in making markets function better
1	2	3	4	5	6	7
-	<b>1</b>	<b>1</b>	<b>4</b>	<b>8</b>	<b>3</b>	<b>1</b>

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Most participants think that DG Competition's impact on the European market has been significant, but there are mixed views on its effectiveness. On the positive side, it is believed that it has fostered competition and promoted compliance among companies. It is thought that its mere presence is a deterrent to anti-competitive behaviour.

*"There is a great impact, because it leads companies to modify their behaviour. They need to make sure to check the different industry sectors but they are busy doing this."*

*"Without them, with the whole economic crisis we would have seen an increase in protectionism by the Member States, so they keep the competition going."*

*"They play a good active role. This fosters competition through the world."*

*"It is a positive impact on the markets but they are not targeting all the issues, they have to prioritise."*

On a less positive note, some participants consider that DG Competition's impact has been to impede progress and create "bottlenecks" as decisions are awaited. Furthermore, in its quest to promote competition, it is thought that it has put too many constraints on enterprises, and even on Member States that want to protect their national industries.

DG Competition is perceived by a few as being too centralised and not influential enough in some Member States. There is also a perceived element of impotence where it is thought that guidelines have not been enforced - as in the airline industry.

*"We need competition policy, rather there is dysfunction!"*

*"There's certainly a degree of effectiveness. The will is there to have effective rules and they do have some impact. But must we have the same rules everywhere? ... For instance, DG Competition admits that there are regions on the periphery where the guidelines don't apply."*

### **4.8 Use of settlements in cartel cases and commitment decisions in antitrust cases**

**- Though not very well-known, alternative enforcement tools are considered to provide an effective and quick resolution, but some question the transparency of such procedures -**

Most of the business and consumer associations questioned who were asked about alternative enforcement tools preferred not to comment on behalf of their members.

Among the few who did answer, they did not differentiate between settlements and commitments. Taken together, these alternative enforcement tools are considered an effective, practical compromise. They are mostly considered an easy way to conserve resources and shorten the process, and they are believed to provide a quick resolution to a case.

The downside is they are felt to run the risk of being unbalanced if weighted towards a company's proposal only - as evidently occurred in a deal that had become public. For those not involved, they can seem opaque. It is unclear how enduring the commitments are if they become less relevant or if the market changes.

## DG Competition Stakeholder Survey - Business and Consumer Associations Report

Despite the perceived benefits, there is not a wide support for these tools.

*"A more effective way to change the market situation is the use of fines."*

*"We hear our member companies are glad these tools exist but for instance, [in a specific case], there was an Article 9 decision to offer major remedies so as not to get an infringement decision. It was almost like 'blackmail' to reach the settlement."*

### 4.9 Enforcement of decisions

#### **- The overriding perception among participants is that decisions are being enforced in all areas, except for State aid -**

There is strong agreement among a majority of participants that the Commission's decisions are enforced in all areas, except for State aid. It is felt that a culture of enforcement has had the intended effect on the market, namely compliance in payment of fines. It is also believed that it has likely curtailed some illegal practices. One participant voiced that wariness of enforcement or investigation has shaped their business plans.

*"Quite simply, we would never contemplate a deal that has to be approved by the Commission."*

In the case of State aid however, the ability to enforce decisions is thought to be less successful. It is felt that they take too long, they come too late and that there is also not enough communication about them.

*"On the EU level, decisions need to trickle down to the Member States and this is not always successful."*

### 4.10 Contribution to the EU's economic growth

#### **- Enforcement of competition policy is considered to positively impact on competition and economic growth within the EU, but is also thought to negatively impact the competitiveness of EU countries on a global scale -**

Mean score = 3.3

Unlike the other quantitative questions presented in this report, the following rating does not represent an evaluation of DG Competition's work by its stakeholders. It indicates the participants' perception regarding the contribution of the enforcement of competition policy by the Commission to the EU's economic growth.

*C10. To what extent, in your view, does the enforcement of competition policy by the Commission contribute to the EU's economic growth?*

		<b>Nb of participants</b>
<b>Contributes to a great extent</b>	5	<b>1</b>
	4	<b>2</b>
	3	<b>3</b>
	2	<b>2</b>
<b>Does not contribute at all</b>	1	<b>-</b>

## **DG Competition Stakeholder Survey - Business and Consumer Associations Report**

Eight of the business and consumer associations questioned provided answers to this question – asked on a 5-point scale.

The general view is that enforcement of competition policy leads to economic growth, by encouraging innovation and product development, which in the end benefits consumers.

*"It does help; many cases they take on are the right cases."*

*"If there is no competition, the economy will suffer, it will reduce the scope of innovation and finally, it will have an impact on consumers."*

However, several feel that enforcement of competition policy has made the system more complicated compared to a more pragmatic and liberal approach of competitors outside of the EU, "who then prevail".

*"There's no flexibility, there are too many constraints. They have the merit of creating the rules and we do need them, but they're too lacking in flexibility."*

*"DG COMP should cooperate more with the other DGs such as DG Enterprise and Industry. Because now, their pursuits don't always converge with that of other DGs."*

*"Companies and DG Competition do not always have the same goals."*



## 5. COMMUNICATION AND PROMOTION OF COMPETITION CULTURE

### 5.1 *Clarity and comprehensibility of external communications*

- **It is felt that clarity and comprehension would be enhanced by less technical, less general and more targeted communications -**

Responses to the clarity of communications were broadly clustered into four areas: comprehensibility, the website, volume of communications, and outreach.

Whereas some participants are satisfied with the clarity and comprehensibility of DG Competition's communications, others complained that these are too complicated and technical for laypersons. Some feel communications are too general, not targeted and not specific enough and a couple of participants would like communications in other languages, not only English. One participant mentioned that, just like other EU institutions, DG Competition often answers questions by quoting directives, which he/she\* knew already. He/she wants clear and specific answers to questions.

*"They hide too much behind legal language and they do not explain why State aid for a particular company is not good..."*

*"Put communication in laymen's terms."*

*"They have gotten a lot better with Q&A and memos and they are addressing questions from the ground."*

The website is generally the main means used by business associations to receive information and this is generally considered to be a good vehicle. There were comments though that sometimes the language is too technical and the website is only in English. Small operators are not able to understand complex information in a foreign language.

*"The main tool is the Internet, with their website. But more often than not, it's in English. That's not appropriate for small companies."*

*"The website could be more user-friendly and more comprehensive. FAQ does not always answer my questions."*

For some business and consumer associations, it is said that the volume of communications, as well as recent changes occurring in the markets, have made it difficult to keep up to date.

*"No doubt it's our fault. There's so much communication that it's hard to keep up with everything that comes from the EU."*

*"They inform a lot. Sometimes there is too much information or sometimes the steps change in information. A 'Track Changes' tool would be handy. I sometimes feel there is an information overload."*

Some feel that more extensive outreach and a broader focus are required. One participant considers that DG Competition does not project a clear enough image of its relevance and power as a regulatory authority to gain public acknowledgement and respect.

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\* In order to protect anonymity, the use of 'he/she' is preferred when referring to participants

## DG Competition Stakeholder Survey - Business and Consumer Associations Report

Some of the business and consumer associations questioned recommended more communication on a national and international level, and some requested more frequent face to face contact.

*"They do a pretty good job but they must try to communicate with the full sector to explain the impact of the new changes."*

*"They should cooperate more with other DGs to develop a better understanding – like with DG Move for transport, with DG SANCO for healthcare, etc."*

*"The best way for us is to have real interaction like conferences, and meetings where DG COMP comes and answers our questions. So, it's a very well-targeted communication."*

*"An ambitious program would be to go outside the Brussels world, visit universities, for example and show a human and not only an administration authority face."*

### 5.2 Choice of communication and media channels

**- It is believed that DG Competition makes appropriate use of a variety of communication channels, including its website, the mass media, personal and face to face contacts -**

In addition to the previous section about clarity of communication, the current section focuses on the communication channels used by DG Competition.

The communication channels deployed are thought to be both appropriate and varied. Participants referred to the use of mass media such as the press, as well as more personal contacts. These include the help desk, emails, phone calls or even face to face contacts through conferences, seminars, and meetings.

*"Communication channels are OK. There's the website, policy letters, press conferences, videos, but changes should be put online faster."*

*"I feel well informed with weekly newsflashes, consultations and press releases."*

*"There are enough face to face opportunities and presentations to us by DG COMP."*

However, not everyone thinks the channels currently used are sufficient, or perhaps were unaware of what is available. One participant requested more communication from credible local representatives of Member States, such as national competition authorities. Another criticised DG Competition's approach as being "too top down" and hope for more "direct exchanges" with stakeholders.

*"It's more information from them than communication. It really doesn't go in both directions."*

*"They should use workshops to explain how they function, why they do something and explain articles. Also, they should invite people and have face to face meetings."*

*"This survey is a really good step. It's one of the surprises that come out of DG Competition."*

## DG Competition Stakeholder Survey - Business and Consumer Associations Report

The website is possibly the tool most relied upon for information. Most participants are enthusiastic about it, but a few feel it was not user-friendly enough.

*"The website is OK, I read the speeches online."*

*"I only use the website: I can find relevant information there."*

*"The website is functional, it is an effective tool. In addition to that, there are seminars and meetings, as well as conferences."*

*"The website has a clear structure, but looks more like a blog."*

*"Neither good or bad, mainly press releases and info on the website."*

*"The website of the DG COMP is not that well-made. Finding information is not always that obvious."*

The majority of participants consider using social media unnecessary; however, a few feel it could be useful.

*"I have not looked at social media, it sounds controversial. Maybe Twitter could be used to draw attention to current things going on."*

*"Maybe they could use YouTube, talking about things in a video instead of reading about it and put things in laymen's terms."*

### 5.3 Promotion of competition culture and policy convergence at the international level

**- Most participants have little awareness of DG Competition promoting a competition culture internationally but would strongly support it -**

✓ **Rating: promotion of competition culture**

Mean score = 4.1

DG Competition's activities promoting competition culture are very poor quality						DG Competition's activities promoting competition culture are very good quality
1	2	3	4	5	6	7
<b>1</b>	-	<b>4</b>	<b>2</b>	<b>6</b>	<b>1</b>	-

Most participants do not understand what a competition culture means, and are not aware of DG Competition's efforts to promote it.

*"I know nothing about this, there is no communication about this or I am not aware of it. There is no central communication, no dissemination of information."*

*"This can be improved, only few people know about this."*

*"No, I have no info about this; they should communicate more about this."*

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The sentiment however is that cooperation with international bodies and attempts to level the playing field could benefit individual EU companies and better enable them to compete globally.

*"They are political matters but I understand the effort."*

*"There could be more transparency when negotiating international trade agreements."*

*"Yes, it is much more than just DG COMP. If we negotiate with third countries, it is difficult to compete because of strict EU rules."*

*"It's a good thing to work on a convergence and it helps if different countries work with DG COMP."*

The quantitative ratings show mixed views about DG Competition's perceived performance in promoting a competition culture. Comments in the interviews reveal some do not see DG Competition as an administration promoting a competition culture and that they even question the appropriateness of this.

*"Competition culture is badly suited for promotion. That would be like promoting the law. It's just here and it must be followed. So it's about providing information, not promoting."*

Notwithstanding the above, some feel DG Competition's performance has improved in this area and had had a positive impact.

*"It would be a shame had they not improved; they are using new tools to help with this."*

*"It has a positive impact because the DG COMP handles new rules on collaboration policies pretty well."*

*"On a European level I would rate them a 4, on the international level only 2."*

Some participants are a little disappointed that DG Competition does not appear to have greater presence in the mainstream media. It is thought that this is the best place to communicate and promote the culture of competition.

*"The current Commissioner draws less attention to his authority than his predecessor did."*

*"The communication is already quite bad towards the third countries, and certainly in promoting the results to the citizens. The Commissioner, who is the communicator of the DG, should be more present in the media of the Union members. We should see them on television in the news."*

## **ANNEX – Discussion guide**

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

L = lawyers

C = companies

EC = economic consultancies

BA = business associations

CA = consumer associations

NCA = national competition authorities

MSM = Member State ministries

### **Introduction**

The purpose of this first section is to understand the respondent, the organisation they work for and their role within it, and to begin to build a rapport. We also ask about their relationship with and views on DG COMP.

#### Moderator

- TNS
- Independent
- Impartial

#### Process

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

DG COMP is the part of the European Commission responsible for ensuring competitive markets, for businesses and consumers alike.

DG COMP has several key activity areas of competition policy and competition policy enforcement: antitrust/cartels, merger control and State aid control. You should have dealt with DG COMP in at least one of these four key areas. We would like to ask you about your experiences and opinions about working with DG COMP (and, where appropriate, obtain constructive feedback on how DG COMP can further improve).

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

- 1) The soundness of its legal and economic analysis
- 2) Its transparency and procedural fairness
- 3) Its economic effectiveness
- 4) Its communication and international advocacy

### **Respondent Background Information**

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

- Position
- Responsibilities

*Ask the following information from Lawyers and Companies*

*Please note that lawyers should answer the following background questions based on both their own opinions and that of the companies they have represented in cases concerning DG COMP. Lawyers should also give information on the types of cases they have handled.*

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

*Ask the following information to all groups*

- When first and most recently had contact with DG COMP
- Amount/frequency of contact they have had with DG COMP
- In which of the four main area(s) of competition policy (antitrust, cartel enforcement, merger policy or state aid control) do you have experience in particular?
- In which of the four main area(s) of competition policy (antitrust, cartel enforcement, merger policy or state aid control) did you have interaction with DG COMP in the recent years?
- What was your position in the procedure (addressee of a decision, beneficiary of aid, complainant, interested third party, more than one)?
- Size of company / organisation (*this question is applicable to all groups with the exception of Member States ministries*).

### **A. SOUNDNESS OF LEGAL AND ECONOMIC ANALYSIS**

*I want to start by thinking about DG COMP's legal and economic analysis when it proposes decisions on cases. We will now discuss the soundness of DG COMP's legal and economic analysis on which it bases these decisions.*

#### **A1. How clear and understandable are the Commission's decisions?**

(L, C)

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

#### **A2. Do you consider the Commission's decisions predictable, based on the existing legislation/rules? To what extent can one foresee the outcome of the Commission's decisions?**

(L, C, EC, NCA, MSM)

- Why did you give this answer?
- What experiences in particular do you base this opinion on? (thinking about both final decisions and other decisions relating to cases)
- Did the results correspond with your expectations?

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- Is there consistency in the Commission's decisions?
- How could the Commission improve the predictability of its decisions?

### A3. Do you consider the amount of fines imposed by the Commission predictable?

(L, C)

- Why do you give this answer?
- What experiences in particular do you base this opinion on?

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

(L, C, NCA, MSM)

SHOW CARD 1

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

- Why did you give this score?
- What other comments do you have about the legal soundness of DG COMP's analysis?
- Overall, regarding the legal soundness of its decisions, has DG COMP's performance improved, worsened or stayed the same during the last five years?
- Check for eventual discrepancy between the points given and the content of the answers to previous questions.

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

### A5. Following its investigation, to what extent do you think DG COMP understands the markets in which Commission decisions are taken – how knowledgeable are DG COMP staff about sector dynamics and business models? (READ OUT IF REQUIRED: Their understanding of the markets can be shown in the legal and economic analysis included in the Commission decisions)

(C, EC)

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

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How would you rate **DG COMP's market knowledge** on the scale shown here?

*SHOW CARD 2*

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

- Why did you give this score?
- What other comments do you have about DG COMP's market knowledge?
- Overall, regarding their knowledge and understanding of the market, has DG COMP's performance improved, worsened or stayed the same during the last five years?
- Check for eventual discrepancy between the points given and the content of the answers to previous questions.

### **A6. What is your impression of the quality of the economic analysis on which the Commission decisions are based?**

(C, EC, BA, NCA, MSM)

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

How would you rate the quality of **DG COMP's economic analysis**?

*SHOW CARD 3*

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

- Why did you give this score?
- What other comments do you have about DG COMP's economic analysis?
- Overall, regarding the quality of their market analysis, has DG COMP's performance improved, worsened or stayed the same during the last five years?
- Check for eventual discrepancy between the points given and the content of the answers to previous questions.



**B. TRANSPARENCY AND PROCEDURAL FAIRNESS**

*The following section discusses the transparency and procedural fairness of DG COMP's activities. In particular, the focus is on how DG COMP deals with and consults with stakeholders and the rules that DG COMP follows as part of these processes.*

**B1. Do you think that DG COMP works transparently?**

(All)

- Why did you give this answer?
- What does “transparency” refer to, in your opinion? If not mentioned spontaneously, probe:
  - ✓ Keeping you informed in a timely manner
  - ✓ Giving you access to the elements of your case
  - ✓ ‘Best practices’ adopted in 2011 including ‘State of play’ meetings in AT cases
- What experiences do you base this opinion on? Can you give examples of when DG COMP has / has not worked transparently?
- Do you have any suggestions about how DG COMP could further improve in this field?
- How does DG COMP compare with other competition authorities?

**B2. Do you consider that the non-confidential versions of decisions are published swiftly enough?**

(All)

- Why did you give this answer?
- What experiences do you base this opinion on? Can you give examples of when DG COMP has / has not provided you with a non-confidential version in a timely manner?
- **Do you have any suggestions about how DG COMP could further improve in this field?**

**B3. To what extent do you think DG COMP listens to stakeholders and informs them in a timely manner about the procedural steps of its enforcement activities and/or the reasons behind its intermediate decisions, etc.?**

(All)

- Why did you give this answer?
- What experiences do you base this opinion on? Can you give examples of when DG COMP has / has not kept you informed in a timely manner?
- Do you have any suggestions about how DG COMP could further improve in this field?
- Probe for DG COMP’s “Best practices” including State of play meetings

How would you rate DG COMP’s performance on the scale shown here?

(L, C)

*SHOW CARD 4*

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

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- Why did you give this score?
- Has DG COMP's performance on this element improved, worsened or stayed the same during the last five years?
- Check for eventual discrepancy between the points given and the content of the answers to previous questions.
- PROBE FOR:
  - ✓ In cartels/antitrust
  - ✓ In Mergers
  - ✓ In State Aid

**B4. To what extent do you consider DG COMP has involved you in their stakeholder consultations on the creation of new rules?**

(All, especially BA, CA)

- Why did you give this answer?
  - What experiences do you base this opinion on?
  - In what ways have they involved you / not involved you?
- ASK IF was NOT involved in the creation of new rules:*
- Have you received information about these new rules? Why not?

How would you rate DG COMP's performance on the scale shown here?

*SHOW CARD 5*

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

- ✓ Why did you give this score?
- ✓ Has DG COMP's performance improved on this element, worsened or stayed the same during the last five years?
- ✓ Check for eventual discrepancy between the points given and the content of the answers to previous questions.

**B5. Based on your experience, do you consider DG COMP duly observes its own procedural rules?**

(All)

- Why did you give this answer?
- What experiences do you base this opinion on?
- PROBE FOR:
  - ✓ Handling and protection of sensitive / confidential information, for instance in the "access to file" procedure
  - ✓ Parties given due hearing during the process, including oral hearings

## **DG Competition Stakeholder Survey - Business and Consumer Associations Report**

**B6. Do you think DG COMP's investigation work and/or consultations have been carried out so as to place the minimum necessary burden on the businesses (also Member State ministries, national competition authorities) involved?**

(C, NCA, MSM)

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

**C. ECONOMIC EFFECTIVENESS**

*This next section looks at the impact DG COMP's work has had. It looks at the decisions DG COMP has proposed to the Commission as final decisions and discusses the DG's level of success in imposing these decisions.*

**C1. What do you think of the effectiveness of DG COMP's detection policy, i.e. finding infringements?**

(L, C)

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

**C2. Do you think that DG COMP's policy of using fines is an effective deterrent?**

(All)

- Why did you give this answer?
- What experiences do you base this opinion on?
- Can you think of any other enforcement tools (other than fines) that may be more effective?

**C3. Sometimes ensuring compliance with EU antitrust rules leads companies to substantially modify or abandon a planned business transaction (a business contract, a cooperation agreement, etc.) without the Commission's intervention.**

**In the last five years, have you/your company (or your clients) been in such a situation?**

(L, C)

SHOW CARD 6

Never	Once or twice	3 to 5 times	5 to 10 times	More than 10 times
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- Can you tell me more about what happened?

**C4. Do you consider that the Commission's decisions are processed within a reasonable time span to have a strong impact on the markets?**

(All)

- Why did you give this answer?
- What experiences do you base this opinion on?
- And more specifically, are the Commission's decisions made in a reasonable time span to limit the negative impact of the procedure on companies' activities)?
- And what about the time past between the decisions and its economic impact on the relevant market?

## DG Competition Stakeholder Survey - Business and Consumer Associations Report

- PROBE FOR:
  - ✓ Distinguish between:
    - Cartels
    - Antitrust
    - Mergers
    - State Aid
- What suggestions do you have to improve the processes?

How would you rate DG COMP's performance on the scale shown here?

*SHOW CARD 7*

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

- Why did you give this score?
- Has DG COMP's performance on this element improved, worsened or stayed the same during the last five years?
- Check for eventual discrepancy between the points given and the content of the answers to previous questions.

### **C5. Do you think DG COMP focuses on the right sectors?**

(EC, BA, CA, NCA)

- Why did you give this answer?
- What experiences do you base this opinion on?
- **Is there any sector where you feel DG COMP puts too much focus on? Why?**
- **Is there any sector you feel DG COMP should focus on more? Why?**

### **C6. Do you think that DG COMP adapts well to the rapid changes of technology and globalisation in general?**

- Why did you give this answer?
- What experiences do you base this opinion on?
- How can they improve this?

### **C7. What impact do you think DG COMP's work has had on the markets? (READ OUT IF REQUIRED: Please consider all the work that DG COMP has done, including case work, policy and regulatory work).**

(All)

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

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- Besides decisions from the Commission, what are according to you the other factors which have an impact on the market?

How would you rate DG COMP's performance on the scale shown here?

SHOW CARD 8

Not at all effective in making markets function better						Very effective in making markets function better
1	2	3	4	5	6	7

- Why did you give this score?
- Has DG COMP's performance on this element improved, worsened or stayed the same during the last five years?
- Check for eventual discrepancy between the points given and the content of the answers to previous questions.

### C8. What is your view on the Commission using as enforcement tool settlements in cartel cases and commitment decisions in antitrust cases?

IF NEEDED, explain that:

*In cartel settlements the company gets a 10% reduction of the fine in exchange for acknowledging their involvement in the cartel. The decision is also shorter, containing fewer details which is favourable to the company in case of private damages claims. It contains less direct evidence that claimants of private damages can use against the company.*

*In Antitrust commitment decisions no wrongdoing by the company is established. The company offers (commits itself) to implement specific business practices that address the Commission's concerns. The Commission's decision makes the commitments binding on the company.*

*In both procedures a significant advantage for both sides (Commission and the companies) is that the procedure is a much shorter.*

- On what grounds did you give this answer?
- Do you have any suggestion about how DG COMP could improve these tools?

### C9. What is your view on the Commission's ability to sufficiently enforce its decision following its adoption?

(All)

- Why did you give this answer?
- What experiences do you base this opinion on?
- Based on these experiences, did the enforcement decisions have the expected effects on the markets?
- PROBE FOR THE FOLLOWING IN RELATION TO THE FIRST QUESTION:
  - Company / Member State compliance with decisions
  - In area of State Aid: effective and timely 'recovery' of state aid that has been paid out illegally by Member States
  - Economic effectiveness in increasing competition in the market

**DG Competition Stakeholder Survey - Business and Consumer Associations Report**

**C10. To what extent, in your view, does the enforcement of competition policy by the Commission contribute to the EU's economic growth?**

*SHOW CARD*

Does not contribute at all				Contributes to a great extent
1	2	3	4	5

➤ On what grounds did you give this answer?

**D. COMMUNICATION AND PROMOTION OF COMPETITION CULTURE**

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

*DG COMP uses press releases, newsletters, policy briefs, press conferences, its website, videos and conferences / workshops to communicate.*

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

(C, BA, CA)

- Why did you give this answer?
- What are your best / worst experiences regarding communication by DG COMP?
- What is the best way for DG COMP to communicate about its enforcement action and policy, generally, and with you / organisations like yours specifically? What recommendations do you have?

**D2. What do you think of the communication and media channels used by DG COMP?**

(C, EC, BA, CA)

- Why did you give this answer?
- Through which media channels are you aware of competition-related issues and news generally, and of communications from DG COMP specifically?
- Are these the best channels to reach the audiences DG COMP is aiming at (businesses, advisors, policymakers, media)?
- Do you think that DG COMP should use social media?

**D3. DG COMP's activities also aim at promoting a competition culture and policy convergence at the international level, for example through the International Competition Network, OECD, bilateral cooperation agreements with third countries or international conferences, etc..**

(All)

- Are you aware of such activities?
- What do you think of the impact of these activities?
- Why did you give this answer?
- Are its activities well targeted, sufficient and effective?
- What experiences do you base this opinion on?
- How can it improve these communications activities?

PROBE on the awareness of such international cooperation activities for example with:

- United States of America
- BRICS countries (Brazil, Russia, India, China, South-Africa)



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**D4. Thinking about DG COMP's activities aimed at promoting competition culture in general, how would you rate DG COMP's performance on the scale shown here?**

*SHOW CARD 9*

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

- Why did you give this score?
- Has DG COMP's performance on this element improved, worsened or stayed the same during the last five years?
- Check for eventual discrepancy between the points given and the content of the answers to previous questions.

### **CLOSING REMARKS**

- Are there any other issues relating to DG COMP that we have not discussed?
- Anything you would like to add?

### **OUTLINE NEXT STEPS: production of aggregate report Q4 2014**

Check preparedness for the name of their organisation being included in a list of contributors to the report

Thank respondent and close interview