



Eurobarometer Qualitative Study

DG COMPETITION STAKEHOLDER SURVEY

Companies 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**

Companies 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
(DG COMM "Strategy, Corporate Communication Actions and
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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.

DG Competition will use the findings of the study to achieve more targeted and dynamic communication and interaction with its professional stakeholders and the general public. It also hopes to detect areas of possible improvement in its cooperation and interrelations with stakeholders and furthermore prioritise its projects to achieve a greater impact on the markets. Finally the findings will serve to measure its performance in a number of fields related to the quality and impact of its work.

The study targeted DG Competition's professional stakeholders, in particular law firms, economic consultancies, business associations, consumer associations, companies, national competition authorities and EU Member State ministries. This specific report is based on interviews with companies. 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 having benefited from it. Twenty-seven (27) in-depth interviews (IDIs) lasting on average 75 minutes were thus carried out, conducted face to face wherever possible. The interviews took place in June and July 2014. This report was finalised in December 2014.

SOUNDNESS OF LEGAL AND ECONOMIC ANALYSIS

The majority of company participants considered Commission decisions to be well written, comprehensible and based on sound logic. Most considered decisions to be of a high standard and professionally written.

However, they can be lengthy and complex and require legal insight to understand how they have been made. Some also noted that the language is sometimes ambiguous. A few participants considered that some decisions are politically motivated, which does not necessarily detract from the logic of decisions. Decisions can also be EU-focused and not reflect the global nature of markets that many companies face.

A quarter of the participants found the Commission decisions to be predictable and clearly based on previous decisions. Even where a company may not have agreed with the decision, it recognised the clarity of the logic and the reasoning.

Other participants considered that some decisions are less predictable. This is not necessarily a consequence of poor reasoning, but more a reflection of external interventions. For example, the fact that market situations are unique and very specific means that applying rigid rules within a specific context can lead to unexpected outcomes. Moreover, some felt that political influences and motivations sometimes impact the soundness of legal arguments and thus the final decisions. Finally, a couple of participants mentioned that there is also less predictability in decisions relating to new and evolving markets, since new legal precedents are being set.

Most participants had little direct experience of fines and therefore declined to comment on the predictability of fines overall. Amongst those who were able to comment, a minority found fines broadly predictable; others felt there was an upward trend in the value of fines. Views on high fines were mixed: supporters believed high fines are more effective in their deterrence effect on larger companies, whereas others considered fines unnecessarily high.

There was considerable variance in how participants rated the legal soundness of the Commission's decisions. Around a third believed Commission decisions are based on clear legal certainty, including some who felt that the Commission's performance in this area has improved in the past few years. Others had had a negative personal experience that resulted in low ratings. State aid cases were described as unclear by a couple of participants, as was a merger case mentioned by one participant.

There was a mixed response about how well DG Competition understands the market and sectors it operates in. At best, around half of the participants saw case teams as competent, experienced and knowledgeable. Others were less positive: they felt that Commission decisions do not encompass all relevant market information and that case teams are not specialised in market sectors and seem unwilling to engage in open dialogue with companies.

Whilst DG Competition collected considerable data, a small number of companies struggled to see how the information is used in the final decision. This is particularly frustrating for them as they feel processes to collect such large amounts of data could be overly burdensome. Some participants considered the markets they operate in as too detailed, complex or technical for DG Competition to understand as well as they do. The global complexity of markets also needs to be understood, which means having a broader approach rather than an EU focus.

Views on the quality of the economic analysis provided by DG Competition were polarised, depending on how well participants believed the Commission understands how the different markets or sectors (especially their own) function. Around a third of participants felt that at times DG Competition lacks understanding of specific market dynamics and felt they would like to see DG Competition dialogue more with companies and sector experts.

TRANSPARENCY AND PROCEDURAL FAIRNESS

Perceptions were quite polarized regarding the transparency of DG Competition's work. Over a third of the participants believed that DG Competition works in a transparent way and ensures access to information and staff as required, despite the difficulties that arise in some cases when handling confidential information. The Best Practices documents were considered to be helpful tools in the procedure. Others were less satisfied and referred back to their own cases where DG Competition had not met information or communication requirements. As non-confidential decisions are often not vital for companies, the time taken to produce them is not relevant to companies and in this context the time frames are considered acceptable.

Whilst processes and procedures were followed, many felt that DG Competition does not listen adequately to company feedback. Participants called for real dialogue with DG Competition rather than passive information gathering.

Whilst the majority of participants were aware of invitations to consult on new rules, most only responded sporadically. This was due to the following factors: limited resources, lack of relevance to their company or their sector, or the impression they have limited impact on the outcome (reinforced by the lack of feedback).

The majority believed that DG Competition generally adheres to its own rules. However, some also mentioned situations where these rules were not properly followed (information leaks and delays). On the other hand, one participant mentioned a situation where DG Competition had shown more flexibility, by responding to special circumstances of a third party in a merger case.

The burden placed on companies by DG Competition's requests and activities were largely thought to be too heavy. Large questionnaires are a particular concern, made worse by the amount of detailed information required, tight timelines and their broad nature.

ECONOMIC EFFECTIVENESS

Most believed DG Competition is very effective in detecting infringements, particularly because of its leniency policy. However, some participants doubted whether DG Competition has the capacity to detect infringements independently of complaints and whistle-blowers.

DG Competition's use of fines was regarded by most as an effective deterrent, particularly since the fines are considerable.

However, many also agreed that criminal prosecution is more effective in some situations (where it is appropriate and/or where the anti-competitive activity is clear cut) and considered that alternatives (for example, breaking companies up, forcing them to sell assets or cancelling contracts) could be less damaging to business than very large fines.

Although not relevant to all, most believed antitrust rules have an impact on business transactions, often at an early stage, modifying or abandoning transactions that might raise issues with regards to antitrust rules.

Participants were quite divided regarding the timeliness of the Commission's decisions: whilst most thought it is acceptable, many thought that it could and should be improved.

Most believed that DG Competition is generally focusing on the right sectors, although many also thought that they focus too much on their own sector, with the related burden mentioned above.

Most participants had the general impression that DG Competition is responsive to changes in technology (both in terms of markets and their technological efficiencies) and globalisation (because it focuses only on Europe which is too narrow) but the response is not fast enough.

Around half the participants felt that DG Competition's activities contribute to the EU's economic growth by encouraging competition.

The majority supported DG Competition's use of settlements and commitments as enforcement tools. These tools were considered as good examples of the Commission's flexibility. They were endorsed due to their effect of reducing the constraints and risks that burden enterprises in traditional proceedings and sanctions. The majority also believed that the Commission has considerable authority and is able to enforce its decisions by imposing large fines and applying other enforcement tools.

Most participants believed the activities of DG Competition should in theory promote economic growth. In practice, about half felt the contribution is overall positive, but many doubted that it does actually promote economic growth or at least had strong reservations on the subject.

COMMUNICATION AND PROMOTION OF COMPETITION CULTURE

The majority of participants pointed out that DG Competition has two targets for its media and communications activities: professional stakeholders and the general public. Whilst most thought communication with stakeholders is clear and understandable, few were aware of external communications to the general public other than through the website (which most thought might not be as clear to the lay person).

The majority were less aware of the range of media channels used by DG Competition, although interestingly, many participants used news aggregators to keep up to date with information about DG Competition's activities and competition law in general. Many companies were not aware of DG Competition's international activities, however those that were aware were complimentary.

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.

DG Competition will use the findings of the study to achieve the following:

- 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), as well as 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 companies. Further reports cover the views of:

- Business associations
- Economic consultancies
- Lawyers
- 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+. 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 27 interviews with companies. The following companies participated in this study:

Companies	Location
• Trafigura	Switzerland
• ČEZ Group	Czech Republic
• E.ON SE	Germany
• Alpha Bank	Greece
• Outokumpu	Finland
• Bank of Ireland	Ireland
• Trustly Group AB	Sweden
• KRKA d.d.	Slovenia
• Lloyds Bank	UK
• Volac	UK
• Qualcomm	UK
• Liberty Global plc	UK
• Warner Music Group	UK
• Rolls Royce	UK
• IFP EN	France
• Sanofi	France
• Air France	France
• Hachette	France
• Ikea	Belgium
• Johnson & Johnson	Belgium
• McCain Foods Belgium	Belgium
• Microsoft	Belgium
• Impala	Belgium
• Ahold	Netherlands
• Schiphol	Netherlands
• KPN	Netherlands
• Philips	Netherlands

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 DG Competition’s enforcement work and 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 a qualitative research methodology. The interviews were structured around a consistent set of topics agreed with DG Competition, but within each topic area they were open and discursive in nature. So, while we have striven to indicate how widely held these perceptions and views were, such information should be treated with some caution. 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 way; some will have introduced caveats, expressed mixed views, referred to a topic only tangentially, focused on a specific aspect of an issue, etc. This can also make it difficult to state, definitively, how many people held a particular view.

Verbatim quotations from 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 companies.

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 the score mentioned immediately above (scale); in this case, one participant gave a score of '1', one gave a '2', three gave a '3', while five participants gave a score of '4', 5 gave a '5', 8 gave a '6' and two participants 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	
1	1	3	5	5	8	2	

1.3 Participant background and selection

Participants all played key roles in their companies with relation to competition issues, either at a senior executive level in the legal department or in market monitoring. They all had personal experience of direct contact with DG Competition and background in law, management or economics.

The majority of the companies included in the study had rather irregular contact with DG Competition (becoming more regular as required). However, some companies had very regular ongoing contact with DG Competition, either because of an ongoing investigation or due to their business activity (operating in sectors that have been under scrutiny e.g. energy). Frequency of contacts varied from occasionally (once or twice a year) to several times a week. Some had not recently been in touch with DG Competition. Others had been involved in one or several cases for several years.

In order to get the most balanced view possible, the initial list of potential respondents aimed to cover a broad range of companies dealing with DG Competition. This included companies who had been involved in cases as complainant or recipients of prohibition decisions or fines, as well as those who had been beneficiaries of the Commission's decisions (in many cases companies fell into multiple categories).

DG Competition's initial selection of companies was based on those involved in cases which closed between 2010 and 2013. It should be noted that qualifying companies were not excluded if they were also involved in current cases. The sectorial coverage of the invited companies was broadly in accordance with DG Competition's policy priorities of the last three years.

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 = 4.8

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

2.1 Clarity and comprehensibility of decisions

- Decisions were considered to be clearly written and comprehensible, although some questioned to what extent the companies’ point of view had been taken into consideration -

In the majority of cases, Commission decisions were considered clear and understandable. However, decisions are sometimes also very lengthy and ultimately complex to understand. As a result, some companies require legal advice to understand how decisions have been made. Also several participants regretted that the language is sometimes ambiguous in relation to decisions or that some contradictions can sometimes be found.

"Largely, yes. The logic is clear at a macro level. They are pretty rigorous these days. When you get into reading the detail of a 200-page merger decision, there will be some points which are not entirely clear, or even possibly contradictory. But those are points of detail, not criticisms of the big picture."

Beyond this, there were also some decisions where companies involved did not agree with the legal viewpoint taken by the Commission, or where the company believed that the motivation behind the decision was not clear. A few participants mentioned that some decisions appear to be politically motivated. Whilst this does not necessarily detract from the logic or sound reasoning behind decisions, it was a point of issue, especially for companies involved in the investigations in question.

"We thought the decision that was made wasn't supported by the material that we had provided to them... Perhaps they had come to a conclusion that was politically expedient."

There were also issues raised around the scope of investigations and analysis. A number of participants perceived the Commission’s decisions to be too EU-centric rather than taking a global view. One example was raised by a company where the Commission had based a decision on an analysis of the European market rather than then global market.

"DG COMP's decision was logical when considered within the context of only the European market, but in terms of the broader implications, it was limited in scope. In that sense, the decision was clear. I think they were limited by their legal remit. But in the context of the global market reality, their decision was unsatisfactory."

Three participants specifically questioned whether the Commission really listens to company viewpoints or takes them into consideration when making final decisions. Companies did not always feel they played a consultative role, even companies directly involved and impacted by investigations and final decisions.

Therefore whilst DG Competition was seen to openly seek feedback/dialogue with companies, it was not necessarily seen to act on the input provided.

"They say that they consider our point of view, but you hardly find a clue of that in the decision."

"They were dictating the questions to us - they were not so much looking for a dialogue. We were trying to be cooperative and helpful. We feel that we could have come to a better outcome if they had been more open. But they were a bit sceptical as well, about our motivation."

There were other examples where the Commission had not formally informed companies about important case developments:

- One participant complained that they had not been informed about intermediary steps in an investigation;
- Another noted the Commission had not consulted with the company on important proposed market changes, which would have been a relevant step in the process.

2.2 Predictability of decisions

- There were mixed views on how predictable Commission decisions are, depending on differing company experiences -

Overall, it appears that most participants have a somewhat selective view on Commission decisions, depending on which instrument of decision they have been exposed to, or which market or sector their company operates in.

Around a quarter of participants felt that Commission decisions are predictable, consistent and clearly based on previous decisions. Even in cases where a company did not agree with the decision, it recognised the logic and the clarity of the reasoning.

"I don't think we were surprised by the decision. I don't think we could have accurately predicted the outcome, but it was broadly what we were expecting it to be. I think we understood the reasoning the Commission used to come to the conclusion it did."

The remaining participants raised instances where decisions were less predictable and where unexpected variables had impacted on the outcome. This was not necessarily reflective of poor reasoning but about how the Commission applies legislation. The Commission was seen to work in accordance with clear and well defined rules, but how it applies those rules is seen as complex and sometimes difficult to understand. Further, participants perceived market situations to be quite specific and felt that applying rigid rules within this context could lead to unexpected outcomes.

"I mean, predictable for whom? We would have a lot of resources and expertise targeted at trying to understand the way regulators make decisions and influence them. So we see a degree of predictability, but nothing's completely predictable, because those decisions are informed by a wide variety of factors. But they're certainly not arbitrary."

Many of these participants saw the task as more difficult in cases where the Commission lacks market knowledge or an understanding of specific market variables. In such cases, the result can appear unpredictable and not reflect the market situation as the company perceives it. Political influences were also seen to impact on final decisions. Again, this leads to uncertainty in how cases will be resolved, as decisions move away from the rigid rules and legal precedents that might otherwise decide the outcome.

"The Commission shifted its stance over the whole case. You clearly got the impression that there was a political dimension. And there was criticism about the decision from the other country which, after pressure from the outside world, resulted in the decision being modified."

"We had a complaint dismissed. We can't say the arguments convinced us. That's why you come to suspect that there's a more political dimension."

There was also less predictability in relation to new and evolving markets. However, participants accepted and supported this. These markets are moving beyond legal precedent and it is appropriate that the Commission is setting new legal outcomes around these issues.

Outcomes were therefore expected to be less predictable. There were also some very individual comments from participants:

- One participant did not see standard methodologies being applied across all market sectors when it comes to State aid and felt that the banks were treated differently;

"I suppose we don't see a standard methodology that you could actually say – if you get this amount of State aid, this should be what results from it. We see different people getting different amounts of State aid calculated on a different basis and with different outcomes. It is hard to correlate between the amount of State aid and the ultimate decision."

- Interestingly, another participant felt it was cartel/antitrust/merger case decisions that are much less predictable, with State aid being more consistent;
- One participant saw Commission decisions as entirely unpredictable, based on the case their company was involved in, in which the merger decision had been totally unexpected.

Overall, it appears that most participants have a somewhat selective view on Commission decisions, depending on which instrument of decision they have been exposed to, or which market or sector their company operates in.

The following improvements were suggested:

- Some participants felt DG Competition needs to keep more up to date with recent developments in markets, to ensure that decisions reflect current situations;
- Associated with this, they recommended that DG Competition should organise regular forums with key market players in important sectors to ensure an understanding of market conditions;
- DG Competition needs to clarify when and why cases are being dealt with differently to previous cases. This should be communicated early on to the companies involved;
- One participant wanted an independent government body to decide on competition cases proposed by the Commission, to ensure that 'checks and balances' were applied (especially when decisions are unpredictable).

2.3 Predictability of fines imposed

- Most participants were unable to comment on fines, as they had not experienced fines beyond high profile media cases -

Most participants interviewed had little direct experience of fines and therefore declined to comment on the predictability of fines overall. For participants who had been exposed to fines issues, it was mostly through high profile cases, with a couple of participants having experienced fines directly. Other participants were aware of fines through experiences of other companies in their market sector. Overall, there was a mixed response to the predictability of fines imposed.

- A minority of the participants that commented felt that fines appear to be broadly predictable, certainly within a range of amounts;
- Others felt that unknown and subjective variables sometimes impact on the final amount, making it less predictable;
- One participant suggested specialist lawyers were required to really understand how fines were applied. Others noted that the final amount could depend on the type of company being investigated (e.g. large multinational) and is not consistent;
- One participant commented that the amount of fines is intentionally unpredictable, as the Commission does not want companies to calculate the financial risk in advance.

"They want to avoid companies calculating financial risks in advance. The amount of fines is based on the Commission's legal assessment, which differs from ours."

Several participants made comments regarding the amount of fines. While most regretted such high amounts, others found them justified. One participant specifically endorsed higher fines as necessary, in order to impact on larger companies. One company felt that fines were higher than expected, but well explained in the reports. Two participants noted an upward trend in fines in general, but neither endorsed nor rejected this concept.

There was considerable variance in how participants rated the legal soundness of Commission decisions. Some participants answered from the viewpoint of negative personal experiences and this resulted in low ratings. Others made more general observations and/or had had more positive experiences.

Around a third of participants believed Commission decisions are based on considerable legal certainty, including some who believed the Commission's performance in this area has improved in the past few years. One participant noted that even in less predictable cases where the outcome had not been expected, the Commission explained its legal position convincingly. Staff members were also considered to be of a high quality.

"The European Commission employs the most capable lawyers and economists. The legal brains are huge. I have genuine respect and a lot of appreciation for the standards."

Beyond this, participants were less sure of the adequacy of the legal arguments presented; and the majority raised issues and areas for improvement. In some cases, it was even thought that the Commission starts with a decision and works back from there (building a legal argument) rather than the other way round.

"I would give a '4'. Sometimes you feel that the decision is taken and then the rational and the legal basis are given. Not to say that it's not supported; in the end it is supported, but you wonder if the decision is actually totally based on the case and not on other external influences."

"There is clarity but the soundness is weaker. Because it starts from some political visions, the premise is then sometimes subjective. From there, they build their decision perfectly."

"The EU didn't want to be challenged. Maybe they could have pushed the boundaries further, asking more of the involved parties, but they wanted the decision to be accepted. To us, it felt like a pragmatic, commercial compromise."

Some participants specifically referred to cases that had an impact on their own business or the market sector that they operate in.

- State aid cases were raised by three participants and in each case the decision and amounts of aid provided were not well understood. At least one of these participants believed that the outcome had been politically motivated, which had overridden some of the legal analysis/arguments;
- One participant had been involved in a merger case where they felt that some of the legal analysis was conducted incorrectly. This resulted in a negative decision and caused considerable issues for the company;
- One participant questioned the application of legal regulations and was concerned about independence.

"Who oversees decisions made by the Commission?"

Two participants raised concerns about the rigidity of decision-making and noted that although strict legal guidelines and legislation are important to protect consumers, inflexibility in decision-making is harmful to companies and may not reflect the market reality and what is best for the market as a whole.

"If the Commission imposes additional regulations, this could result in too rigid a situation. Catch is to find the right balance between free market and protective regulation. Maybe this is new terrain for the Commission. And for sure on this point, they also need to deal with interests and lobbyists of big and powerful companies."

"On State aid, they want to make it more flexible now, because they've realised that they were too strict on notifications."

Issues were exacerbated by the complexity of decisions and evolving global nature of markets and economies. One participant noted that Europe has also experienced considerable economic 'crisis' and flexibility is required to accommodate this.

"We should recognize ...that they are operating in an unprecedented crisis and they have to self-design things so the realm of legal soundness becomes even more relative. You know, you have to be flexible at the same time."

Despite raising many issues, participants did not provide many recommendations for improvements. Where suggestions were made, these tended to focus on improving market understanding rather than legal soundness per se.

- Some participants suggested DG Competition needs to improve its overall understanding of markets. This would help it to align decisions with reality;
- As an example of this, DG Competition should consult market sector specialists more often and more openly. This would be particularly relevant for cases or market sectors where specialised market knowledge is required and/or lacking;
- One participant stated that there had been moves towards introducing revisions and simplifications to reduce the time taken to reach decisions; this was welcomed and thought to be important.

2.4 Understanding the markets

- Most believed DG Competition needs to improve processes around how it tries to understand markets and market sectors -

✓ Rating: market knowledge

Mean score = 4.5

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

There was a mixed response as to how well the Commission understands the markets in which decisions are made. Different perspectives were based on companies working in different market sectors and with different DG Competition case teams. DG Competition teams were seen by around half of the participants to be competent, experienced and knowledgeable about at least some of the markets they work in.

- DG Competition was often considered to offer high quality staff, with a willingness and ability to get up to speed very quickly on market sectors, as and where required;
- Some participants felt that staff listen to relevant local market sources and are able to interpret and analyse the information they are given. In particular, sectorial surveys are used to inform DG Competition and led to mastery in some important market sectors, according to at least some of the participants.

"I think they're incredibly knowledgeable. They got to grips with what is quite a difficult market to understand very quickly and with very bright people on the case team. This made the meetings with them easier: we were talking the same language."

However around half of the participants were less positive and raised a number of issues. Amongst these participants, DG Competition was seen to offer inadequate experience in the markets it investigates and to make decisions which do not encompass all the relevant available information. They questioned DG Competition's willingness to have open dialogues with local experts/companies and find out what they need to know.

Most of the more negative participants felt DG Competition case teams are not specialised or expert in the market sectors they investigate. As a result, teams are required to educate themselves. This process is seen to take too long and could be burdensome for the companies involved. Some participants believe that certain markets are incredibly technical and too complex/detailed for DG Competition staff to understand – particularly compared to the level that companies are at.

"Their problem is that they have people who are well versed in a particular market, but they are always at an information disadvantage because they control a group of people who have a level of knowledge that is way beyond theirs. It restricts their ability to have meaningful oversight."

Even those that were more positive agreed that markets have become more complex (and global) and increasingly specialised teams are required. Sometimes these teams have been set up and sometimes they have not. Staff turnover, at senior levels, leads to a loss of market knowledge which impacts expertise negatively. More junior DG Competition teams tend to ask for more information, regardless of what is actually required.

There was also criticism around how DG Competition deals with the market knowledge it gathers and receives. Some participants provided examples of where they felt market information had been wrongly interpreted by the Commission:

- Vital links between public and industrial bodies to fund research and innovation had been wrongly analysed by the Commission as a distortion of competition;
- A non-material goods market had unfairly been analysed only in terms of price, which put it at risk of being unnecessarily devalued;
- Decisions had been made by DG Competition which imposed a certain loan to deposit ratio on banks. This had an unexpected impact on the local market (creating low demand and a lack of customers).

DG Competition was also seen as lacking the knowledge of enterprise culture, according to some participants. Therefore, whilst its expertise is in knowing and understanding legislation, DG Competition is not always as competent in understanding the practical implications of its work or the challenges which companies face within a particular sector.

"Staff members at DG COMP are very competent people. But they are people who don't come from enterprise, who've never worked there. This is not a problem of competence; it's a problem of culture, of comprehension"

Finally, a number of participants believed that the Commission decisions are too focused on EU market analysis, which results in only a partial understanding of the economic reality that many businesses face. Many companies operate in global markets and an EU focus does not provide adequate scope on which to make fair assessments.

In terms of improvements, the following specific suggestions were made:

- DG Competition needs to focus on providing more fixed teams for specialised sectors. This is already happening in some sectors and one company noted it had worked with specialised teams in the banking sector;
- Other participants suggested that to improve its understanding of enterprise culture, DG Competition needs to recruit more people experienced in the business sector and/or utilise external experts with this experience;

- Retention of staff is also important particularly at senior levels. Participants suggested that working conditions, including wages need to be attractive to attract and retain good staff.

2.5 Quality of economic analysis

- Many participants would like to see DG Competition enter into more dialogues with companies and sector experts, to improve its economic analysis -

✓ Rating: quality of economic analysis

Mean score = 4.5

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

Views on the quality of the economic analyses provided by DG Competition were polarised and related to how well participants believed the Commission understood different market sectors - especially their own. Therefore, whilst just under half of the participants felt that the economic analyses were of a high quality, around a third disagreed. The remaining participants were not willing to score DG Competition on this or did not have enough knowledge to comment.

On the positive side, around a fifth of participants were very impressed with DG Competition.

These participants felt that staff and case teams are knowledgeable and provide extensive economic analysis with solid grounding. Sectorial surveys were mentioned and praised as a way to gather comprehensive information on a market. A small minority of participants noted that DG Competition has improved in the area of economic analysis.

"I think this is a facet they have invested in heavily in recent years. The appointment of a Chief Economist and the team of economists are very important and have become more important. And the authority of economists has also increased."

However, at least a third of participants were more negative and saw DG Competition as rigid in its analyses and lacking time to properly understand specific market dynamics. Whilst basic sector analyses are completed competently, market nuances are not always considered and DG Competition could struggle to apply general knowledge to specific sectors, specific cases and specific companies.

As noted in relation to market understanding, many participants felt that DG Competition is too EU-focused when providing economic analyses and does not respect the global economic reality that some companies face. Others perceived that political motivations occasionally tend to override economic conclusions. Again, as mentioned in reference to other questions, several participants believed that high levels of staff turnover among senior staff impacts expertise and deeper market understanding and economic analysis could be undermined. According to them, more constant teams would help expand and deepen market and economic understanding, especially if teams specialised in sectors.

In some cases, negative attitudes towards economic analyses were based on pre-existing negative views around economic theory. One participant believed DG Competition is not working with the most up-to-date economic modelling.

Finally, a certain contradiction seemed to appear between, on the one hand, participants who felt that DG Competition is reluctant to listen to companies operating in the sector under investigation and incorporate their feedback, and on the other hand, those who questioned the method of data collection, regretting it relies heavily on the actual companies being investigated in the case and thus questioning the independence of data and 'evidence' collection.

A few participants suggested conducting more market surveys to help predict and determine the consequences of decisions; they encouraged DG Competition to take into consideration all possible economic consequences when making decisions.

Finally, one participant wanted the Commission to generate feedback from companies on proposed decisions before they were published. This would mean sharing confidential information, which the participant understood would raise considerable procedural issues.

3. TRANSPARENCY AND PROCEDURAL FAIRNESS

3.1 Overall level of transparency of DG Competition's work

- Views on transparency were polarised - some praised the openness of DG Competition, others were dissatisfied and called for considerable improvement -

The level of transparency of DG Competition's work polarised perceptions. For most participants, transparency referred to parties having access to all materials used in decision-making and not just parts of the information. Other participants mentioned that evidence and decision-making should be handled openly and comprehensively.

Over a third of participants believed that DG Competition works transparently, despite the difficult circumstances in which it sometimes works and the confidential information it has to protect.

"I think we generally have an open relationship and we generally have a good idea of what's going on. And for a regulator, they're really quite transparent. Comparing them to national authorities, they're much better."

"We have never had a call from them to discuss anything or for them to hear our position. Of course, if you feel the need to challenge some point that strikes to the heart of the matter, you might get stonewalled albeit sympathetically. We would probably do the same in their position."

Participants that were positive about transparency believed they have access to most or all of the information they require. Many praised how approachable DG Competition staff members are. Even if information cannot be made available or accessible to the company for whatever reason, staff remain easy to contact and willing to communicate with companies.

A few participants emphasised the usefulness of the Best Practices guidelines. They are seen as an effective way to keep companies informed about processes and procedures and what to expect during investigations. One participant referred positively to an experience with State of Play meetings. Another felt that although the Commission's procedures are transparent and widely available, the decision-making that has gone into setting those procedures is not always so transparent.

However, around a third of participants were not satisfied with the level of transparency associated with DG Competition's work and referred back to their own cases where DG Competition had not met specific information or communication requirements. Many of these participants also noted what they viewed as a one-way relationship between themselves and DG Competition. Companies were required to provide large amounts of information without fully understanding what the information was being used for. DG Competition provided little, if any feedback on how the information was analysed or how it would be used in final decision-making.

Many of those participants who were more negative about transparency also reflected on how disinterested DG Competition appears to be in hearing their views and responding to their feedback. There are limited opportunities for an exchange of views, open feedback or real insight into reasoning around decision-making, prior to reports being published.

Overall, DG Competition was perceived as working using a process of 'absorption', rather than one of openness and interactivity. A couple of participants compared DG Competition unfavourably to interactions it had with US institutions.

"Lawyers working for the DOJ on the phone tend to come at things from a very US angle, but their style of gathering information is far more focused on a really interactive Q&A, where propositions are tested and tested and tested. Whereas I would characterize the EU interaction as hearing what you have to say, taking it away and deciding what they think about it."

Regarding State aid, two participants noted decisions and calculations lacked transparency.

"There was no transparency at all over State aid. We didn't know how that would go. In the case of transatlantic alliances, we were very interdependent so there, yes, we had a lot of contacts. But for the rest, they ask you questions, you have four days to reply, and you learn the results in the press or you find out that that decision has already been taken."

For a small minority of participants, transparency was also associated with the transparency of data collection and evaluation by the Commission. One participant held that the fact the Commission collates and evaluates its own data, in addition to the external information they receive and assess, raises an issue around the independence of the final decision. Again the comparison with US institutions was unfavourable.

"DG COMP does not handle the materials they are receiving (like documentation and expert opinions) independently, since at the same time they also produce their own material which supports their own views. Also there is not an independent party included like there usually is: in the court of law there is always a court which independently evaluates the opinions of the both participants and after that reaches its verdict."

"In the United States, they have an independent court which makes its decision on the grounds of opinions of the officials, as well as the other parties utilising the arguments, evidence and results which they present. This is the way it should be."

In terms of improvements, the following were suggested by single participants:

- Where information is requested from companies, there is a need for formal feedback on how information will be used;
- Increased openness and dialogue with companies during consultations so that the latter do not form the impression that they are simply being 'sent their copy' at the end of the process;
- DG Competition should aim to share information more actively at various phases of the process, especially at intermediary steps. For example, take a more proactive approach to informing the complainant;
- The pre-notification period during merger decisions does not have the same strict timelines as the rest of the process. This should be improved.

3.2 Listening and informing in a timely manner

- Whilst processes and procedures were followed, many did not perceive DG Competition as listening adequately to company feedback -

✓ **Rating: informing in a timely manner**

Mean score = 4.9

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
-	2	3	3	7	9	2

There was polarisation in how participants perceived DG Competition in relation to listening to companies and informing them in a timely manner. Around a quarter of participants appeared to be very positive and believed that DG Competition listens to stakeholders in most of the cases it conducts. One participant noted that DG Competition is particularly good at interacting with stakeholders in relation to merger cases where it will initiate discussions around enforced action and in cases of serious antitrust violations, where DG Competition will discuss regulations with stakeholders as required.

A minority of participants felt well informed about the timelines that DG Competition works to and State of Play meetings were mentioned by one participant. Although some decisions are protracted, the complexity of cases was seen to be a valid reason for this. As one participant noted, it's better to make the right decision than a hasty one.

"You don't want to speed things up to the point where the agency is getting things incorrect. It's impossible for the Commission to understand market dynamics if they don't have enough time. It's a fact of doing business in complex markets."

Despite being positive, the majority of participants raised issues and wanted to see DG Competition improve its level of interaction with companies and reconsider some of its timelines. In particular, participants called for real dialogue with DG Competition rather than passive information gathering.

Therefore, whilst many agreed that DG Competition gathers considerable information and feedback from companies, in many cases, companies are not informed about how the information will be used, nor are they provided with any direct feedback on their responses. Certainly when issues and concerns are raised by companies as part of the information gathering phase, DG Competition does not directly address these or provide a personalised response.

"Good in terms of process. It is clear what you can expect and when. But it tends to be one-way traffic when it comes to merger cases. There is no dialogue."

In addition, when decisions are published, it is difficult to see how/where feedback provided has been taken into consideration.

- One participant noted that after three rounds of public consultation regarding the guidelines for State aid in energy and the environment, stakeholders' opinions weren't taken into account, or at least the participant hadn't received any feedback or information about this – which is why he/she felt this to be the case.

A lack of transparency and feedback led to some cynicism amongst participants and a belief that DG Competition does not actively listen to stakeholders. One participant even went as far as to suggest that public consultations are just a formality, as decisions are already largely made.

In cases where a political agenda emerged, feedback and consultation with stakeholders tended to be even more limited.

There was also concern that DG Competition does not appear to understand the requirements it places on businesses, often asking for considerable amounts of information and data to be delivered in a short period of time or paying no attention to holiday periods.

There were other comments from a small minority of participants:

- One participant felt that there was almost a presumption of guilt when the company was under investigation;

"We had the feeling that we were talking to people who'd made their minds up in advance. They didn't think through the issues with us. It's not straightforward in emerging markets. It felt as if we were considered guilty, that they didn't believe us or understand when we explained our reasons."

- Another participant noted a degree of variance in the level of openness and feedback from one DG Competition contract to another and between cases;
- One participant believed that DG Competition does not listen to other national authorities as much as it should;

"The decisions were taken to other DGs but that was very formal, they did not seem to have any real possibility to influence, although our branch of industry is very important for Europe's competitiveness."

- In some cases, the press received certain information before the company involved, which was judged unacceptable.

3.3 Publication of non-confidential decisions

- Most participants were satisfied with the time taken by the Commission to publish non-confidential decisions -

Most participants believed that non-confidential versions of decisions are published swiftly, or at least swiftly enough to meet their needs. Participants understood the need for writing of confidential information and this was often believed to be what drives the extended timelines where they are evident.

A small number of participants were concerned about the length of time taken to publish non-confidential versions of decisions. However, even amongst these participants, the time frame did not specifically impact the company; it was simply a matter of expecting decisions to be published more swiftly.

"In the world we live in, we would have thought that once DG COMP reaches a decision, they would at least have been able to issue the key aspects of that decision that day. Such a decision should be made with full information."

"No, they don't come out fast enough. Some take ages to come out and that might be down to parties taking ages to write stuff, or translation. But it's not awful - they'll come eventually."

One participant noted that it had been frustrating not to have access to an interim decision. Another participant felt that for antitrust cases in particular DG Competition took too long to publish non-confidential versions of decisions.

3.4 Stakeholder consultation on new rules

- The majority is aware of invitations to consult on new rules, but many only responded sporadically -

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

Mean score = 4.3

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

Whilst the majority of participants were aware they had been invited to consult on the development of new rules, many hadn't often responded and some had not responded at all. Those who didn't respond often believed they had little influence on the outcome. Many had responded to one or two consultations, but lacked the resources to respond more frequently. Generally, companies were keener to engage with consultations that would have a direct impact on their future operations. A minority were not aware that they had been invited to consult on new rules.

"We respond to consultations selectively. We select the ones that are relevant to us, and where there is most opportunity to influence, so that they come out without untoward consequences."

Amongst participants who had participated, many indicated that the communication seems to be one-sided, having not received a response to their comments. Although DG Competition listed contributors, they did not indicate which contributions they had taken into account and the reasons for this. Several participants had attended hearings or meetings and one participant noted that they preferred hearings (compared to website comments), because in a face-to-face meeting, you will receive a response.

"I think the tendency now is to involve more stakeholders. In the past, this was decided by a limited group of people, who were probably lawyers and people very close to the Commission. But the internet has allowed them to reach a larger group in the market. This is a major improvement."

Suggested improvements to the consultation process included the following:

- One participant suggested consultation could be improved by holding a hearing once the initial wave of comments has been received, highlighting any particular areas of interest or contention;
- Another suggested a return to broader consultations on the operation of markets (returning to the principle of sectorial surveys);
- One participant suggested there could be better feedback for contributors (specifically feedback about how the Commission weighs up the various contributions);
- One of the participants actually questioned the degree to which input from stakeholders was appropriate.

3.5 Observance of procedural rules

- Most believe DG Competition generally adheres to its own rules. However, more flexibility is sometimes required -

The majority of participants had the impression that DG Competition adheres, in most cases, to its own set of procedural rules. As an organisation, DG Competition was seen to be very process driven; it issues Best Practice guidelines and it applies the rules consistently in most cases. Most respondents had experience in handling and protection of sensitive or confidential information and had no complaints about it. Others noted that they had no issues with the degree to which parties were given due hearing during a case.

"They really comply with their rules. I have no reason to doubt it."

However, a minority of participants mentioned that this strict observance by DG Competition could sometimes lead to exaggerated rigidity. Two participants illustrated this with an experience where, despite their company's efforts towards more flexibility, the Commission did not deviate from its procedures. A minority were not involved with DG Competition on an ongoing basis and therefore weren't aware whether they did follow their own rules or not, but simply assumed they did.

Despite the overall impression that DG Competition follows its own procedural rules, many participants had examples to the contrary or doubts in some circumstances. A couple of participants mentioned that DG Competition does not always duly observe the principle of fair judicial proceedings and good governance. One participant noted they did not receive complete information before a hearing. A few participants also raised issues about leaked information, although not everyone was convinced leaks came from DG Competition.

"At one point, a draft report (featuring objections), which could have come from the Commission, fell into the hands of a newspaper. You never know how such things happen, but it was very damaging in this case."

Other specific examples of DG Competition not following procedural rules included:

- One participant complained about DG Competition 'stopping the clock' on the procedural timeline for merger cases (which apparently they didn't know was possible within such procedures);
- Another participant noted that rules were sometimes not followed depending on political issues or the involvement of case team;

- One participant shared their experience of a situation where an official representative from the Commission had made a public comment about the number of purchase candidates, which made the whole merger case process more difficult for the company (although they did not specify why it was more difficult).

Participants did not offer any specific suggestions for improvement.

3.6 *Burden on businesses and organisations*

- A majority believed DG Competition's requests and activities place too great a burden on businesses -

The majority of participants believed that the requests and activities of DG Competition place an unnecessary burden on businesses, both in terms of timelines and resources. The most common source of frustration is the amount of information requested in the form of questionnaires. The fact that the questionnaires are long is an issue, but this is exacerbated by the amount of detail required and the need to complete them quickly, with little notice. Most believed that the questionnaires are too broad and not tailored enough to the case; many believed this to be the result of junior employees not understanding the impact of their requests, the case or the sector.

"We regularly receive questionnaires featuring 190 questions. And you are given a week or less than a week. That is a massive burden."

"You get a lot of questionnaires in merger cases. And sometimes turning them around is hard work. Particularly in a case where you have no view or you don't care – frankly you could do without it."

"If you speak to people in certain sectors, they'll tell you a sector inquiry is immensely burdensome. It is extremely complicated to respond to an Article 18 or an Article 11."

A couple of participants pointed out that when case teams change, the new team requires updated information which means double the work for the company. Two participants mentioned the burdensome State aid procedure for assembling dossiers and providing evidential documents (months of research, extensive coordination between departments).

"I spent whole weeks and months on it. The time it takes to prepare the documentation is considerable. To justify financing projects, we have people who do only that. It takes a lot of coordination between the legal services, subsidiaries."

Participants didn't see consultations or conferences as a burden. The amount of work required by consultation has for many been limited (often by their own resources).

Participants were able to suggest the following improvements:

- Many suggested there should be a longer time frame for responses or prior warning about an impending tight timeline;
- Many recommended that requests for information become more targeted, both in terms of the level of detail and specific pieces of information required;
- In merger cases, some participants questioned the need to consult companies in relation to a merger between two third parties;

- One participant suggested using experts with specific sectorial experience, which would minimise the need for companies to provide so much data;
- A couple of participants suggested DG Competition considers avoiding the holiday period when sending multiple questionnaires;
- One participant suggested being able to complete questionnaires over the phone. Another suggested dividing the questionnaire process into two, similar to the ACM.

4. ECONOMIC EFFECTIVENESS

4.1 Effectiveness of detection policy

- Most participants believed DG Competition's detection policy is very effective, particularly because of its leniency policy -

The majority believed DG Competition is reasonably effective in detecting infringements, particularly because of its leniency policy (attracting complaints and whistle-blowers). However, some participants doubted whether DG Competition has the capacity to detect infringements independently of complaints/whistle-blowers.

The majority of participants felt that DG Competition is very effective in detecting infringements, as evidenced by its detection of major infringements, high profile cartel cases, a high volume of antitrust cases and the total amount of breaches penalised.

"They seem to be pretty good at uncovering cartels. Non-cartel stuff is much more complicated, also abusive dominance – it's a lot harder to tell what abusive dominance is. ... I think they do a pretty good job on detecting the most egregious breaches of Competition law."

However, a minority of participants had the impression that the system relies too heavily on complaints and whistle-blowers for detection and is too passive to detect infringements independently. Some pointed out that effective detection relies not only on leniency, but also on market surveys. A few participants simply didn't feel they had sufficient knowledge about DG Competition's cases to provide a comment.

"I know that many cases are based on complaints. I am impressed when the Commission launches an investigation under its own initiative."

A few participants criticised the way investigations to detect infringements are carried out. A couple of participants noted that investigations to detect infringements are sometimes actually inefficient because too many resources are spent on minor offences. They also accused the Commission of suspecting an entire sector (e.g. the pharmaceutical industry), when the offence only relates to a particular case. One participant also disapproved of DG Competition's approach of 'piecing together a story' based on past documents/facts and sometimes lacking the detail required.

"And the other problem is that often it's interested in past events, so it pieces something together from old documents. It pieces together a story, a scenario, that doesn't necessarily correspond to what actually happened."

A few participants made a range of suggestions with regards to improving the effectiveness of detections policy as follows:

- As mentioned earlier, a number of participants believed that DG Competition could adopt a more proactive approach to launch investigations at its own initiative;
- One participant suggested DG Competition could improve the way it listens to stakeholders in order to better understand the specificities of a situation or a market. Furthermore, DG Competition could take a less accusatory attitude towards a sector or a group of players, and instead strengthen the dialogue with them;
- One participant pointed out that there was too little attention and recognition paid to the efforts of companies to prevent unlawful actions.

4.2 Deterrent effect of fines

- Most believed DG Competition's use of fines is an effective deterrent, particularly since the fines are considerable -

The majority of participants regard DG Competition's policy of using fines as an effective deterrent, particularly as fines were considered increasingly large and often unpredictable. Most participants were wary about potentially receiving fines, particularly smaller businesses because of the impact such a fine would have on them. Public trials and negative publicity were also considered deterrents. Conversely, one participant thought that the fines were actually too high and another that they were out of step with the worsened economic situation and likely to weaken some businesses considerably.

"Yes, I agree 100%, fines are an effective deterrent. And it involves a great deal of money. 10% of worldwide turnover is a lot of money if you step out of line. And it comes with a lot of negative PR."

"They are more than a deterrent! When you see some of the fines they've issued, Saint-Gobain for example, it makes you think."

Opinions were split with regards to whether alternative sanctions were more or less effective than fines. Some participants claimed that fines were a milder form of punishment because once paid, the punishment is complete. A few were less convinced of the effectiveness of fines and sanctions as a deterrent, believing that markets are inherently vulnerable to cartels and antitrust activity. A couple of participants felt there is a limit to the effectiveness of fines and DG Competition must find another approach.

Despite being largely positive about fines, most thought criminal prosecution would, in some circumstances, be a more effective deterrent than fines (as it would directly impact on the individuals involved). However, others pointed out that in cases where infringements are less clear cut (for example, in instances of abusive dominance), it would be inappropriate to impose criminal sanctions. There is also a risk that businesses would be blocked if companies feared consideration of alliances altogether.

In terms of suggested improvements to DG Competition's use of fines as a deterrent, the following recommendations were suggested:

- One participant suggested that DG Competition, rather than fining them, could break up companies, force them to sell assets or cancel specific contracts;
- Another participant felt that, in addition to increasing the level of fines, DG Competition must also examine the follow-up measures companies implement and adjust the fines accordingly.

"We have seen them play with mergers, restructuring measures, remedial actions to remedy certain things which are much more effective than simply paying a fine. See cases like Microsoft. They can force you to sell sectors you are involved in."

4.3 Impact of existing EU antitrust rules on planned business transactions

- Although not relevant to all, most believed antitrust rules have an impact on business transactions, often at an early stage -

Amongst those who felt they could comment, the majority believed antitrust rules have an impact on business transactions, often prompting companies to modify transactions at an early stage. Others pointed out that internal analysis of the rules can lead companies to decide against a transaction altogether, if it is likely to lead to problems with regards to antitrust rules. A few participants point to trade-offs being made with regards to pre-empting antitrust rules.

"Of course, you always perform an internal analysis. You ask yourself: what must be reported and do we foresee any problems? Are we prepared to deal with the problems for the sake of the transaction? But the conclusion we often reach is: I think we'll stay well clear."

Quite a few participants have only been in this situation once or twice, or this was not relevant to their organisation at all. Others say they simply do not engage in potentially problematic transactions. One participant pointed out that whilst their company was not engaged in activity that was likely to be an issue, larger companies in their sector could be and hence they hoped antitrust rules prevented larger players from threatening the sector.

"Any responsible company would look at the impact of antitrust rules and ensure that its transactions comply with it. Either by way of modifying them to comply or by notifying them as necessary."

"Yes, this happens: in case of cooperation, if we want to shape this, it's already happening that we change certain components, depending on possible problems with the DG COMP."

4.4 Timeliness of decisions

- Many believe the timeliness of DG Competition's decisions could be improved -

✓ 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
	1	3	4	4	5	1	2

Whilst most participants thought the timeliness of the Commission's decisions is acceptable and that the procedure is as lengthy as could be expected given the complexity of its cases, many thought that timeliness could be improved. Several participants mentioned examples where Commission decisions were sufficiently quick so that they were able to have a strong impact on the market (e.g. Microsoft). However, there were more examples where decisions were too slow.

"It doesn't give any teeth to the law if it takes a long time for decisions to be made. People have moved on."

"The Commission must tread extremely carefully. And that takes time. I understand why it happens, but I don't think it is ideal."

Many believed that decisions should be reached quickly enough to prevent harm and the time taken leaving too much legal uncertainty for companies. Others pointed to cartel cases where decisions take so long that they fail to impact on the market.

"I think it throws up a lot of uncertainty around businesses, and particularly for employees, if they don't know for 7 or 8 months, or even a year, whether their company is going to be bought up by a larger company."

Many of the examples given to demonstrate that decisions take too long, focused on the inconvenience of delayed decisions for companies, rather than on the negative consequences for the market. In fact, one participant pointed out that their company was particularly dissatisfied with the length of time taken to receive a response from the Commission. The company eventually cancelled a planned merger because of the Commission's lengthy delays in responding.

One participant pointed out that State aid control processes sometimes take too long, exacerbated by the fact there are no strict timelines associated with the process.

"We were trying to put together an animal health business and in the end we had more than 700 markets to be analysed and the analysis was taking too long."

"On State aid, they've shown clear evidence of a wait-and-see approach."

Conversely, one participant pointed to an example where DG Competition intervened 'too quickly' in a cartel case in an emerging market, without correctly analysing the circumstances.

"In our case, the Commission moved too fast in an emerging market and nipped it in the bud. Ultimately, it promoted the dominance of a single player."

Some participants pointed to decisions taking a year or longer, but this is considered acceptable either because it is to be expected, or because it would not affect the company's business planning. An example given was the Glencore/Xstrata case. One participant felt that it was the investigation itself which had an impact on markets and so the time taken to produce a final decision was seen to be of lesser relevance.

There were a few suggestions made, outlining how DG Competition could improve the timeliness of its decision-making, including:

- Apparently unaware this is already the case, one participant suggested that the Commission should give in principle approvals for mergers, and have 30-40 days to carry out the investigations, with the option of a further investigation if necessary;
- Another participant suggested improving the level of resources and processes to minimise bureaucracy;
- The Commission could make certain intermediate decisions earlier.

4.5 Focus on the right sectors

- Most believed, from their limited view, that DG Competition is generally focusing on the right sectors, albeit too much on their own -

Most participants felt they had a somewhat limited view of the sectors that DG Competition focuses on, although generally speaking, most thought the sectors they were aware of are the right ones. Many participants mentioned the energy sector, telecommunications, technology and banking as important, since those are the sectors that have the greatest impact on the consumer. Most mentioned hearing, or reading about some of the Commission's activities but tended not to have detailed knowledge of all sectors that were of less interest to them.

"Yes, they're looking at the right areas. They've got to prioritise, they've only got the resources they've got."

"Yes, I have that impression: IT, automotive, food..."

A few participants felt that their own sector is too much of a focus for DG Competition, including the airline and pharmaceuticals sectors. In the pharmaceutical sector, the participant also felt there is an assumption of guilt by the Commission and that the sector suffers from a poor image. One participant felt that the food retail sector is given a great deal of attention.

"It focuses on large sectors but without grasping the internal changes. Our market has evolved."

A few of the participants had questions about how DG Competition decides upon its priorities for enforcement. Some felt that there is scope for the prioritisation of certain sectors to become a political matter and that this is potentially inappropriate. One company felt that the use of sector inquiries is preferable to DG Competition launching a large number of individual investigations into one particular sector (e.g. the technology sector), which was felt to have resulted in excessive scrutiny.

Participants in the culture sector weren't concerned about too much focus on their sector, but they felt the approach to their sector is too 'industrial' and hence less appropriate.

A few participants only had dealings with DG Competition concerning State aid and thus did not feel they were able to answer this question.

4.6 Adaptability to technological changes and globalisation

- Whilst adaptable, most believed DG Competition is adapting to technological changes and globalisation too slowly -

Most participants had the general impression that DG Competition is adaptable, but that it is not adapting quickly enough to changes in technology and globalisation.

The majority of participants pointed out that DG Competition is constrained in its work by its exclusive focus on Europe. They accused the Commission of regarding markets as European rather than global, which does not correspond to the reality in many sectors. One participant noted DG Competition does not adapt well to the rapid changes of globalisation - it doesn't appear to understand the current global nature and dynamics of the market, the global competitiveness facing European industry or how significant Asia has become globally.

"If the two players are in France and in Germany, they look to see if their relationship will influence the European market, but that's not the right analysis. The market is global."

In terms of adapting to technological changes, participants held mixed views. Some believed DG Competition is adapting to technological changes both procedurally, i.e. by progressively using electronic procedures and substantially by adapting its market analyses. Others were more sceptical about DG Competition's capacity to adapt to changes, particularly those involved in the digital/technology sectors. A few participants recognised that the Commission is reluctant to adapt to market changes until they become more significant (taking a more conservative approach than companies).

"They took a long time to understand what the Internet was and how it impacted on retailing in general – it took ten years for them to issue proper guidelines on Internet restrictions, and that's really too long."

Many also pointed out that DG Competition has not made a sufficient shift towards electronic procedures, e.g. electronic complaint mechanisms.

4.7 Impact on the markets

- Mixed perceptions of whether DG Competition activities impact the market and whether that impact is positive or not -

✓ **Rating: impact on the markets**

Mean score = 4.4

Not at all effective in making markets function better						Very effective in making markets function better
1	2	3	4	5	6	7
1	0	4	2	5	4	0

The majority of participants agreed that DG Competition has an impact on markets through its enforcement and legislative activities.

Certainly the majority agreed that increased attention paid by enterprises to competition law has changed their internal practices and higher fines have caused companies to become very cautious during transactions (although a few participants felt this was a hindrance rather than a benefit).

"If I think about my own sector, they came out with these State aid guidelines and this affected the way that countries invested in our sector."

"Indirectly, it has an impact, yes. With all the investigations, the fines, habits have changed. Everyone is paying more attention."

However, almost a third of the participants were not convinced of DG Competition's impact on the markets. A minority of these believed DG Competition's activities do not have an impact on markets because they are too slow to act. Examples given included responses to the Brent enquiries (in the US) and to the LME Warehouse enquiries, only after 12 or 18 months of outcry in the press, or the 2009 sector survey on generic medicines, the results of which have still not been used.

A couple of participants believed DG Competition's actions have a negative impact on the markets because they are focused on the consumer rather than on businesses. They are also focused on Europe whereas companies are focused on the global market.

"It's weakening the European industry because the rules are too strict."

A few participants offered suggestions to improve DG Competition's impact on markets:

- DG Competition could have more impact on the markets if it had more resources;
- One suggested DG Competition could take a more holistic/global view of the market;
- Another suggested DG Competition should work more closely with other national antitrust authorities;
- One participant suggested it may help if companies had the opportunity to present certain cases to the Commission (for example, the possibility for two small companies who would benefit from joining forces to present their arguments to the Commission);
- Another suggestion involved not imposing high fines, but including a conditional component to encourage companies to implement measures.

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

- The majority were positive about DG Competition's use of settlements and commitments as compliance tools -

Almost two thirds of participants who felt they could offer an opinion, tended to be reasonably positive about the use of settlements in cartel cases and commitments in antitrust cases. These were considered relatively flexible and constructive compliance instruments. Some pointed out that these tools are evidence of the Commission's flexibility and a way it could reduce the constraints and risks that burden enterprises in traditional proceedings and sanctions.

One participant pointed out that the existence of these tools contributes to the discovery of more infringements (companies more often confess or abandon their partners).

However, almost a third did not feel they had sufficient direct experience of these tools or cases, where they were used, to be able to offer definitive judgment on them.

Commitment decisions tended to be viewed more positively than settlements. They were felt to provide clear guidance to the companies involved as to what they need to do to become compliant. They could be delivered quickly so are also particularly efficient. However, a few participants thought that commitments do not always achieve the most relevant outcomes in antitrust cases.

"The use of commitments is positive when the restrictions are alleviated. But that's not always the case. Even so, it's an efficient way of resolving things."

Some companies questioned whether commitment decisions would have the same deterrent effect as decisions leading to a fine and were uncomfortable with the idea that a company that has committed an infringement could reduce the value of its fine.

In terms of settlements, for some of the participants these were regarded as an effective instrument to shorten cases and enforce market solutions practically. It was noted that settlements may change market behaviour in the future and possibly also impact on market structures. However, a few participants were concerned about whether the use of settlements downgrades the process to an economic decision (minimising the impact that unlawful behaviour has on people's lives).

A couple of participants believed that many companies calculate the benefits compared to the possible costs in case of a penalty ('pricing the breach'). Moreover, some regretted that settlement decisions are usually much shorter and provide less information than could be used by private damages claimants.

"It's pragmatic. But I don't know if it's good or not. It feels slightly wrong. If there's been a cartel, why should people have less opportunity to sue?"

4.9 Enforcement of decisions

- A majority believed the Commission has the power and the tools to enforce its decisions -

The majority believed that the Commission has considerable authority and is able to enforce its decisions by imposing hefty fines and applying other enforcement tools. All were able to cite instances where DG Competition has enforced the law against companies committing infringements and most felt that this is likely to be applied uniformly. A small minority were not able to answer the question because their only dealings with DG Competition concerned State aid investment.

"I'm sitting here imagining that the enforcement is 100% - there's no issue with the enforcement, it just happens! That's my perception."

Only a few participants questioned whether DG Competition is able to enforce their decisions in all instances, querying whether high-profile cases might draw more effort from DG Competition than those which are less significant.

"In general, the intentions are good, like price transparency. But I get the impression that no one is really checking that these reports are applied."

4.10 Contribution to the EU's economic growth

- A majority believed the activities of DG Competition in theory promotes economic growth but in practice some doubted the extent of this contribution -

Mean score = 3.1

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

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

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

Views about DG Competition's impact on the EU's economic growth were split. The large majority thought that, at least theoretically, DG Competition's role in promoting competition means that they should have a positive effect on growth. Almost half the participants felt that, indeed, DG Competition's activities contribute to the EU's economic growth by encouraging competition.

"Yes it contributes: DG Competition creates a level playing field and avoids the abuse of power."

However, a minority of the participants felt that DG Competition's impact on the EU's economic growth is ambiguous or difficult to quantify. A few doubted that it has an impact on economic growth or felt that its actions actually work against economic growth.

Some participants felt they weren't able to answer the question, either because they didn't have a complete view of the economy (they were only able to talk about their company or their sector), or because their only dealings with DG Competition concerned State aid matters. Others thought that DG Competition's impact on EU economic growth is very difficult to measure.

Finally, while several participants thought that other policies influenced economic growth far more than DG Competition's work, a few held that DG Competition's too strict rules could even weaken a company's position globally, hence limit the overall economic growth.

5. COMMUNICATION AND PROMOTION OF COMPETITION CULTURE

5.1 *Clarity and comprehensibility of external communications*

- The majority regarded DG Competition's external communications as clear and easy to understand for companies -

The majority of participants pointed out that DG Competition has two targets for its media and communications activities: professional stakeholders and the general public. Both targets require quite different information in order for it to be clear and easily understood. DG Competition's external communications were generally viewed positively by participants, although some were not specifically aware of, nor interested in external communications other than the website.

In the case where participants had direct experience of the materials circulated by DG Competition, they tended to view these positively. Materials were seen as detailed and clear, although participants acknowledged that they would perhaps be difficult for a lay audience to understand. Some participants were simply more ambivalent about the quality of DG Competition's communications, offering no strong opinions.

"I think this is an area that the Commission has been extremely good at. When particular steps are taken in certain cases, it is absolutely clear what those steps are and what they imply. However, some of their speechwriting is extremely loose – it's not written by the case handlers. The press releases are a lot better, a lot clearer."

"I still get their State aid weekly newsletter. I'll look up press releases because they're generally very good and very comprehensive. They're very high quality documents, and their website has loads of information."

In terms of improving the clarity and comprehensibility of external communications, the following suggestions were made:

- One participant recommended that DG Competition communicate more about the current issues concerning Europe's competitiveness;
- Another participant felt that DG Competition is not pro-active enough in terms of providing information and that companies have to search the website in order to find relevant information.

5.2 *Choice of communication and media channels*

- Beyond the website, most participants were less aware of other media channels -

Again, most participants believed DG Competition has two targets for its media and communications activities: professional stakeholders and the general public. Both require different forms of communication and access to different media channels. Some participants thought that communication of the benefits of competition to the general public is in fact the biggest challenge, whereas communication with stakeholders is already reasonably good.

Most participants were not sure which media channels are used by DG Competition, apart from the website.

The majority of participants were reasonably positive about DG Competition’s website, although many also believed it could be improved. Whilst the website was considered very comprehensive (particularly the database of the Commission’s decisions) some found it difficult to find information on the site.

Quite a few participants mentioned newsletters and third party ‘newswire’ services or other aggregators. These were considered useful in keeping them up to date with DG Competition’s activities and competition law in general, without having to go to the website.

In terms of the preferred channels of communication with DG Competition, most participants felt the existing channels in use are adequate, with email and website being seen as the most effective channels.

"Email is pretty good. Emails with links to articles – it’s the content that would be the concern. It would need to be something you could read in 5 minutes."

One company was particularly disparaging about DG Competition’s use of press conferences, as they depict companies as criminals.

Most participants agreed that the use of social networks does not seem suitable or appropriate given the seriousness of the subject matter and the complexity of the information.

A few participants suggested more one-to-one communication, speeches, as well as private events specifically targeted to generalists in companies (e.g. a State of Affairs about regulations, best practices, etc.).

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

- Many were unaware of DG Competition’s international activities but support the promotion of competition culture at this level -

✓ Rating: promotion of competition culture

Mean score = 4.2

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
1	2	4	5	5	2	2

The majority of participants were not aware of DG Competition’s activities promoting competition culture and policy convergence on an international level. Some even declined to comment, given their lack of knowledge in this area.

A small number of participants were more informed and specifically praised the work of DG Competition. DG Competition was seen as an influential body that is able to set a positive example for other competition authorities across the world. This comes together with considerable responsibility, especially given the impact of its decisions on trade/markets.

Three participants agreed that DG Competition has done a very good job at establishing competition legislation and has reached a position where it is obeyed.

"I think there's been a massive spread of competition policy across the world, and the Commission has played a role in that and I think it's a positive thing. They certainly are one of the preeminent authorities in this area and it's important that they're a part of this."

"With great power comes great responsibility. Given that the Commission has so much influence it needs to lead by example. If the Commission stands up and says we should all go after exploitative abuse, agencies around the world would start regulating prices – which would really be quite worrying. The Commission needs to be more aware of its abilities."

One participant was kept informed through notifications about events and activities and as a result they attended events once or twice a year.

Amongst those participants not aware that DG Competition promotes competition culture internationally, most were broadly supportive of this activity and could see its value to business. Most also expressed a desire to know more and some were disappointed that these activities are not communicated to a wider audience.

"I've never heard that mentioned. It's a good thing, but they've mistaken the scale. They themselves say that they only look at the European market. I've no knowledge of any collaborative work by DG COMP in this area. They don't communicate much. It's not like DG Research or Industry."

Some participants felt that communication with the US is particularly important, given discrepancies in rules between US and Europe which could result in the latter being disadvantaged. Discussions, driven by DG Competition, dealing with these issues could definitely be beneficial to countries in the EU.

"I think it's a very good idea. Competition-related issues we struggle with at international level, which cannot be resolved via the WTO, will have to be addressed as a region. You can be more effective and persuasive if Europe does it as a whole. It helps to create a level playing field... you compete with one another under the same conditions."

One participant was less positive about DG Competition's effectiveness in relation to international competition issues. They specifically referred to how DG Competition had handled the company's case, which encompassed international issues related to pricing. DG Commission had negotiated trade deals and tariff systems but international pricing issues remained unresolved.

DG Competition was compared unfavourably to US institutions by some participants, especially with regard to enforcement.

"I wouldn't put DG COMP in the same category as the US Department of Justice when it comes to enforcement. They just don't seem as aggressive, proactive or willing to really step up."

The following improvements were suggested:

- One participant talked about improving and increasing dialogue with the US;
- Another one suggested that there needs to be more consistent and clear communication around compliance programmes, particularly in relation to fines;
- Some also supported more communication with the general public.

6. OTHER REMARKS

There were a few participants that wanted to provide a closing remark as part of the survey. Some made general comments and observations, others chose to focus on their own case, particularly where they were still disgruntled about the outcome.

Summary of comments are provided below:

- Some participants expressed a hope that DG Competition will fundamentally seek to acquire a better understanding of market realities and issues facing industries. This could ultimately be achieved through increased dialogue with industry and by developing more open cooperation;
- One participant wished national authorities would listen to DG Competition more. The expertise they have demonstrated and the resources they have to acquire knowledge about markets could really benefit national organisations;
- Several participants commented on the perceived benefits of conducting the current research program and felt it was positive that DG Competition wants to listen to stakeholders and improve its practices;
- At least one participant concluded that there should be more focus on external communication with the general public. One participant suggested the message should be 'competition is good for everyone' and communicate more about how DG Competition works;
- One company reiterated its belief in decisions ultimately being made by an independent institution. It also reiterated the need for a global perspective;

"An unconditional recommendation is that a decision should be made by an independent party, which means somebody else who prepares the case. It should not be conducted as an official process in which the same institution analyses, presents its own views and decides the matter. The Commission should take the industrial environment into account in its entirety. One should understand the global market and the global competition and try to take care that European companies are able to operate there effectively and profitably so that they can be competitive and survive."

- Another company felt a sense of injustice in its own case and was concerned that the rules had not been applied fairly. This was partly about how DG Competition had handled the case and partly about how the company's competitors had behaved. Information requests were unwieldy and the relevance of much of the data remained unknown. Despite this, the company praised the relationship that had developed with DG Competition. Staff were accessible, supportive and pressed for timely resolutions where possible;
- For one company, an investigation was currently ongoing. Within this context, it noted DG Competition acted more like an investigator or a state attorney than a market regulator.

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

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?
- 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?

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

- 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

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?

- 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?**

- **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

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)

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