

Eurobarometer Qualitative study

**DG Competition
Stakeholder survey**

Lawyers 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
Eurobarometer" Unit)

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EXECUTIVE SUMMARY

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

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

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

SOUNDNESS OF LEGAL AND ECONOMIC ANALYSIS

The majority of participants said that the Commission's decisions are generally clear and understandable, because they are based on sound analysis, are well reasoned and are prepared using the same template. However, the quality of the rationale for decisions is considered to be inconsistent, depending on the different competition enforcement instruments (mergers, cartels, antitrust and State aid). Decisions are thought to be clearer and more comprehensible for mergers than for other types of cases.

A majority of participants feel that the decisions made by the Commission are fairly predictable, although differences were again stated, depending on the competition enforcement instrument.

The majority of participants agreed that the fines imposed by the Commission are generally predictable, as they are based on guidelines. However, predicting the exact amount is often difficult.

The Commission's decisions are commended for being legally sound and most participants think that this has improved in recent years.

DG Competition's understanding of the markets is generally considered to be good, but is thought to differ by sector and case team, with more junior team members seen as less experienced.

DG Competition's economic analysis is widely regarded as being of high quality and as having improved in recent years.

TRANSPARENCY AND PROCEDURAL FAIRNESS

Although many participants are very satisfied with the transparency of DG Competition's work, more than half feel that the level of transparency could be increased. There are thought to be differences between different competition instruments: in mergers, the guidelines and timing requirements are usually seen to be very well applied, whereas in cartel cases, the investigations are considered too often take a very long time. Participants reported mixed experiences of State of Play meetings.

It is widely felt that the publication of non-confidential decisions takes too long. Most participants considered it important for parties to be able to apply the decisions as soon as possible after they are made. Only in merger cases is the publication of non-confidential decisions seen to take place in a timely manner.

Most of the lawyers who were interviewed noted that, although they are usually informed in a timely manner about procedural steps or the reasons behind intermediate decisions, this is not equally true for all competition instruments; additionally, they believe that there is room for improvement in how they are listened to and informed.

DG Competition is highly commended for its consultations with stakeholders, which is said to have greatly improved in recent years. It is felt that DG Competition listens to stakeholders; and that in return, stakeholders take these consultations seriously.

The majority of participants believe that DG Competition usually follows its own procedural rules, that sensitive information is handled with care and that DG Competition is open to arguments from all parties.

A vast majority of participants pointed out that the burden placed on parties is too great. It is said that irrelevant information is sometimes requested, which necessitates a time-consuming and costly effort.

ECONOMIC EFFECTIVENESS

The lawyers surveyed have mixed views on the effectiveness of DG Competition's detection policy. Close to a majority regard it as effective and a similar proportion see it as merely reactive.

Most participants consider fines to be a very effective deterrent mechanism, with the large amount of fines pushing companies to try and avoid being in a position where they can be penalised.

The lawyers questioned have widespread experience of advising their clients on compliance and of clients modifying their plans accordingly. Their roles generally include helping their clients decide whether it is necessary to modify their intentions.

Apart from merger cases, the Commission's decisions are generally not thought to be processed within a reasonable time frame, which is thought to have a negative impact on the parties involved and more generally on the market.

Although DG Competition focuses for the most part on the right sectors, decisions on where to focus are thought to sometimes appear to be in response to a crisis, or even politically motivated.

According to most of the lawyers surveyed, DG Competition has managed to adapt, albeit slowly, to technological changes and globalisation.

DG Competition's work is generally regarded as having a strong impact on the markets, although it is reported that there is room for improvement. The Commission's decisions are not the only factors that are thought to influence the markets - with areas such as politics and the economic crisis also believed to play a part.

Both settlements and commitment decisions are generally seen as effective tools. However, it is thought that the speed with which decisions can be taken should not undermine the analysis that underpins good decision-making.

Although a sizable proportion of participants believe that the Commission is usually able to enforce its decisions, some of the lawyers questioned feel that the more complex the cases, the more difficult it is for the Commission to do so. Conversely, decisions related to fines are believed to be easier to enforce.

For most of the lawyers interviewed, competition policy is generally thought to contribute to economic growth or at least to create the proper circumstances for growth to occur. However, the extent of this contribution remains largely unclear.

COMMUNICATION AND PROMOTION OF COMPETITION CULTURE

DG Competition is commended for communicating with external stakeholders in a clear, understandable and informative way. The choice of communication channels is considered appropriate, although several participants reported mixed views about the website, and only a few feel that social media would be an appropriate channel to use.

Finally, DG Competition is seen to have improved in its activities to promote a culture of competition at an international level and most participants are aware of these efforts.

1. BACKGROUND AND RESEARCH METHOD

1.1 *Background and objectives*

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

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

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

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

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

The study focuses on the perceived quality of DG Competition's actions: enforcement work (antitrust and cartel, merger and State aid control) and policy and advocacy activities. The study targeted DG Competition's professional stakeholders who are knowledgeable about its work, either through their practical involvement in casework as part of DG Competition's enforcement activities or indirectly by having influenced or benefited from policy work. A separate study directly addressed the general public in all EU Member States.

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

- Economic consultancies
- Business and consumer associations
- Companies
- National competition authorities
- Member State ministries

1.2 *Methodology and sampling*

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

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, a leniency applicant, etc.

This report is based on 34 interviews with lawyers. The law firms whose views are included in this report are:

| Law Firms | Location |
|--|-----------------|
| Baker & McKenzie | Belgium |
| Beplex | Belgium |
| Berwin Leighton Paisner | Belgium |
| Bird & Bird | Belgium |
| Cadwalader, Wickersham & Taft | Belgium |
| Clayton Segura | Belgium |
| Cleary Gottlieb Steen | Belgium |
| Clifford Chance | Belgium |
| CMS DeBacker | Belgium |
| Contrast | Belgium |
| Freshfield Bruckhaus Deringer | Belgium |
| Gianni, Origoni, Grippo, Cappelli & Partners | Belgium |
| Gibson Dunn | Belgium |
| Hogan Lovells International | Belgium |
| Jones Day | Belgium |
| Linklaters | Belgium |
| Mayer Brown | Belgium |
| Morrison & Foerster | Belgium |
| O'Melveny and Myers | Belgium |
| Shearman | Belgium |
| Sidley Austin | Belgium |
| Slaughter and May | Belgium |
| Uria Menendez | Belgium |
| Van Bael & Bellis | Belgium |
| VVGB Advocaten | Belgium |
| Kammeradvokaten | Denmark |
| Zemberis, Markezinis, Lambrou & Associates | Greece |
| Pensa and Jadek | Slovenia |
| Brauw Blackstone Westbroek | The Netherlands |
| Stibbe | The Netherlands |
| Pinsent Masons LLP | UK |
| Simmons & Simmons | UK |

Two law firms asked not to be identified.

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

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

The reader should note that this report is based on findings obtained through qualitative research methodology. The interviews were structured around a consistent set of topics priorly agreed on with DG Competition. However each topic area was open and discursive in nature. So, while we have striven to indicate how widely these perceptions and views were held, 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 manner; some will have introduced caveats, expressed mixed views, referred to a topic only tangentially, focused on a specific aspect of an issue, etc. This can also make it difficult to state, definitively, how many people held a particular view.

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

A series of quantitative questions were included as part of the interview process, to provide an overall summary of participant views on key aspects of DG Competition's performance. Not all participants were able to provide a rating for all the elements due to feeling a lack of personal knowledge. The data on raw scores plus an overall mean based on the number of participants rating each aspect are included within the report. As illustrated in the example below, the figures in the last line represent the number of participants who answered with the score mentioned immediately above (scale); in this case, no participant gave a score of '1', '2' or '3', while four participants gave a score of '4', 14 gave a '5', 12 gave a '6' and one participant gave the highest score of '7'.

| Commission decisions were not legally sound | | | | | | Commission decisions were very legally sound |
|---|---|---|----------|-----------|-----------|--|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
| - | - | - | 4 | 14 | 12 | 1 |

1.3 Participant background and selection

All the participants were experienced specialist competition lawyers, some with twenty years' experience or more. All the participants were partners in their firms and a number were senior partners and influential in the field of competition law.

The majority of participants were in frequent contact with DG Competition. Of those participants based in Brussels, most dealt with case teams on at least a weekly basis. One participant even mentioned that during the last year, he/she¹ had been in contact with DG Competition almost every day. Some of the more senior partners had less frequent contact with DG Competition but usually at a senior management level. Participants from other parts of the EU tended to have less contact with DG Competition but levels of contact varied from as little as 'once or twice a year' to 'once or twice a week'.

¹ In order to protect anonymity, the use of 'he/she' is preferred when referring to participants.

Participants had many years' experience of working with DG Competition and the majority of participants were broadly satisfied with this contact.

Several participants stressed that their knowledge and experience were limited to certain areas of competition: some were specialised in cartels only, others in State aid, etc. However, several participants from bigger law firms had an overall good knowledge of all aspects covered during the interview.

The initial list of potential lawyer respondents was established based on DG Competition's most frequent contacts in different enforcement cases and / or consultations. This list was narrowed down by inviting only one lawyer per company, in the majority of cases (the choice within law firm was based on inviting the most senior of the named lawyers or on availability within the law firm). If a law firm had offices in more than one Member State, the Brussels location was generally given priority, on the assumption that those working from that office would have the most comprehensive knowledge.

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

2. SOUNDNESS OF LEGAL AND ECONOMIC ANALYSIS

✓ Rating: legal soundness of decisions

Mean score = 5.3

Three participants did not provide a score.

| Commission decisions were not legally sound | | | | | | Commission decisions were very legally sound |
|---|---|---|----------|-----------|-----------|--|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
| - | - | - | 4 | 14 | 12 | 1 |

Most of the lawyers surveyed are of the view that the Commission’s decisions are legally sound, although no institution is thought to be perfect. Most participants mentioned that the quality of the Commission’s decisions has improved in the last five years. It is thought that the Commission has a good reputation and engages in good quality analysis to reach its decisions.

"It's [legal soundness] got to be at the top end. I think their lawyers are very good. They ought to know their case law probably better than we do. That doesn't mean that things won't be challenged."

However, the quality of decision-making is considered dependent on the members of the case team and on the personality of the Commissioner. Prior to Neelie Kroes, Commissioners were considered by several participants to have acted more as administrators, and it was noted that they favoured sound decisions that took a long time to be produced. Neelie Kroes and Joaquin Almunia are seen by the same participants as politicians who regard competition law as a means of government and consequently put pressure on their staff to deliver faster decisions.

"During the Kroes administration, there was a lot to be debated on how legally sound the decisions were. Astronomical fines were imposed, or cases annulled. Now it's better, the current administration does less headline-grabbing; they take the path of settlements more, so there are far fewer appeals."

"I give a 6, because there's room for improvement, but in general their work in this area [of legal soundness] is of a high quality. They are good people, competent and diligent. Of course, a lot depends on the individual person, but I really do feel that this area has improved over the years."

A majority also considered the high level of agreement by the judges of the European Court of Justice as an indication of the legal soundness of the Commission’s decisions. Several participants said that when the Commission loses a case in court, it is usually due to procedural error; this is thought to have been different in the past, when the Court of Justice would challenge decisions more often. However, one participant mentioned being “surprised” that DG Competition wins so many cases in the court in Luxembourg and noted that it might be attributed to the bias of the judges. This respondent stressed that it is important to have critical judges in order to evaluate the Commission’s decisions.

2.1 Clarity and comprehensibility of decisions

- Most participants feel that decisions are generally clear and understandable, but that the quality of the rationale for decisions is occasionally inconsistent -

The majority of the lawyers questioned considered the Commission's decisions to be clear and understandable. It was mentioned that decisions are usually well-reasoned and explained, and based on sound and comprehensive analysis. It is thought that publishing decisions further acts as an incentive to produce high-quality content. It was said that decisions are also written using the same template, which makes it easier to have an overview of the case and know where to look for important points.

"You may or may not agree with them [the Commission's decisions], but they are well supported..."

"It makes it a lot easier that decisions are written based on the same formula. I don't have the time, nor do I have the resources to read through all of the decisions that DG Competition sends out, let alone understand exactly what it says on each page. But the fact that the key aspects that I need to know about are always located under the same headings and the decision is built in the same way with the same structure every time means I am able to have an overview very quickly, which saves me a lot of time."

However, several participants noted that the Commission seems to adopt fewer but longer and more detailed decisions than before.

The lawyers surveyed also mentioned feeling that sometimes a lack of consistency and transparency is evident in decisions. Some decisions are considered to be well written, while others less so - and the use of specialist vocabulary is said to make them difficult to comprehend for non-experts. In antitrust and cartel cases, the reasoning is generally seen to be very good. However, in State aid cases, it was said that the decisions are not always seen to be well reasoned.

"My guess is that their workload has increased and they have to produce work more quickly."

Some participants believe that the Commission does not have enough insight into every market sector it supervises. This means that it is thought that it can take too long to reach a final decision.

Additionally, several of the lawyers questioned said that, in case of simplified procedures (such as settlements and commitment decisions); the decisions published by the Commission are not detailed enough. Some of the lawyers interviewed expressed regret at losing knowledge of precedents and at a perceived lack of transparency in these cases.

Differences in clarity and comprehensibility between different types of competition enforcement instruments were mentioned by a minority.

More specifically, one participant recommended that in merger cases the Commission should publish the reasoning and the elements of analysis which led to the final decision, in order to improve the clarity and the comprehensibility of such decisions.

In the area of State aid, decisions are considered by several participants to be much more discretionary and less understandable, resulting in the feeling that recipients of State aid have very limited tools with which to argue against the Commission's decision.

The lawyers questioned suggested ways in which decisions could be made clearer and more comprehensible, no matter the competition enforcement instrument: it was mentioned that the Commission often simply states that 'this precedent applies', but that it would be useful if it explained both the legal and economic context; it was said that DG Competition could engage more people from the business world, in order to compensate for the perceived lack of experience of more junior case team members.

2.2 Predictability of decisions

- The majority of participants feel that most decisions made by the Commission are predictable, although differences were noted by case type -

The decisions made by the Commission are considered by most participants to be predictable, because they are based on existing policies and legislation; indeed, new decisions are often based on previous ones and on the decisions of the European Court of Justice. Decisions are generally seen as consistent, although this is less so in market areas where there have been new developments.

However, several of the lawyers interviewed shared negative experiences of cases which, in their eyes, lacked transparency and predictability. Others mentioned that the basis on which a case is chosen is not always clear.

"Let me give you an example of an unclear ruling: we had a case on infrastructure where DG Competition disagreed with us, but we couldn't get a clear answer as to why exactly they disagreed. We just got a cold reference to a court ruling that was inapplicable. That was very frustrating."

"Final decisions are reasonably predictable. What is less predictable is how they pick a case; for instance, sometimes it seems to be more about media value instead of economic impact."

Differences in predictability were noted between instruments. In cartel and merger cases, the decisions are mostly considered to be very predictable. In these cases, there is usually a statement of objections, which makes it easy to predict the outcome. In State aid cases, however, the predictability of decisions is seen to vary much more.

"In State aid, it is difficult to predict decisions. It's very political and there are other issues involved."

Further differences in predictability were noted between Article 7 and Article 9 decisions. Article 7 decisions are considered to be transparent, as they follow more traditional procedure (there are facts, the law applies to the fact and this is followed by a decision). It is thought that the outcome is predictable and the process transparent because the decision is properly reasoned. Cartel cases are considered a good example of this.

Article 9 decisions, however, involve negotiations between the Commission and the parties, and it was said that the Commission exercises substantial discretionary power.

Participants suggested ways in which predictability could be improved: adding more staff to case teams; being very careful to apply the law strictly; guiding against DG Competition acting as a prosecutor – instead it is thought that it should be an independent investigator, and seek the input of different stakeholders in order to better understand the market sectors.

Additionally, one participant recommended greater separation of the investigative and decision-making powers in the Commission, as this is the norm in other competition agencies.

2.3 Predictability of fines imposed

- Most participants agreed that the fines imposed by the Commission are generally predictable as they are based on guidelines -

The fines imposed were considered by most of the lawyers questioned as roughly predictable because they are based on guidelines. In the guidelines, there are clear indications of the percentages that need to be applied; there is a minimum and a maximum and the difference gives the margin of error.

"Our job is to reduce the fines, but the initial fine they come up with is usually reasonably predictable."

However, some of the lawyers interviewed mentioned that fines are less predictable when new information comes to light during the course of the investigation. In addition, it is considered to be within the lawyers' remit to try and get their clients' fines reduced, which means that they are unable to accurately predict what the fine might be when the final decision is reached. One participant said that DG Competition might deliberately keep fines somewhat unpredictable, as it may not want companies to make a trade-off and calculate whether it is worthwhile continuing with certain actions in the expectation of being able to afford to pay the fine.

In addition, one participant mentioned feeling that the guidelines on fines are actually quite flexible, and that there is room for discretion in the Commission's decisions, which limits their predictability.

"No, it is very difficult, even with fining guidelines. The fines are very high and there is no good justification for them, which makes it difficult to give advice. It can vary from 5-50 million Euros."

Several of the lawyers questioned referred to the size of the fines, which are regarded as being too high.

"The fines are excessive and politically motivated. They are sometimes outrageous."

"These fines [in the case of cartels and abuse cases] are exorbitant and are rarely proportionate to the severity of the case."

2.4 Understanding the markets

- DG Competition’s understanding of the markets is generally considered to be good, but also thought to vary by sector and case team -

✓ Rating: market knowledge

Mean score = 4.6

Two participants did not provide a score.

| | | | | | | |
|---|----------|----------|----------|----------|----------|---|
| DG Competition do not know the markets at all | | | | | | DG Competition know the markets very well |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
| - | 2 | 4 | 9 | 9 | 7 | 1 |

DG Competition’s understanding of the markets is considered to be good by a majority of participants. This could in part be attributed to the fact that DG Competition is organised by market sector, resulting in an efficient concentration of knowledge. Participants mentioned that DG Competition has put a lot of effort into understanding the markets in which they frequently work, such as telecommunications and the pharmaceutical sector.

However, although DG Competition’s market knowledge is thought to be commendable, it is also regarded by several of the lawyers interviewed to be variable, depending on sectors; it is believed that there is greater understanding of the markets in sectors where members of staff have had recent experience, while knowledge is considered to be more limited for new or emerging sectors. An example mentioned is the case of e-books - where DG Competition has had to learn about the market and decide where to locate it within its existing structures.

"They have good knowledge on sectors such as telecommunications and energy; but in the fishing products case, they had no practical experience and it was difficult to explain the market to them."

A participant mentioned that when DG Competition has limited knowledge of a market, they are often quick to try and improve this and/or bring in relevant experts who know the markets well.

Participants frequently discussed DG Competition staffing in relation to market knowledge. Turnover of DG Competition staff is seen as a weakness. Five or 10 years ago, DG Competition is thought to have been able to rely on a stable staff component that accumulated knowledge and experience in a particular industry. However, it was mentioned that the current rotation of staff, although considered to be necessary to ensure breadth of experience, means that members of staff have to constantly be educated. It is believed that as new products or markets come to the attention of DG Competition, they have to rely more heavily on third parties for expert knowledge. Finally, more junior staff on case teams – which many participants believe are inadequately supervised – are also considered to have less market experience.

"At the level of case management, they [DG Competition] have problems because people are constantly changing and the new ones have to learn everything."

"Very often we have to appear in front of very young people who do not always know the markets. More senior people have a better view, whereas the younger people have no experience with the real business world."

Several of the lawyers questioned said that DG Competition cannot rely solely on its own experts, because they lack the time and the means to study a case thoroughly. It is thought that they tend to arbitrate between the arguments of parties without having formed their own opinion. Some of the lawyers interviewed see this as a major weakness because they believe the Commission comes to decisions based on what one party says and not on the objective information gathered.

For merger cases, participants said that DG Competition is again pre-identifying the markets, as it had done in the past. This is considered to be positive as it means that they consult with the various parties involved, such as key customers and competitors, and therefore develop an overall view of the case.

Several suggestions were proposed for improving DG Competition’s market knowledge, such as hiring people from the private sector, meeting people from different companies, and increasing the amount of private sector experience of staff - possibly through secondment

2.5 Quality of economic analysis

✓ Rating: quality of economic analysis

Mean score = 4.8

Three participants did not give a score.

| DG Competition’s economic analysis is very poor | | | | | | DG Competition’s economic analysis is very good |
|---|---|---|---|----|---|---|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
| - | - | 2 | 9 | 15 | 4 | 1 |

- DG Competition’s economic analysis is widely believed to be of high quality -

Overall, the quality of DG Competition’s economic analysis is thought to be of high quality and to have improved over the last five years. Several of the lawyers questioned feel that the Commission is placing increasing focus on the economic analysis, resulting in a sound assessment of the situation which contributes to good decision-making. This high quality is thought to be consistent across all competition enforcement tools.

Two participants mentioned that, in State aid related cases, the increasing complexity of competition-related issues has obliged DG Competition to run more in-depth analysis.

"They need to determine which issues are likely to affect competition. This is the most difficult exercise: how competition can be affected by any given State support. And it usually goes beyond the limits of a simple economic analysis of the issue."

One respondent was very positive about the quality of DG Competition's economic analysis and feels that the Commission is increasingly "investing in the quality" of economic analyses. He/she referred in very positive terms to a recent report written by DG Competition about the damage caused by cartels.

Most of the lawyers questioned mentioned that Chief Economists provide a good service and have a lot of experience and expertise.

On the other hand, the main criticisms of DG Competition's economic analysis are thought to be related to staff issues:

- Several of the lawyers interviewed mentioned feeling less confident about the quality of analysis conducted by junior team members if they are not supervised by more senior DG Competition staff. This is believed to result in delays due to the lack of knowledge and specialisation of the team. It is also thought that this means that the quality of the economic analysis varies across teams.
- A few participants mentioned disappointment in the frequent changes in the case teams, which is believed to result in instability and delays. Ideally, it is thought that a team should stay in place for a period of 10 years.
- Participants hold diverse opinions about the Chief Economists. Although most praised their work (as mentioned above), some mentioned not finding them to be very helpful, as lawyers do not always have access to the Chief Economist and their views. One participant mentioned wanting to see the appointment of an independent Chief Economist outside the Commission, in order to provide a more objective view of the case or situation.

"The Chief Economists are a bit lost; they sit there and don't know what their role is."

"Economists are less likely to listen to arguments. They reject everything that does not fit into their models."

One participant mentioned finding the analysis often overly complicated.

"The economic analysis is very unhelpful, especially in merger cases. They make models but they are not always suitable, they only tend to complicate the case more."

3. TRANSPARENCY AND PROCEDURAL FAIRNESS

3.1 Overall level of transparency of DG Competition's work

- Although some are very satisfied with the transparency of DG Competition's work, more than half said that it is insufficient -

Several of the lawyers questioned said that they are very satisfied with the overall transparency of DG Competition's work. Reasons for satisfaction include clear lines of communication, timely communication, clear processes, etc. A small minority also acknowledged that internal processes mean that not all parts of the process can be transparent and that a balance is needed between working transparently and in a timely manner. However, more than half noted that they believe DG Competition does not work transparently enough.

"Transparency is a utopia. There are internal processes, so they cannot always be transparent. They published a handbook on procedures and this is very useful for stakeholders."

"Transparency for me is the ability to talk directly to the case teams in the early stages about their ideas of theories of harm. The actual procedure is very transparent, the process is very transparent, but what is going on in the background is not."

Differences in transparency were said to have been observed between different types of competition enforcement instruments. In merger cases, the guidelines and timing requirements are seen by most to be very well applied, whereas in cartel cases the investigations are generally seen to take a very long time. A suggestion for improvement would be to set a timeline that the team has to work to. State aid cases are considered as the least transparent by several respondents with experience in this area, as they are regarded as very political, which means that transparency is even further compromised.

"In mergers, they are quite good and it's easy to react; but in cartels, there is no transparency, they use everything against you!"

"In State aid there are many problems. You never know what is happening in a case. We get very little information on the case, but if DG Competition needs something, they inform us or request information. They do what is most convenient for them. It is all very unpredictable. There is also too much variation between cases. It is really unsatisfactory."

"With my most recent merger case, I thought the case team was very good at being accessible and at being willing to explain their thinking clearly. So I was quite impressed by that. With cartels, it's a lot harder to get a clear readout of where your client stands and what is going on."

One participant distinguished between the transparency of Article 7 and Article 9 cases. Article 7 cases are seen as more transparent because there is access to the file when the statement of objections is received. On the other hand, Article 9 cases involve negotiations and are therefore less transparent. An example of this was the Google case, an Article 9 case in which negotiations have been ongoing for more than 4 years.

Some participants commented on the State of Play meetings of which they have mixed experiences. Some have found them to be very useful platforms for interaction with DG Competition and for bringing transparency to cases. However, several of the lawyers interviewed feel that the meetings are not always useful (involving people who do not know the case very well) and take place simply to meet procedural requirements.

"There is no transparency in cartel cases. After the statement of objections and the hearing, you'll get a State of Play meeting; the purpose of these is to have an open and frank discussion about their [DG Competition's] view of the case. But in fact, they talk to you and you are not allowed to say anything."

According to a few of the lawyers questioned, access to documents seems to come late in the process. Some participants would like to have earlier access, in order to have a better overview of the case.

"For the State of Play meetings, we often don't get any documents in advance and there are meetings where little is said. There is no real dialogue in the meetings, so they are irrelevant. They should be held earlier in the case, parties should be able to prepare themselves in advance and there should not be any reading from a script. They should be proper discussions and dialogues."

Another issue related to transparency is the accessibility of the Director General. One participant mentioned that he had been previously accessible to lawyers when cases were not treated to their satisfaction; but that this was unfortunately no longer the case.

Although DG Competition has adopted guidelines stipulating the key moments for meetings with the case team, this is seen by some as a pretext not to communicate outside of these identified moments. Some of the lawyers questioned complained about the very limited time between receiving the information needed to prepare for the meeting and the meeting itself.

Finally, the volume of information that needs to be handled is seen as a significant challenge by several participants. For some cases, thousands of documents are collected and need to be reviewed, which results in logistical difficulties. Some of the lawyers interviewed, however, acknowledged that the Commission is currently investigating ways in which the situation could be improved.

"Less good is that the system or process has become extremely burdensome. Now they tend to have endless requests for information, pages with questions, and dozens of questions. So they are busy and we are busy sending them answers to all these questions. Sometimes they even send the same questions more than once."

Some of the lawyers questioned mentioned being more positive about the issue of transparency, thanks to the existence of 'best practices'.

When comparing DG Competition to other agencies, participants did not have a uniform view:

- Some consider that DG Competition is one of the more transparent agencies and certainly more transparent than the US competition agency.
- However, other participants consider DG Competition to be less transparent than other agencies, namely the Germany competition agency, whose procedures are seen as less cumbersome; the US department; the Dutch Authority for Consumers & Markets (ACM); and the UK’s Competition and Markets Authority, specifically when it comes to requesting ad hoc meetings.

3.2 Listening and informing in a timely manner

- The lawyers interviewed feel they are most often informed in a timely manner about procedural steps or reasons behind intermediate decisions, but that room for improvement remains -

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

Mean score = 4.7

One participant did not provide a score.

| DG Competition has not at all informed me in a timely manner | | | | | | DG Competition has informed me in a very timely manner |
|--|----------|----------|----------|-----------|----------|--|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
| - | 1 | 3 | 9 | 13 | 7 | - |

As DG Competition generally follows its own procedures, most of the lawyers surveyed feel that they are informed in a timely manner and know when they will be informed. However, their experiences are not uniform across different types of cases.

The merger process is seen as the clearest because there is a time frame to work to. On the other hand, when a company wants to modify or waive a remedy some years after clearance, it is thought that the Commission does not answer the requests – possibly because there is no clear procedure or framework to follow.

"In merger control areas, the Commission works with a very tight deadline. In those cases, the parties have an interest in collaborating as much as possible because they want the deal to be cleared and approved."

In cartel cases, where there are no timelines, it is believed that the Commission could benefit from being more structured. Although ‘best practices’ exist, the timelines are not seen as being properly communicated to all parties. Furthermore, it was mentioned that there is sometimes an antagonistic relationship between the Commission, businesses and their lawyers, where the Commission is seen as keeping its cards close to its chest for as long as possible. There was some suggestion that there should be an independent decision-maker for cartel cases.

"It depends very much on the case handler. They could give more information and speed up the process. This would create goodwill and give DG Competition a positive image."

In antitrust cases, because of the volume of investigations, several of the lawyers questioned mentioned that the Commission often has a draft timeline that is not shared with the different parties. Once the case team is ready for the meeting, it was stated that parties are often left with very little time to prepare and to answer the questions raised during the meetings.

Some of the lawyers interviewed noted that the 'State of Play' meetings are the only occasions when information is conveyed. These lawyers believe that the meetings are of limited use, as they feel that DG Competition maintains its views even when there is good evidence to the contrary.

"The Commission likes to put everybody under a lot of pressure. That is something they use in order to try to win their cases. I think there should be more of a balance between parties. If it has taken them 6 months to write a decision, we should also be given 6 months to consider what they wrote."

There was a general request that the Commission should give clearer milestones for the procedure in each case. Although tripartite meetings are usually planned during the procedures, it was mentioned that they often fail to take place. Yet it is thought that these could lead to better and timelier involvement by stakeholders.

3.3 Publication of non-confidential decisions

- Participants feel it often takes too long to publish non-confidential decisions -

The vast majority of the lawyers interviewed said that the process for publishing non-confidential decisions takes too long. They stressed that parties need to be able to apply the decisions as soon as possible after the decision is made.

"This is the biggest flaw in their procedural operation."

"No, absolutely not, this is a serious problem. There should be more transparency and less prosecutorial bias. The investigations take too long; the defendant should be better informed."

"Typically, it is the most recent ruling that is the most relevant. It should be a key priority to make this available a lot sooner than what is currently the case."

On the other hand, it was said that companies are able to indicate what information they consider to be confidential and that this delays the process. Some of the lawyers surveyed therefore acknowledged that the Commission is not the only party that influences how swiftly decisions are published.

A few of the lawyers interviewed explained the delay in publishing these decisions by the fact that the Commission seems to lose interest after the decision is taken: from a resource management point of view, it is felt that it is reluctant to allocate the appropriate staff to the publication of the decision.

In cartel cases, many feel that the publication of the non-confidential versions of decisions takes too long. Again, it was mentioned that sometimes companies deliberately hold up the publication because it suits them. Only in merger cases are non-confidential decisions seen to be published in a timely manner.

"It is sub-standard in cartel cases. It actually takes years. Merger control is okay; that's fast enough. A world of difference."

Suggestions for improvement include the following:

- DG Competition could be more prescriptive about what constitutes confidential information.
- The publication process could be streamlined in order to prevent some parties involved in a case, including DG Competition, from slowing down the publication process. Ideally, the non-confidential version of the decision should be ready at the same time as the decision – both should be available earlier than is currently the case.
- DG Competition should more strictly adhere to its own guidelines on the time frame for publishing decisions.
- Decisions should systematically be published in English, which seemed not to be the case currently in the case of a dispute between two non-English speaking parties.

3.4 Stakeholder consultation on new rules

- DG Competition is highly commended for its consultations with stakeholders, which is considered to have greatly improved in recent years -

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

Mean score = 5.7

Two participants did not provide a score.

| 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 | - | - | 1 | 7 | 18 | 5 |

DG Competition is widely and highly commended for its consultations with stakeholders. It is felt that DG Competition listens to stakeholders; in return, stakeholders take these consultations seriously. It is thought to be a process from which all parties benefit and one that has improved greatly in recent years, partly because of electronic means of communication that allow for greater interaction.

"Communication with stakeholders is now many times better than it has ever been."

"There is no new piece of relevant legislation that is not announced to the public with comments invited."

"Very much, it is one of their strong points."

"They are good at that; they consult us about big changes and allow us to publish proposals for amendments."

Only two of the lawyers interviewed indicated that, although they are consulted regularly, they do not believe that their comments have much impact. They think that DG Competition knows what it wants to achieve and is not open to changing its views.

"They do not always take our comments into account."

3.5 Observance of procedural rules

- The majority of participants feel that DG Competition follows its own procedural rules; however some concerns were raised about the usefulness of oral hearings -

Overall, DG Competition is seen as observing its own procedural rules. Sensitive information is thought to be handled with care and DG Competition is considered to be open to arguments from all parties.

"I've never come across a problem and we have never been denied access."

"Overall, our experience is good, we lawyers are aware of their [DG Competition's] internal rules. They are very good at following their own rules."

However, a minority of the lawyers questioned mentioned feeling that DG Competition sometimes does not follow its own procedural rules and cited various examples to support that view. First, DG Competition is seen to take on cases selectively – ones that it is believed it feels equipped to handle. DG Competition is also thought to occasionally take short cuts in cases that are quite complicated. Another concern referred to the time frame in which cases are concluded – the overall time frame is thought to be too long, but parties are given too little time to prepare the information requested of them. Finally, several participants feel that, although access to files is regulated by published guidelines, some uncertainty remains as to what can be accessed. They believe that some information is left out of the files, such as internal deliberations, and other parts are deleted on the grounds of confidentiality.

"They respect the rules, except when they don't want to. Such as in mergers, where time is too limited; or in cartels, where they'll be condemned anyway."

"Sometimes, they do not follow 'best practises' with such deadlines. Then to fix this, they make our deadlines shorter and the clients are unhappy with this. For instance, sometimes we do not hear anything for 6 months and then they send you a questionnaire for which we get only 10 days. There is no advance notice at all. They take too long on their side and they then try to speed up the process by giving the other side less time."

Participants have mixed views about the extent to which parties are given due hearing during the process. A majority feel that this is indeed the case and that DG Competition is willing to listen to all the arguments. But several others raised some concerns: first, although the hearings are meant as an opportunity to present their case, they feel that very little seems to change as a result. One participant specifically mentioned that the Hearing Officer is a Commission employee whose role is limited.

Mostly junior officers are present during the hearing and it is believed that very little happens. Lawyers ask for oral hearings because they want to believe that something can be changed, but in practice they feel that this is not the case.

"There I see room for improvement: they should appoint an independent hearing officer with more power and have the hearing attended by senior managers."

Secondly, several of the lawyers interviewed mentioned feeling disappointed that the oral hearings are held quite late in the process, which means that their impact is fairly limited. They suggested that these hearings should take place earlier, during the "fact finding" stage.

"It's common belief that at the time of the hearing, the Commission has already made up its mind!"

"I think people view their hearings as: you speak and the staff is not really willing to absorb or move."

3.6 Burden on businesses and organisations

- DG Competition is seen as placing a very heavy burden on companies, often asking for irrelevant information -

The majority of participants feel that the burden placed on parties is too heavy. Most of them tend to believe that the extent of this burden is of no real concern to DG Competition.

Most participants said that the questions that are asked and the information requested does not always seem relevant to the progress of the case, although they understand that DG Competition might want to err on the side of caution in asking for a lot of information. However, participants generally wonder whether DG Competition really measures the implications of the requests on the businesses, in terms of cost and time. Some of these participants blame more junior team members for this, as it is thought they might not have the necessary experience and are not adequately supervised. One participant mentioned that businesses are sometimes not given enough time to prepare the information requested.

"We had a case recently where what they [DG Competition] were originally looking for became very different to what they looked for subsequently; the case they presented was very different to the one they had initially suggested. This resulted in wasting a huge amount of time, money and resources. It could have been dealt with in a better way by spending more time at the beginning engaging with the parties."

"DG Competition assumes that companies can deliver business data for the past 20 years by simply pressing a button...! That's unrealistic, it is completely ridiculous. They don't realise what they are asking for!"

In antitrust cases too, the number of documents requested is seen as substantial by most participants. They suggested that DG Competition could take a more pragmatic approach and ask for descriptions of decision-making processes rather than a copy of every email and document that the company produces.

However, contrary to the majority view that a heavy burden is placed on parties, a minority of the lawyers questioned think that a minimal burden is placed on the businesses involved and that the burden has lessened in recent years, especially in merger cases where questions are more focused.

Some suggestions to reduce the burden of work for the businesses involved include:

- Working with experts in the field who have a good understanding of the market.
- Stabilising and supervising the investigative teams, so that they gain more experience and self-confidence.
- Instead of written requests for information, meetings could be held with the companies involved to better explain the reason for the request.
- More flexibility with deadlines for companies would be welcome. The practise of internal deadlines which follow the holidays means that companies and law firms have to work over the holiday periods, which is inconvenient.
- Instead of DG Competition initially asking for a lot of data, the process could be reversed by asking for less but more relevant data and then requesting more if needed.

4. ECONOMIC EFFECTIVENESS

4.1 *Effectiveness of detection policy*

- The lawyers surveyed have mixed views on the effectiveness of DG Competition's detection policy, with some regarding its approach as exclusively reactive and others as effective -

Participants have mixed views on the effectiveness of DG Competition's detection policy. On the one hand, a small majority feel that DG Competition does not detect any infringements, but relies solely on complaints or applicants. It is believed that DG Competition therefore does not direct the detection process or area of focus, but takes a reactive approach. It is thought that this might mean that certain sectors are scrutinised more or less than others.

"They [DG Competition] let some cases pass, but decide to focus on other cases, which makes you ask why they have allowed them to pass so easily."

On the other hand, a similar proportion of the lawyers interviewed feel that DG Competition's detection policy is quite effective. DG Competition is regarded as finding and working on the most relevant cases. The complaints procedures and leniency applications are seen to work quite well. One lawyer mentioned that a system that is able to break up approximately twenty cartels a year should probably be considered efficient. Two participants also mentioned the difficulty of detecting violations relating to State aid, considering the number of Member States and the differences in their competition enforcement frameworks.

Apparently unaware that this is already the case, one participant recommended that DG Competition should publish a press release when an investigation is opened, in order to encourage companies to review their internal processes. Another suggested that DG Competition should develop clear guidelines around what constitutes a cartel. It is also believed that the general public could be better educated about the meaning of competition and State aid in countries where these might be contentious.

4.2 *Deterrent effect of fines*

- Fines are generally considered to be an effective deterrent -

Most participants consider fines to be a very effective deterrent mechanism. It is believed that the large amount of the fines means that companies try to avoid being in a position where they could be penalised. One participant also mentioned feeling that fines are effective because of the reputational damage that companies suffer as a result.

"For companies, these are nightmare scenarios that have an impact for many years."

However, several of the lawyers questioned mentioned that the fines can only be effective if the law is clear. It is thought that additional guidelines could be implemented in case of doubt or ambiguity, which would limit the need to issue fines. Apparently unaware that such information is already available on DG Competition's website, one lawyer called for more information on which fines had been issued, to whom, and when they were paid.

Some of the lawyers surveyed regard the Commission as ‘heavy-handed’ when issuing fines, while others hold an opposing view – that fines are not always an effective deterrent, but that this is the only available form of sanction.

"There are no other options, there are no criminal sanctions. In the Intel case, the fine was 1 billion Euros... so apparently it was not that effective."

"There is no real solution other than fines. In the US, people go to jail. But here it is not realistic. It is too complex. I don't think it is feasible. So we are left with fines."

"They over-rely on high fines, it gives them power and it's making the companies afraid of them. They need more concrete remedies. Remedies are wishy-washy now; they should get more creative and specific."

Some suggestions were offered regarding alternative enforcement tools, although participants are aware that the introduction of criminal sanctions would require legislative changes:

- disqualifying directors (in cartel cases);
- fining individuals;
- imposing prison sentences;
- promoting competition compliance, in particular by clarifying prohibited practices for businesses. That would have a preventive effect and lead to fewer fines.

4.3 Impact of existing EU antitrust rules on planned business transactions

- The lawyers questioned mentioned widespread experience of advising their clients on compliance and of clients modifying their plans accordingly -

✓ Changing planned business transactions to comply with EU antitrust rules

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?

| | Never | Once or twice | 3 to 5 times | 5 to 10 times | More than 10 times | No answer |
|--------------|----------|---------------|--------------|---------------|--------------------|-----------|
| TOTAL counts | 5 | 6 | 4 | 5 | 11 | 3 |

Nearly one-third of the lawyers interviewed (11) had experienced more than ten occasions in the last five years in which their clients had changed their planned business transactions in order to comply with EU antitrust rules. A further five participants had had 5 to 10 such cases, ten participants had had between 1 and 5 cases and five of the lawyers interviewed had no experiences of this kind. Three participants did not provide a score, one of whom only dealt with State aid cases.

The lawyers surveyed have generally been helping their clients decide whether it is necessary to modify their plans. Sometimes clients have simply checked whether what they wanted to do would be acceptable or not.

"A lot of compliance programmes regarding competition laws have led to changes in companies."

"Yes it happened [that clients had change their plans] because I thought that the Commission would not approve. People don't want to do deals that the Commission will block, because you spend a couple of years trying to do a deal, you look like an idiot and it costs you a lot of money."

"This happens all the time. I counsel companies on how to structure agreements in order to comply with the rules."

"There is a culture in the industry of seeking to comply with competition law."

In merger cases, the lawyers questioned have tended to be approached by clients who want to know what the consequences of their plans could be. The predictability of Commission decisions is felt important for both lawyers and businesses.

On the other hand, one participant mentioned feeling that some businesses could reconsider a previously halted deal because they thought that the market conditions or the Commission's views might have changed.

4.4 Timeliness of decisions

- Apart from merger cases, the Commission's decisions are generally not thought to be processed within a reasonable time frame; this is thought to potentially have a negative impact on the parties involved and the market more generally -

✓ **Rating: timeliness of decisions**

Mean score = 4

Three participants did not provide a score.

| 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 | 5 | 19 | 5 | 1 | - |

The lawyers questioned generally feel that the Commission's decisions are not processed within a reasonable time frame and that this could have a strong impact on the markets. However, the situation is thought to be different for the four different instruments of competition policy. Some of the lawyers surveyed feel that the time frame is unreasonable for cartel cases, but generally reasonable for mergers. A few of the lawyers interviewed mentioned two years as a maximum reasonable time frame, but believe it is both important and difficult to find a balance between the quality of the process and the need to reach decisions quickly.

"It could move quicker. Procedures take a long time; they should improve the speed of their decision-making in order to have an impact on the markets."

"You always have to make a trade-off between process quality and how long the process takes. And they [DG Competition] work hard."

It is believed that the more complex the cases, the longer it takes the Commission to reach a decision. Several of the lawyers questioned said that it is quite common that, because of slow and cumbersome procedures, businesses that have suffered damages give up on their complaint or go out of business altogether before the Commission reaches its conclusions. It was also said that businesses also sometimes postpone or cancel their plans due to delays, and this sometimes turns out to be unnecessary if they eventually receive a decision in their favour. It was also noted that it is possible that delayed decisions could allow the violation to continue unabated. One participant said that changes in the DG Competition team assigned to a case could also contribute to delays in reaching decisions.

"Procedures take a long time and there are regular personnel changes in the teams. We then have to deal with new people. I get the feeling that a lot of things need to be explained again and we are not sure whether things are absorbed or not."

In cartel cases, where there are many cases under investigation at the same time, many of the lawyers surveyed feel that the Commission is lagging behind. One participant mentioned believing that such delays are due to the fact that the documents need to be translated into the different languages of the parties involved. However, a few participants mentioned feeling that the use of settlements has successfully speeded up the procedure in cartel cases. According to one respondent, companies often change their behaviour and modify their compliance policy before the Commission reaches a cartel decision.

"In the case of cartels, the enquiry in the automobile market needed so much follow-up that they are running behind."

A majority of participants said that they feel that in merger cases, the existence of a strict timeline speeds up the procedure considerably.

"There is definitely an impact on the market in merger cases, because companies cannot conclude their transaction until they get permission, but the whole process can take a year, which is very long."

Participants with experience of State aid cases have divergent views. Some feel that these cases are also resolved within a reasonable time frame as a deadline is also fixed. One lawyer mentioned that the recent cases related to the banking crisis illustrate that some decisions can be taken in 24 hours and that quick decision-making is possible.

On the other hand, a similar proportion feels that it sometimes takes a very long time for a decision to be reached.

"They [DG Competition] asked a lot of questions about very insignificant details and you could really sense that they tried to put this on hold because they didn't have time to process it. It can be very damaging, for a government that needs to show results quickly before the next election, if a growth package they are proposing is put so completely on hold with DG Competition, especially when it really wasn't very problematic at all. It was simply just a case of DG Competition not having the time to process it."

There was some criticism that complaints are processed too slowly. Participants gave examples of complaints that had been with DG Competition for more than six months before the lawyers interviewed were informed.

On whether decisions are published fast enough to impact the market, most agree that the 'political' commissioners tend to use the press to their advantage. Some participants even said that the Commissioner have even occasionally informed the press of decisions that had not been finalised yet. In addition, good decisions have an impact on the market before they are taken, because everyone working on the case can see where the Commission is heading. However, the length of time it takes for a decision to be processed often means that the economic impact is limited.

An example of this was the IBM case that started in the 1970s, but was only completed after the market had changed considerably. This is thought to be an example of where the market moved more quickly than the Commission's procedure. The current Google case was another example mentioned where several of the lawyers questioned expressed their desire for DG Competition to move faster.

"In technology markets, the Commission is always late."

4.5 Focus on the right sectors

- Although DG Competition mostly focuses on the right sectors, its decisions sometimes appear to be reactive, in response to a crisis, or politically motivated -

A majority of participants feel that DG Competition focuses for the most part on the right sectors. Indeed, most of the lawyers surveyed do not feel that there are sectors in which DG Competition is either over-active or not active enough.

However, a minority of the lawyers interviewed believe that DG Competition targets specific sectors and does so in phases; for example, the pharmaceutical and the consumer goods sectors were targeted a few years ago, and currently the IT and the financial sectors are under particular scrutiny. Several participants mentioned that DG Competition focuses on sectors which it considers particularly important in the economy.

One participant stated that DG Competition also occasionally focuses on a sector after a crisis has occurred, whereas it could have anticipated the situation if it had been more vigilant. The financial sector was mentioned as an example here, following the Libor scandal. According to one participant, another factor influencing the sector in which DG Competition focuses on is leniency requests. Moreover, DG Competition's focus on certain sectors is also seen by a majority as politically motivated; for example, a participant remarked that pharmaceutical companies are under scrutiny because politicians want to reduce the price of medicines. Another participant mentioned feeling that the telecommunications sector has been scrutinised too much in recent years.

Individual participants believe that the following sectors could receive greater focus from DG Competition: insurance, food, healthcare, high-tech goods and services, consumer products, the services sector, as well as the energy sector.

4.6 Adaptability to technological changes and globalisation

- It is thought that DG Competition is able to adapt to technological changes and globalisation, although sometimes slowly -

Most participants feel that DG Competition tries to adapt as much as possible to changes in technology and globalisation. Overall, DG Competition is deemed to be able to follow global developments, as it has the necessary tools and knowledge to do so. The majority also feels that DG Competition has access to the resources to understand the rapid evolution of technology and the changing market components in a globalised world. Examples of how DG Competition has adapted to technologies and globalisation mentioned by individual participants include: using more modern electronic systems when conducting research; exploring what tools are the most effective in a modern environment; reminding Member States of broader globalised perspectives; adapting to new markets (such as the case of e-books).

"Compared to other government departments, DG Competition adapts relatively quickly. But it takes a while to adjust."

Suggestions for improvement mentioned by individuals or small minorities of participants include:

- Increasing the budget for software and IT development.
- Improving the way information is handled electronically, such as communication with the parties. DG Competition should use advanced communications technology to make it easier and faster to send documentation. The new IT platform that was introduced recently was one step in that direction.
- Use staff with private sector experience more frequently.

4.7 Impact on the markets

- DG Competition’s work is generally regarded as having a strong impact on the markets, although it is believed that there is room for improvement -

✓ **Rating: impact on the markets**

Mean score = 4.6

Four participants did not provide a score.

| | | | | | | |
|--|---|---|---|----|---|--|
| Not at all effective in making markets function better | | | | | | Very effective in making markets function better |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
| - | 1 | 2 | 9 | 13 | 5 | - |

Some participants had difficulty answering this question, as they were unsure how the impact of DG Competition's work on the markets could be assessed. But for the majority of the lawyers questioned, DG Competition's work certainly has an impact on the markets.

Several participants mentioned that competition law is of great importance to all listed companies and that DG Competition's rules are incorporated into companies' compliance programmes, which impacts business decision-making and hence the market.

One participant said that DG Competition has a greater impact on certain sectors - such as energy -, where it is active in enforcing certain policies and where it has an agenda. Finally, one participant mentioned that it is essential to stipulate clearly what practices are allowed in order for competition to function properly in the markets, as monopolies would otherwise flourish. One participant mentioned feeling that DG Competition should do more to publicise its work and its positive impact on the markets.

"It has an enormous impact, they determine whether you get support or not."

"DG Competition has a huge impact upon the way markets work, how businesses work."

But decisions from the Commission are not thought to be the only factors that influence the markets and areas such as politics and the economic crisis are also believed to play a part.

A minority of the lawyers surveyed were more critical of the impact of DG Competition's work on the markets and expressed the following concerns:

- Sometimes it appears that a company is singled out for investigation, while there are others (for example its competitors) that are engaging in the same practices.
- The Commission is seen as occasionally over-regulating or imposing disproportionate remedies ('going too far'), which is thought might discourage business initiatives.

Individual suggestions for improvement and greater impact in the market include:

- DG Competition should work more closely with other DGs in order to get to know the markets better and to benefit from the economies of scale of inter-directorate communication and collaboration.
- The Commission should use its 'market investigation power', namely sector inquiries, which allow it to look at a market as a whole. Actions taken on a sectoral basis draw more public attention than individual cases.
- Decisions should be reached and published more quickly.

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

- Both settlements and commitment decisions are generally seen as effective enforcement tools -

This question was not answered by all participants. Of those who did respond, most reported that settlements in cartel cases and commitment decisions in antitrust cases are thought to be effective measures and to enable all parties to reach a quick decision.

However, concern was expressed by some that such decisions do not sufficiently reflect how DG Competition interprets certain laws.

Three participants feel that it is still important for the Commission to carefully examine the evidence supplied in these cases and not just accept it without proper scrutiny. The speed with which decisions can be taken should not undermine the analysis that underpins good decision-making.

"Both are good tools. They allow DG Competition to close an investigation more quickly."

"The one worry I have is that it [settlements] leads to fewer full and argued positions being published, and fewer appeals to the court. And we begin to get fewer cases coming out over the years, which will make competition law less useful. But on a case-by-case basis, I think they work quite well."

Settlements for cartel cases are regarded as very effective, but the savings on the fines remain relatively low. Participants reported believing that the Commission has had little experience of these settlements so far, but the cases appear to have been straightforward.

"For cartel settlements, I am not sure it is the ultimate response because the amount of savings you achieve on the fines is relatively low."

Commitment decisions in antitrust law are also regarded as effective by the majority of participants who answered this question and such decisions are perceived as having been used fairly frequently. According to one participant, they are used too often. Cases that are subject to commitment decisions are thought to be complex and too often involve many parties, but it is also recognised that commitments allow some cases to be concluded more quickly. One participant mentioned that these commitments encourage engagement between DG Competition and the different parties, making relations less adversarial. However, some concerns were raised by individual participants about a lack of clarity as to why some cases are treated in this way; and about the lack of detail regarding decisions which could guide the actions of other parties in future.

"Commitment decisions are a disaster because there are no useful decisions that can be published. They should investigate, analyse and explain better why they are choosing to settle a case. Now there is obscurity."

4.9 Enforcement of decisions

- A sizable proportion of participants feel that the Commission is able to enforce its decisions. Decisions regarding fines are thought to be easier to enforce -

Although participants have mixed views about how well the Commission monitors and enforces its own decisions, a majority feel that it does a relatively good job. One participant mentioned that in most cases, there are no appeals against the Commission's decisions, and when there are appeals, the Commission is usually successful. Another participant mentioned thinking that the enforcement of decisions is somewhat reliant on how the authorities apply the decisions – how they understand the directives and how quick they are to act.

"You really get the impression that they don't give up easily – once a decision is final, they work hard on seeing it through."

"They have the power to enforce their decisions, but they must make sure they follow up on the decisions, and make sure fines get paid."

Other participants gave the opinion that the Commission is not very good at enforcing its decisions and even said that they believe this is to some degree not part of the Commission's remit.

"The parties have to apply the decisions in the market. The Commission is not forcibly engaged in enforcing its own decisions."

Participants tend to agree that the more complex the cases, the more difficult it is for the Commission to enforce its decisions.

It is considered that the enforcement of decisions largely has the expected effect on the markets, as companies and Member States are obliged to comply and competition in the market is increased.

When fines are imposed, it is thought to be easy to check whether they have been paid. However, when a company is requested to discontinue certain practices, one participant mentioned that it is often difficult to accurately assess what activities are included or excluded in the decision, specifically referring to a case involving Microsoft.

In State aid cases, some of the lawyers interviewed do not believe that the money is consistently reimbursed.

"In the area of State aid, it is a nightmare because Member States are reluctant and it is difficult to enforce things in this area."

One lawyer, however, pointed out that even though there are no specific provisions for the recovery of illegal State aid in a Member State, this does not prevent enforcement of the obligation to recover this aid at national level under the supervision of the Commission.

4.10 Contribution to the EU's economic growth

- Competition enforcement contributes to economic growth, but to what extent is believed to be unclear -

Mean score = 3.2

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

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

| | | Nb of participants |
|--------------------------------------|---|--------------------|
| Contributes to a great extent | 5 | 1 |
| | 4 | 6 |
| | 3 | 8 |
| | 2 | 2 |
| Does not contribute at all | 1 | 1 |

Nearly half of the participants did not want to provide a score or even an opinion on the question of the contribution of competition enforcement to economic growth, as they found the question either too general and more appropriate for economists, or too difficult to answer.

Overall, nearly all of the lawyers questioned who did respond gave the opinion that competition policy contributes to economic growth or creates favourable circumstances for growth; but the extent of this contribution is thought to remain largely unclear. Overall, competition policy and enforcement is believed to lead to market regulation that promotes economic growth.

"If DG Competition didn't do its work, we would have a lot of cartels."

"If DG Competition is not there enforcing its decisions, it's going to be a mess in the market and it's going to have a negative impact on growth. So yes, the enforcement of competition policy contributes to economic growth."

In order to definitively assess the impact of competition policy on the market and economic growth, a study could be undertaken to determine the effect of particular decisions on prices, i.e. one would expect prices to decrease after the suppression of a cartel.

Finally, one lawyer mentioned that some decisions might have a negative impact on investment, although there is no concrete evidence to this effect. One participant also said that the strict enforcement of rules across all EU Member States does not take into account economic inequality between countries and in this way might hamper growth.

5. COMMUNICATION AND PROMOTION OF COMPETITION CULTURE

5.1 *Clarity and comprehensibility of external communications*

- DG Competition's external communications are regarded as being clear and understandable -

Overall, DG Competition's external communications are regarded as clear, easy to understand and informative.

"Competition law is not simple, so their communication is very good and understandable. An example of this is their speeches."

"With an organisation as large as DG Competition, with that many different offices and diverse agendas, it must be difficult to have common ground externally. Their office managers prioritise participating in conferences and their weekly newsletter communicates clearly."

"I think it is okay; fairly understandable."

It is thought that communication is best accomplished by using a mixture of channels, for example events such as seminars and conferences; written communication such as frequently asked questions (FAQ), guidance documents, announcements and press releases. Many of these channels are considered to be of very good quality.

Individual participants mentioned ways in which communication could be improved:

- More detailed and frequent press releases. One participant also mentioned feeling that press releases are preferred to interviews, as text can be communicated without first being interpreted by third parties.

"We do not expect direct communication. The press releases could be more detailed and more frequent."

- Clearer communication on key terms or questions, such as what is meant by 'public service', how a company is defined, and when infrastructure is included in State aid legislation.

A few participants have the impression that the Commission either deliberately or unintentionally uses the press to put pressure on businesses fairly early in the process of some case investigations. That is seen as a political move on the part of the Commissioner.

"I sometimes think they speak too early in order to put pressure and they use the press to put pressure on business."

5.2 Choice of communication and media channels

- **The choice of communication and media channels is regarded as very good by nearly all participants; few consider social media an appropriate channel of communication -**

Nearly all participants gave the opinion that DG Competition's choice of communication and media channels is very good. A number of the lawyers surveyed mentioned M-Lex as a good, but expensive information source. One participant said that M-Lex is often quicker than the Commission with case-related developments, which is not thought to be ideal. Furthermore, the Commissioner's speeches and articles are appreciated by most of the lawyers interviewed. Other channels of communication mentioned and commended by individual participants include the 'Midday Express', the weekly newsletter, and webinars. One participant receives news about DG Competition's activities through third parties/policy news websites and not directly from DG Competition.

"They do a good job; I get a lot of coverage. I do not feel left in the dark. Their press office does it well."

"The communication channels are fine. I get my info through press releases, M-Lex, which costs 25,000 Euros per year though, and newsletters."

Participants offered mixed views on the website, with some finding it useful and others seeing room for improvement.

"Their [DG Competition's] website allows me to find what I need quickly."

Not many of the lawyers questioned gave the opinion that DG Competition should use social media as a communication channel.

"Maybe it's just me, but I wouldn't really read about State aid legislation on LinkedIn."

Some of the lawyers surveyed feel that written communication reflects the Commission's 'official views' on general policy issues, while oral interventions and meetings are more case-specific.

One participant mentioned feeling that DG Competition should advertise the benefits of its activities more widely, and promote its image through a widespread campaign setting out what it does and how its work contributes to competition and development.

"Up to now, they appear as the bogey man, which is wrong. The advantage should not simply be 'we protect competition'. While that is a great line, it is not easily understood by the average European. They need to dismiss the notion that they are a strict European entity and that anyone who falls into their hands is in serious trouble."

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

- Participants demonstrate widespread awareness of DG Competition’s efforts to promote a culture of competition at international level -

✓ Rating: promotion of competition culture

Mean score = 5

Two participants did not provide a score.

| 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 | 1 | 8 | 9 | 12 | 1 |

Most participants are aware of at least one of DG Competition’s activities to promote a culture of competition at an international level. This is an area in which DG Competition is believed to have improved over recent years.

"Competition culture has changed; there has been a vast improvement."

Most participants are similarly aware of activities around international cooperation with the USA and Brazil, Russia, India, China and South Africa (BRICS countries). They feel that the globalised nature of business necessitates meetings and collaboration with the European Commission Network (ECN) and the International Competition Network (ICN). Close dialogue with the US competition agency is also of utmost importance.

"I know about the ICN conferences and bilateral contacts with foreign competition authorities."

"The Americans were once the trendsetters, but DG Competition is now a trendsetter worldwide."

Participants stressed that the quality of international cooperation is dependent on the quality of the different national authorities. One participant acknowledged that it could be difficult to convince other countries to subscribe to EU rules in the context of a globalised market.

DG Competition is regarded by several of the lawyers interviewed as very active in promoting 'EU competition culture' in international organisations.

The lawyers surveyed are engaged in training their clients to improve their compliance with competition law. This means that the Commission has become the standard against which companies measure their compliance.

Suggestions for improvement include:

- Consulting more with think tanks and experts.

"Maybe they can have think tanks, involve stakeholders and experts, and consult with them."

- Greater transparency in talks between DG Competition and national agencies.

"The transparency of how the network of international cooperation works could be improved. We know that they talk, but we have no information and there is no access to that, because it is regarded as an internal process."

- DG Competition should engage more with the private sector and this communication should be more positive – focusing on how the Commission could support companies in their compliance, as opposed to concentrating on what companies are not allowed to do.

"A good example is their "outreach programme", where they try to engage with companies in the private sector."

- Using its power as a regional body to limit US influence.

"DG Competition in particular has a role to play in pushing the US authorities back a bit from thinking that the world is in US jurisdiction... It's more difficult for national authorities to do that, while DG Competition has a bit more authority, speaking on behalf of the entire EU."

- Do even more to promote competition culture, as although penalties and fines could act as deterrents they are not sufficient to bring about a change in culture.

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 |
|-------|---------------|--------------|---------------|--------------------|

- 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