



Eurobarometer Qualitative Study

DG COMPETITION STAKEHOLDER SURVEY

Member State Ministries Report December 2014

This study has been requested by the European Commission, Directorate-General for Competition and co-ordinated by Directorate-General for Communication.

This document does not represent the point of view of the European Commission. The interpretations and opinions contained in it are solely those of the authors.

Qualitative study – TNS Qual+

Eurobarometer Qualitative study

**DG Competition
Stakeholder survey**

Member State Ministries 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)

Project title	Eurobarometer Qualitative Study - DG COMPETITION STAKEHOLDER SURVEY - Member State Ministries Report December 2014
Linguistic Version	EN
Catalogue Number	KD-07-14-044-EN-N
ISBN	978-92-79-44107-3
DOI	10.2763/638883

© European Union, 2015

TABLE OF CONTENTS

EXECUTIVE SUMMARY 2

1. BACKGROUND AND RESEARCH METHOD 5

1.1 Background and objectives 5

1.2 Methodology and sampling 6

1.3 Participant background and selection 7

2. SOUNDNESS OF LEGAL AND ECONOMIC ANALYSIS 8

2.1 Clarity and comprehensibility of decisions 8

2.2 Predictability of decisions 9

2.3 Predictability of fines imposed 11

2.4 Understanding the markets 11

2.5 Quality of economic analysis 13

3. TRANSPARENCY AND PROCEDURAL FAIRNESS 14

3.1 Overall level of transparency of DG Competition’s work 14

3.2 Listening and informing in a timely manner 15

3.3 Publication of non-confidential decisions 16

3.4 Stakeholder consultation on new rules 16

3.5 Observance of procedural rules 17

3.6 Burden on businesses and organisations 17

4. ECONOMIC EFFECTIVENESS 19

4.1 Effectiveness of detection policy 19

4.2 Deterrent effect of fines 19

4.3 Impact of existing EU State aid rules on planned business transactions 20

4.4 Timeliness of decisions 20

4.5 Focus on the right sectors 21

4.6 Adaptability to technological changes and globalisation 21

4.7 Impact on the markets 22

4.8 Use of settlements in cartel cases and commitment decisions in antitrust cases 22

4.9 Enforcement of decisions 23

4.10 Contribution to the EU's economic growth 23

5. COMMUNICATION AND PROMOTION OF COMPETITION CULTURE 24

5.1 Clarity and comprehensibility of external communications 24

5.2 Choice of communication and media channels 24

5.3 Promotion of competition culture and policy convergence at the international level 25

ANNEX – Discussion guide 26

EXECUTIVE SUMMARY

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

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

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

SOUNDNESS OF LEGAL AND ECONOMIC ANALYSIS

Clarity

Ministries mainly commented on the Commission's State aid decisions. The actual decisions were considered to be clear by most participants, with final decisions usually considered clearer than intermediate decisions. However, several participants asserted that the rationale behind the decisions is somewhat opaque. They would like more detail on the legal arguments underpinning both final and intermediate decisions, as well as information on the decision-making process.

Predictability

Participants were divided on the issue of predictability. Almost half believed that cases are decided according to current legislation and strict guidelines. Additionally, regular discussions with DG Competition staff largely contributed to good predictability.

Others claimed that, because they were not privy to the decision-making process and how guidelines were applied, they could often not predict decisions. Moreover, several participants questioned the predictability of decisions, due to the discretionary powers of the Commission, to new rules introduced by State aid Modernisation and because the rationale behind decisions is sometimes obscure.

DG Competition Stakeholder Survey – Member State Ministries Report

Ministry officials did not express any opinion on the predictability of fines. However, one participant mentioned that the method of calculating the amount of aid wrongfully awarded often appears complex and therefore unpredictable.

Market understanding

DG Competition staff were seen by the majority of participants as having a good general understanding of their markets, especially of large established markets as opposed to local and emerging markets. Several participants mentioned that, even though DG Competition faces constant staff turnover, which somewhat impedes good market knowledge, it has adopted with some success, various measures to maintain an adequate level of market knowledge among staff teams.

The economic analyses prepared by the Chief Economist Team were recognised as having a positive impact on decisions. A vast majority of participants believed these are based on rigorous and complex procedures. They trusted the processes and appreciated the outcomes.

TRANSPARENCY AND PROCEDURAL FAIRNESS

Most of the ten Member State ministries' officials shared the common perception that DG Competition works transparently. Moreover, the staff was considered accessible and responsive if information is specifically requested from them. General information is readily provided, but precise details are harder to obtain. As mentioned earlier, several participants demanded more information on the rationale behind the Commission's decisions.

Regarding the publication of non-confidential decisions, about half the participants thought these take too long (up to a year), especially if they need to act on the decision. A couple of other participants were more accepting of the time lag.

Two key themes re-surfaced when discussing the timely provision of information: first, information provided is often perceived as too general and lacking detail; second, DG Competition's staff, although willing to provide information, appear more reactive than proactive. Overall, most participants felt they had been kept well informed about cases and given information in a timely manner.

With regard to consulting stakeholders about new rules, the process was perceived as highly participative. Even though some participants acknowledged that DG Competition has no obligation to act on their opinions, they were happy to have been consulted. However, some participants regretted that their suggestions are rarely reflected in the new rules.

DG Competition was perceived as scrupulous in complying with procedures. Strong security measures are in place to ensure total confidentiality and none of the participants had heard of any leaks in that regard. However, there were a few wry assertions that DG Competition sometimes asks for more information at "apposite" times, in order to extend the legally prescribed timelines to its advantage; so sometimes, procedural steps which should in principle be concluded within two months can take up to three years

Views were divided regarding the burden placed on ministries. Some thought that DG Competition's requests are clear and targeted. Others called for more targeted requests for information, in order to limit the burden placed on ministries. Once information has been provided to DG Competition, stakeholders would like to be kept informed of progress.

ECONOMIC EFFECTIVENESS

Very few participants were sufficiently knowledgeable to comment on DG Competition's detection policy in general and State aid in particular. It should also be noted that none of the participants were aware of infringements of State aid rules in other Member States.

There was support for conventional fines (outside of State aid, in antitrust and cartels) as they are an effective deterrent thanks to their deterring large amounts. Compulsory recovery of illegally granted State aid was also seen as an efficient dissuasive and reparative measure that protects market balance. Both the Member State ministries and the recipients of grants were thus perceived as cautious in respectively allocating and asking for funds.

The perceived timeliness of decisions strongly depends on whether these concern notifications, complaints or preliminary notifications. Most specifically, complaint cases were considered too long by most participants. Additionally, one participant mentioned that, in State aid cases, grants cannot be awarded until authorised by the Commission, which can cause a delay and undermine its impact on the market.

Most participants couldn't express any opinion regarding DG Competition's adaptability to technological changes. One participant however mentioned that DG Competition has integrated market evolutions well into its analyses, citing the example of an analysis of the retail sector, which integrated both e-commerce and traditional transactions. Also, several ministries' officials reminded DG Competition that a lot of EU companies compete internationally and not only within the EU borders and regretted that too much focus is put on competition within the EU market, forgetting about competition on a global scale.

Almost half the participants viewed DG Competition as an organisation with authority and one that has had substantial impact on the European market. Its enforcement of competition policy guarantees a free market with transparent competition, which translates into economic growth.

COMMUNICATION AND PROMOTION OF COMPETITION CULTURE

From the five Member State ministries' officials who commented on this section, three shared the impression that DG Competition works hard at promoting competition culture and policy convergence at an international level. They also praised DG Competition for the clarity of its external communications and the variety of means it deployed to deliver these.

According to most participants, the website is rich and up-to-date, communications such as newsletters, summaries or press releases are regular, conferences are interactive and stimulating and staff members are accessible, approachable and helpful. Given all of this, adopting additional social media was considered unnecessary.

1. BACKGROUND AND RESEARCH METHOD

1.1 Background and objectives

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

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

DG Competition will use the findings of the study 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 Member State ministries' officials. Further reports cover the views of:

- Economic consultancies' experts
- Lawyers
- Business and consumer associations representatives
- Companies' representatives
- National competition authorities' officials.

1.2 Methodology and sampling

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

Due to data protection considerations, potential participants were initially contacted by DG Competition and invited to participate in the study. Details of those organisations willing to take part were provided to TNS Qual+. All participants have been in working contact with DG Competition in the last three years either as a recipient of a Commission decision, a complainant, leniency applicant, etc.

This report is based on interviews with 10 officials from seven Member State ministries. One of the interviews was conducted with two participants and in another, three were present. Although all Member State ministries were approached, only very few accepted to participate in the survey. However, these participating ministries present a good balance between larger and smaller Member States, as well as a good geographical mix (North, South, East and West).

The ministries whose officials were interviewed are not specifically identified in this report in line with participants' requests that their comments be reported anonymously. By the nature of their involvement with DG Competition, the participating Ministries mainly commented on the Commission's State aid decisions.

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

The reader should note that this report is based on findings obtained through a qualitative research methodology. The interviews were structured around a consistent set of topics agreed with DG Competition, but, within each topic area they were open and discursive in nature. So, while we have striven to indicate how widely held these perceptions and views were, such information should be treated with some caution. It is important to remember that the issues raised by each participant will have been those that were of primary concern to them on the occasion of the interview and should not necessarily be taken as an indication that another issue was of no concern.

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

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

A series of quantitative questions was included as part of the interview process, to provide an overall summary of participant views on key aspects of DG Competition's performance. Not all participants felt able to provide a rating for all the elements due to lack of immediate 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.

DG Competition Stakeholder Survey – Member State Ministries Report

As illustrated in the example below, the figures in the last line represent the number of participants who answered the score mentioned immediately above (scale); in this case, no participant gave a score of '1', '2' or '3', while one participant gave a score of '4', two gave a '5', three 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
-	-	-	1	2	3	1

1.3 Participant background and selection

The participants were clearly very familiar with the legal aspects of EU competition laws. Many functioned as intermediaries between their country and the European Commission for competition matters. Most were also involved in the attribution of State aid. None dealt with issues relating to mergers and cartels. Specific responsibilities included:

- Providing advice and guidance on State aid rules to national, regional and local government and government agencies;
- Co-ordinating and advising on complaint cases, court cases and formal investigations in State aid cases;
- Acting as consultants and coordinators between their Ministry and the EC on State aid cases;
- Controlling the call for tenders and checking compliance with regulations; being the channel through which notifications seeking EC approval for State aid must be routed; providing State aid awareness-raising and training to those in government agencies;
- Coordinating State aid control cases and managing grants;
- Liaising with companies in which their government is the main shareholder;
- Working on general laws and regulations.

For most of the participants, involvement with DG Competition dates back several years. All were in regular contact with DG Competition. Depending on the issues at hand, some periods of contact had been more frequent and intense than others. Most had tried to keep abreast of regulatory changes and matters about which DG Competition communicates. However, they were often confronted with questions in the interviews which they were not able to answer, or answer in detail. Thus a relatively small sample became smaller.

Furthermore, as interviewees had specific areas of work, it was not always possible to group their answers and detect themes. In such case, an overview of their thoughts and experiences has been provided, as well as some individual comments.

The initial list of interviewees was provided by DG Competition. It was based on replies from Member State competition authorities which DG Competition had contacted and invited to participate in the survey.

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

Of the ten quantitative measurements in this report, this question on the legal soundness of the Commission’s decisions was the only one to which the whole sample responded. The responses yielded a mean score of 5.6 on a 7 point scale.

Mean score = 5.6

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

Overall, the majority of ministries’ officials recognised the legal soundness of the Commissions’ decisions.

"Generally, the decisions made are correct. DG COMP has excellent legal professionals whose documents show rigour and in-depth judicial knowledge. That is why the institution’s procedures have scrupulous guarantees."

"Their decisions are legally sound and well annotated. You know the why of their decisions."

However, views were more mixed when evaluating the clarity of these decisions, as well as their predictability, as detailed in the followings sections.

2.1 Clarity and comprehensibility of decisions

- Final decisions are clear, but the underlying legal arguments are less clear -

The majority of participants regarded the actual decisions themselves as clear.

"DG Competition is trying hard to make the decision easy to understand."

However, the reasoning behind the decisions was perceived as less clear. This problem was seen as aggravated regarding the short summaries which are published in all languages for the 28 Member States.

The decision-making process of the Commission in State aid cases was seen as complex and this complexity is seen as influencing how the guidelines are written. As one participant puts it, they are sometimes *"excessively abstract and difficult to understand"*. This reportedly results in difficulties in interpreting legal reasoning and meaning of the guidelines.

"I know they pay a lot of attention to it and are busy comparing things, but it is difficult for us to see how they weigh things up. It's like a black box... Certain parts of a decision are sometimes open to multiple interpretations."

DG Competition Stakeholder Survey – Member State Ministries Report

Difficulties were sometimes encountered interpreting what a term like "acquisition bans" entailed. Similarly, the requirement that "an open and transparent process had to be implemented" raised questions as to what this involved and how one would comply with it.

There was a general sense that where clarity is lacking, DG Competition is approachable for discussion. The amount of discussion needed to interpret decisions differs depending on the team working on the case.

"Via the X case, I have a fairly good insight into decisions... I see their underlying intentions. We can discuss with them and discover which passages need to be confidential and which not. There is consultation and decisions do not come as a major surprise. But that is in the X case."

"We are involved early in the process as an observer, we get a lot of explanation during the entire process."

As mentioned above, intermediate decisions were often seen as more ambiguous than final decisions. While intermediate decisions were recognised as preliminary, there was some confusion regarding their purpose: some participants considered them as preliminary findings, while more information is awaited; others believed they are made when there is conflict with Member States in the hope the issue will be withdrawn.

"In most cases the Commission is just enumerating the doubts. There is not sufficient reasoning and it is up to the Member States to provide information. They have to explain why they have or have not adopted something. The final decisions are clearer than the intermediate decisions."

"They end up convincing the Member State to abandon the process if there is a negative decision: it makes more work for them if there is a negative decision. Sometimes States withdraw to make the process easier, when it would be better to have a clear rule that everyone had to be involved until the end."

Many of the above criticisms could be allayed if the rationale for a decision and more detailed argument were to be more comprehensively and clearly communicated, not only in final decisions, but also in intermediate decisions.

2.2 Predictability of decisions

- Views are polarised regarding the predictability of decisions -

Three participants were of a similar view that cases are assessed and decided in a consistent way and according to the legislation. Predictability is further enhanced owing to the open dialogue with DG Competition professionals.

"Dialogue with DG COMP professionals is open, on-going and continuous, and they let us know if they have any bad news. They do not make any decisions because they cannot, but they let you know, and we usually know what's going to happen, we know the decisions, and according to the guidelines the predictability is 90%."

According to one of the participants, predictability has improved over past practices where the Commission is alleged to have made decisions without considering crucial aspects, or dismissed evidence that led to the Commission having been taken to court.

DG Competition Stakeholder Survey – Member State Ministries Report

How evidence is used or not used is the very issue why some thought that decisions are "not really predictable".

The Commission was criticised by several participants for biased reasoning at times, referring to precedents that support its position and minimising references to others. One participant commented that while they have had no surprises, there was a case decided in contradiction to current rules. This gave rise to a new precedent and hence the rules altered. This unpredictability creates insecurity. The fact that the Commission has discretionary powers was seen as further exacerbating this and as making it difficult to challenge decisions in the courts.

"A lot of discretionary leeway gives them the freedom needed to make effective decisions, but can also lead to surprising decisions."

One participant complained that in the 2014-2020 Regional Aid Guidelines, regional incentives are only allowed for supporting SMEs, where traditionally grants would have rather gone to large companies that are better able to relocate to disadvantaged areas. The participant was of the opinion that while this decision corresponds to a conceptual framework that values competition, it was based not on European studies, but rather on markets such as the United States. It ignored the consequences of possibly losing competitiveness in comparison to countries outside the EU, as large businesses might relocate production to these countries.

"I told them that SMEs are specific to local areas, and that only large companies are able to produce something in one area or another depending on the incentives to do so, but it didn't make any difference [for the Commission's decision to exclude large enterprises from grants according to the new guidelines]."

A participant further demanded that "decisions have to be predictable", especially now, following the major change of rules introduced by the State Aid Modernisation. The new rules significantly broaden the scope for Member States to provide aid without prior permission from, or notification to DG Competition. Therefore, Member States need clear guidelines as to what is likely- or not likely to be acceptable to the Commission, so that they can reasonably predict how the Commission will view their decisions and actions.

To improve the predictability of decisions, an interviewee suggested limiting the Commission's discretion in choosing the measures it prescribes for Member States to make certain amounts of State aid acceptable. They proposed a "contribution scale" that would define which measures could be taken if a certain level of State aid is provided.

One participant requested more transparency on how decisions are made, in order to increase their predictability.

"We're not saying [decisions] are currently made randomly, but we currently have no insight into how they are made. And that can result in unpredictable decisions."

Some participants claimed to have little insight into how decisions are made. There appear to be differences in the compatibility measures used in different cases. While they understood that every situation is different, they nevertheless wondered how decisions are made.

"I have noticed eye-catching differences in the compatibility measures used in different cases. There is no lower limit in case X, but there is one in case Y. So there are differences, which make it difficult to work with."

From participants’ comments about the clarity of the Commission’s decisions and the predictability of decisions, they appear to be requesting more information not only on the rationale and legal precedents that serve as a basis for the decisions, but also on the decision-making processes.

2.3 Predictability of fines imposed

- Whereas fines in antitrust and cartel cases were considered to be imposed according to clear criteria, the recovery of State aid is considered to be based on too complex formulae, curtailing predictability -

Most interviewees did not comment on this question, dismissed it as not applicable for their work, or provided an unsubstantiated view that *“the amount fined is predictable”*.

Indeed, ministry officials pointed out that in State aid cases, the area in which most of the participants are involved, fines are not imposed. Rather sanctions are applied for transgressions and money is recovered according to procedures.

One participant held that fines are predictable, since there are clear criteria that set their amount.

“The Commission has clearly defined criteria, depending on the severity, type and duration of the breach... calculations can be made... We have recently seen two fines and I think we anticipated them. The criteria are clear.”

One participant explained that State aid had been broadened and now incorporates many State activities, not all of which are transparent. For example, granting land for free. If this is incompatible, the money has to be refunded. In some cases it is difficult to follow and it is very complex to calculate the recovery rate that has to be applied to establish the current value of the disadvantage.

2.4 Understanding the markets

- Market knowledge is considered generally good, as well as the measures introduced to further improve market intelligence -

✓ **Rating: market knowledge**

Mean score = 5.5

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

Half the participants thought DG Competition has a good general understanding of the markets in which it operates. According to one participant, this knowledge is particularly high in large markets (national, regional and pan European). Another participant praised DG Competition’s initiative to organise its staff by sector cluster, which results, according to them, in a higher level of experience and knowledge.

DG Competition Stakeholder Survey – Member State Ministries Report

One participant argued that the Commission's knowledge about national markets is often limited.

"DG Competition is not aware of what is really going on... They are removed from reality... There is a lot of theory and little management."

One participant however felt that DG Competition is increasingly trying to consult and seek information from Member States ministries to improve their knowledge.

DG Competition's knowledge of small local markets was also not considered as good and some felt it is behind in understanding new and emerging markets, like telecommunication technologies.

One participant however acknowledged DG Competition's efforts to obtain support from experts in specific fields, including from private companies in relevant sectors.

"These (local markets) are very specific markets which cannot be compared to each other. I have the impression that this sometimes overstrains DG Comp."

"If they are traditional markets, then they have the knowledge; but not for new markets. For example, there is some confusion with very advanced technological aspects such as broadband, digital television, you have to explain a lot of things, they are not experts on the matter, for example on hospitals, museums, etc. This lack of knowledge could have a significant impact, as the Commission has exclusive powers over competition."

The staff was also perceived as less knowledgeable in specific information of a specific country and the major players. However, participants found their knowledge has improved and continues to do so.

"Knowledge has improved, everything is noted down on file after the Member State provides the information. There were periods when the questions were continuous and very basic questions were asked, whereas now there are fewer questions and they are more focused. They need less and less additional information."

Several participants commented on the issue of staff turnover, which they saw as impacting the accumulation of market knowledge.

Participants' suggestions about how DG Competition could further strengthen sector expertise included:

- More two-way communication with Member States;
- Obtaining even more input and expertise from national authorities;
- Keeping teams together for longer, which may also curtail staff turnover.

2.5 Quality of economic analysis

- Sound structures and rigorous procedures underpin economic analyses -

✓ Rating: quality of economic analysis

Mean score = 5.0

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

All participants commented on the economic analyses, although only five offered a quantitative score.

The introduction of the Chief Economist's position seems to have clearly impacted decisions. Most participants viewed this favourably, with respect both for the processes and outcomes. Yet, a couple felt this economic imperative has unseated social objectives.

"The grant and aid policies have many social objectives. Giving an economic evaluation of local development is complicated. It forgets about other public objectives that are just as important."

Five participants regarded the economic analyses very positively. The other two were equivocal and critical respectively.

DG Competition staff were seen as "well grounded". They ask good and logical questions and are capable of getting to the bottom of complex issues.

"The files and decisions are based on solid preparatory work. You feel the impact of the Chief Economist's team."

"There are also very specific Excel sheets for institutions to complete and they do ask quite a lot, like specific things that apply to banks. They carefully distinguish all the markets and request specific drivers."

Economic analyses were appreciated and trusted by nearly all participants, even if they don't always fully understand them, especially if they do not have an economic background. Also, they regretted not always having access to the whole document.

Several participants regretted that the Commission sometimes refers to background economic analysis in its decisions, but which are however not enclosed as part of the documentation and thus not accessible to stakeholders.

One participant, who was critical of DG Competition's understanding of its markets, also asserted:

"economic analyses are unpredictable... There are no clear guidelines that you are aware of in advance... There should be more objective parameters."

3. TRANSPARENCY AND PROCEDURAL FAIRNESS

3.1 Overall level of transparency of DG Competition's work

- **DG Competition readily provides general information but specific details are harder to obtain -**

A key theme in this report is that participants would like more information on the rationale and arguments that underpin decisions. This re-emerges in the coverage of transparency, with a few participants wanting greater insight into the considerations behind a decision.

In terms of what transparency means to them, participants seemed to emphasise different aspects, namely matters of relationship, co-operation and being kept informed – which includes having "*access to information and relevant acts*". Most participants acknowledged receiving forms, but there were mixed views regarding in-depth information.

"For me, transparency should mean that the Commission is transparent enough for you to be able to predict the results. And in this sense, they are not."

Only one participant unequivocally praised DG Competition's transparency and this seemed to be with regard to all aspects of DG Competition's work. That person saw communication as open and easy. Officials in the particular ministry were aware of what DG Competition was working on at any time, including what documents were being used.

"Normally everything that needs to be known is known and the only thing missing is the name of a complainant, but that isn't really necessary."

A few participants felt DG Competition keeps them informed at a general level, but does not explain detailed aspects of their work. For example, they claimed that there was:

- No pro-active information about cases having been closed or explanations of what happened to complaints;

"You do not get an idea before you explicitly ask them what happened with the case... The pre-investigation is internal and kept as a secret - we do not see what happens there.... If they close a case they definitely should inform us."

- No clear communication about the timeline of a case and what happens after it is handed to superiors;

"It depends on the team manager. Some check the files quickly; others keep them for some time and delay the case."

- Short notice given in advance of meetings, thus affording little time to prepare and creating concern that "*this short time reflects on the quality of the stakeholder's feedback.*"

While DG Competition was seen as not always pro-active, most participants acknowledge that staff is accessible and responsive if they, the ministries officials, initiate the contact.

3.2 Listening and informing in a timely manner

- DG Competition is considered to be highly responsive to requests for information, but less likely to spontaneously provide this -

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

Mean score = 4.2

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	2	-	-

Referring both to notification cases and complaint cases, most stakeholders felt well informed by DG Competition. Questions are usually answered and staff is open to discussion. But stakeholders said they needed to explicitly ask for information, yet when they received it, it was timely. Participants would like to see DG Competition be more proactive. One participant mentioned that when compared to previous years, there has been no change in the situation.

DG Competition is generally perceived as taking relevant circumstances into account in its decision-making, is receptive to discussion, encourages constant and open dialogue and when asked for information, delivers it in a timely manner.

"They normally receive everyone and listen and pay attention to what you ask for. There is very open communication."

A couple of participants pointed out that they could not assess the interval between a decision having been made and their being informed about it.

"If they know which decision they will be making, they do inform you. But it is difficult to say if this is timely because you don't know how long they have been considering a certain idea [before communicating it to relevant stakeholders]."

One participant mentioned a specific complaint's decision, for which only the appellant received the decision directly while the ministry did not. Another one was upset after having received the decision by press release. It was suggested the Commission be more empathic to their situation of not wanting to be surprised and value them as customers rather than stakeholders.

3.3 Publication of non-confidential decisions

- It can take up to a year to publish non-confidential decisions which some feel is too long yet others seem to accept -

The responses varied regarding the publication of non-confidential versions of the decisions and three main issues surfaced:

- The length of time it takes for the non-confidential version to be published and the impact of such a lag. Participants’ experiences ranged from less than a month to one year;

"A decision that reached us on one date was published four months later... If you have to intervene after the decision, there is a pause... it's a bit worrying."

"They are taking a decision and the non-confidential version is published one year later. This takes too long."

However, one participant was unconcerned about the time it took to publish decisions, as they receive confidential documents. They acknowledged it may seem a long time for other parties;

"It may be awkward for some, but that's not really the case for us as we get confidential documents. They have to coordinate the exact content with us; this takes time, and leads to difficult discussions. Being able to see certain things and discuss them is also in our interest."

- Confidential versus non-confidential decisions, with one participant stating that only the former is relevant to them;
- The means through which participants are informed of a decision. One participant cited a case where the decision appeared in the press before they were informed directly, which *"surprised and annoyed"* the officials in that ministry.

3.4 Stakeholder consultation on new rules

- Stakeholders feel they have been consulted but that their opinions are often not reflected in the new rules -

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

Mean score = 5.6

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

DG Competition Stakeholder Survey – Member State Ministries Report

Several participants referred to the fact that drafting guidelines is a participative process and DG Competition involves all Member States in a "non-binding way". Even though this has always been the case, several mentioned that the process has now been enhanced by the organisation of regular meetings with Member States to discuss proposals for Commission guidelines.

While DG Competition seeks input from stakeholders, some officials were irked that their or their ministries' contributions may be disregarded if they do not fit the policy tenet. Others felt involved "to the full extent" even though they knew their involvement was only consultation and that DG Competition is not obliged to use their arguments.

"You get a written draft, but if you ask them about a remark which they dropped, they just tell you: 'We don't like it' - with no further explanation."

"They involve you, but not completely: they ask for your opinion."

"If you are lucky, some take your advice."

3.5 Observance of procedural rules

- Procedural rules are strictly adhered to, but there is a feeling that State aid deadlines are easily manipulated -

DG Competition was perceived as scrupulous in its adherence to procedures. Information is treated with discretion, confidentiality is observed and none of the participants were aware of any leaks. They also acknowledged that there are strong security measures in place for confidential/sensitive information.

Notwithstanding its strict compliance with procedures, participants nevertheless believed that DG Competition manipulates deadlines to its advantage. For example, in order to legally extend a deadline, it may request additional information and so trigger a new deadline.

"The Commission has to reply to a request within two months, and it normally takes three years. What they do is ask you for information before two months have passed, which interrupts the deadline."

"If there is a deadline of two months to make a decision and the period ends in August or at Christmas, it is extended. A request is sent, a procedure is added..."

3.6 Burden on businesses and organisations

- More precise requests would help to reduce the workload -

Views were mixed regarding the burden that the Commission's requests for information placed on both ministries and companies/organisations. On the whole, participants felt that companies bear a bigger burden than the ministries when providing information.

While some participants saw DG Competition's requests for information as clear and targeted, others thought that it should decide more carefully what is really necessary and what is not. Very general requests result in a lot of work, as stakeholders have to devise various scenarios.

DG Competition Stakeholder Survey – Member State Ministries Report

"It creates a heavy workload. But they need to ask for this information; it's not abusive."

"Sometimes they want documents which are dated 10 years ago. This is very difficult to collect. Sometimes you feel that companies need to set up a new department just for doing this work. And it is doubtful if this is really necessary."

Several stakeholders mentioned that once they have provided DG Competition with the information, they would like to be kept informed of progress.

4. ECONOMIC EFFECTIVENESS

4.1 Effectiveness of detection policy

- Respondents had only limited knowledge about DG Competition's detection policy and none with respect to infringements in the area of State aid -

Participants were generally unable to answer this question, as they had only scant knowledge and were not aware of infringements.

One participant had the impression that DG Competition manages to focus on the most important cases, thanks to their high level of legal expertise and information.

One participant was of the view that, in terms of State aid, detection is linked to the vigilance of DG Competition's staff and whether they check the press, communicate with Member States and follow-up on possible infringements. Language barriers may also play a role, because unless an activity appears in the leading international media, the case may remain unnoticed.

One participant regretted the allegedly burdensome complaint form which needs to be used to formally file a complaint. In their view, this burden could limit the complainant's contribution to detect infringements.

One participant acknowledged that complaints are important, but added that *"this is not a detection policy, but it's rather motivated by companies' wish to improve their own competitive chances."*

Another participant, however, considered DG Competition's detection policy as "ineffective", as it is *"often based on allegations with little evidence"*. They cited a case where a local organisation had fiscal autonomy to provide grants but was suspected of a breach, based on a press article. They wished that some kind of preliminary investigation would be carried out before putting the blame on a Member State or a benefiting company.

4.2 Deterrent effect of fines

- Sanctions are a deterrent to wrongdoing and a remedy for restoring equity -

Only a few participants could answer this question substantively.

As mentioned in Section 2.3, participants noted that fines are not imposed in the area of State aid, but sanctions include the recovery of illegal aid. Most stakeholders believe that the threat of sanctions deters misconduct and imposing sanctions serves to restore market equilibrium.

"As far as the companies that receive the illegal grants and the States that award them can be punished, these sanctions are effective as a dissuasive measure."

"Compensation measures restore equilibrium in the market."

Focusing on conventional fines (outside of State aid), one participant commented that because fines are so high, they are an effective deterrent, despite only organisations being liable and not individuals.

4.3 Impact of existing EU State aid rules on planned business transactions

- Caution drives both provision and receipt of grants -

Only two interviewees responded to this question, interpreting it in the context of State aid. It was noted that the possibility of having to repay illegally granted State aid makes both beneficiary companies and Member States more cautious when applying for or granting aid.

One of the participants also noted that State aid control cases have the positive effect of providing legal certainty, as beneficiary companies are hesitant to ask for State aid if there is a risk of having to refund it later. The participant mentioned they were aware of about 5 to 10 businesses modifying a transaction to ensure compliance.

The second participant mentioned that, although they had had no contact with companies that spontaneously modified their plans to ensure compliance with antitrust rules, they as a Ministry had changed their guidelines for regional grants. They offered grants to SMEs rather than large companies, which impacted the production of a couple of the latter, due to the lack of funds they initially thought they would receive.

4.4 Timeliness of decisions

- Overall, decision-making takes too long -

✓ **Rating: timeliness of decisions**

Mean score = 4.0

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

Whether decisions are seen as timely depends on whether these concern notifications, complaints or preliminary notifications. In general, the view was that decisions take too long, although one participant added that reasons for the delay might have to do *"with the thoroughness of their [DG Competition's] approach"*.

"The Commission is aware that they take a long time, of course. The average time for each decision, in our case, is a year."

Notifications were seen as dealing with manageable issues. Decisions can therefore be taken within a reasonable time frame. This is typically 3-4 months and a maximum of a year.

Complaint cases are completely different and may take several years, which is considered too long. While DG Competition has apparently signalled plans to reduce timelines for complaint procedures, there are doubts as to how successful this will be.

One participant viewed preliminary notifications as useful, but suggested they:

"should be presented in a document done by the same team that dealt with the preliminary step".

The opinion of another participant was that pre-notifications prolong the process.

"Sometimes the pre-notification takes two years, which makes no sense."

Another participant mentioned that grants cannot be awarded until authorised by the Commission and a delay undermines its impact. On occasions, a grant may arrive after a region has already received investment from a company.

4.5 Focus on the right sectors

- The focus is, appropriately, on new sectors and large sectors -

About half the participants felt comfortable or knowledgeable enough to answer this question.

DG Competition is believed to deal with almost every economic sector, but has more of a presence in newer sectors such as communications, or more *"delicate"* sectors like banking, all of which was seen as positive by participants. Also the focus on large sectors such as energy and environment was seen as relevant.

"It covers all the economic sectors from commerce, to buying and selling shoes, to investment in hospitals. When the sector is new, it gets involved."

One participant suggested each Member State should identify their priority areas, although *"the observations of the Commission are also very important for us."* For this participant, other areas of interest were the production industry, innovations and competitiveness.

4.6 Adaptability to technological changes and globalisation

- Mixed views on adaptability to, and focus on technological change -

This question elicited mixed views and a range of perspectives:

- Integration of technological changes in market analyses

Most participants couldn't express any opinion regarding DG Competition's adaptability to technological changes. One participant however mentioned that DG Competition has integrated market evolutions well into its analyses, citing the example of an analysis of the retail sector, which integrated both e-commerce and traditional transactions. Another explained that DG Competition tries to understand market dynamics, but was late to recognise implications from changes in the transport sector, for example, the rise of budget airlines.

- International co-operation and competition

Most ministries' participants share the view that DG Competition cooperates well with the US and Canada. However, several participants claimed that not enough attention is given to economic analyses within the area of international cooperation. Furthermore, some said that there is too much focus on competition within the EU market, forgetting about competition on a global scale.

"They [DG Competition] want to avoid movement within Europe, for example stopping production being moved to another country in Europe, and they forget about the competition in India."

4.7 Impact on the markets

- Most respondents consider that DG Competition’s authority and practices have considerable influence on the market -

✓ **Rating: impact on the markets**

Mean score = 5.3

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	3	-

DG Competition was viewed by most as an organisation with authority and substantial impact on the markets.

In relation to State aid, participants acknowledged that DG Competition monitors the aid awarded by Member States and removes illegal aid that distorts the market. It is the only organisation that can compel Member States to recover all aid that was awarded illegally.

Most share the view that DG Competition has succeeded in achieving a good balance between better functioning of its markets on the one hand and avoiding "artificial competitiveness" on the other.

"They [DG Competition] have enough of an impact. Once they control free competition, it avoids a grant war and stops them [governments across Europe] from supporting companies that are about to go bankrupt."

"DG COMP should be aware of the impact of the strict laws of State aid in the context of the European market compared with all those outside the EU, where the State intervention is not regulated by such strict rules."

Commenting on one sector in particular, namely transport, a participant assessed DG Competition’s impact as strong, especially since the introduction of State aid rules to air traffic and shipping. The participant however considered the end result as putting too strong a focus on competition and not enough on other areas like infrastructure and safety.

"Transportation is not just a matter of competition. There are further important goals which need to be considered."

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

None of the ministry officials felt this question was applicable to them.

4.9 Enforcement of decisions

- Sanctions and prosecution through the courts empower the Commission to enforce its decisions -

Most interviewees did not feel able to respond to this question. Those who did recognised that the Commission has the power to enforce its decisions and that non-compliance can result in prosecution through the courts. If the Commission does not allow a grant, it cannot be awarded. If it is awarded anyway, this incurs significant sanctions.

"If the grant is not considered to be compatible, a deadline is given. If we do not comply with the ruling, the Commission will bring us back to court for failure to comply and will then impose a fine on the State."

"The Commission has a very powerful tool: the sanctions that can be imposed."

4.10 Contribution to the EU's economic growth

- Enforcing competition policy leads to a free market, in which effective companies prosper and the economy grows -

Mean score = 3.8

Unlike the other quantitative questions presented in this report, the following rating doesn't represent an evaluation of DG Competition's work by its stakeholders. It indicates the participants' perception regarding the contribution of the Commission's enforcement of competition policy 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	-
	4	3
	3	1
	2	-
Does not contribute at all	1	-

As reflected in the 5 point scale above, the four interviewees that responded to this question were like-minded that the enforcement of competition policy contributes to the EU's economic growth:

- It guarantees a free market, ensuring companies are more effective;
- Inefficient firms are forced out of the market and in general it is expedient to not prop up these businesses with grants;
- Comprehensive, transparent competition translates into more economic growth.

"Competition not only guarantees the free market, but it involves alleviating the disadvantages in certain areas."

One participant added that the Commission should also seek, in its decisions, to resolve structural deficiencies and internal imbalances in terms of competition within the EU.

"Competition is not only about guaranteeing the free market, but it also involves alleviating the disadvantages in certain areas."

5. COMMUNICATION AND PROMOTION OF COMPETITION CULTURE

5.1 *Clarity and comprehensibility of external communications*

- DG Competition is commended for the clarity of its external communications and for using a variety of media -

In commenting on DG Competition's external communications, all participants were positive and the overriding view was that communications are clear and easy to understand:

- The website is good and makes it easy to stay up-to-date. It has, for example, downloadable speeches, the recent approval of a regional aid map for 2014-2020, live-stream conferences, etc.;
- Communications are constant: usually every day and in different formats, such as newsletters, summaries, press releases, etc.;
- Press releases about cases, guidelines, decisions are all informative and easy to read. Although some important decisions are communicated via press release, these are "*more or less fine*". One participant mentioned a recent misinterpretation in the press, but added in mitigation that:

"you cannot expect that when you publish something short, it can also be informative in these complex situations";

- DG Competition staff have a positive attitude. They are willing to help and are knowledgeable.

5.2 *Choice of communication and media channels*

- With the gamut of media channels already available, additional forms of social media are unnecessary -

In addition to the full gamut of media channels available to participants (highlighted in Section 5.1 above), several interviewees also mentioned more personal channels, such as phone calls, letters, emails and face to face discussions, as well as conferences and seminars, which are considered interactive and provide networking opportunities. The European Competition Forum is broadcast over the internet. These avenues are all valued.

Most participants regarded the various media channels as sufficient and did not support the use of other forms of social media. Most participants found that the use of social media for official communications is inappropriate, as grants are "*delicate matters*". One participant mentioned an app - SANI (State Aid Notification Interactive) - which can be used for official notifications within the framework of strict legal procedures.

Only one participant said Twitter has potential for communicating short messages.

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

- DG Competition works hard at promoting competition policy and policy convergence -

✓ Rating: promotion of competition culture

Mean score = 6.0

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

In general, competition culture and policy convergence was viewed as actively promoted by DG Competition. For example, one participant mentioned the existence of bi-lateral talks about State aid (e.g. in the case between Airbus and Boeing), although it is unclear if this ends with a binding agreement. Also, one recalled that it has been the topic in recent workshops and seminars, which was not the case previously.

"Oh yes, they are out there very well – there's a strong approach. They push, stimulate..."

A couple of participants praised DG Competition's efforts to promote competition culture even outside the EU borders. They indeed held that some non-Member States grant large amounts of money to their domestic companies, which are direct competitors of EU companies.

"If you think of the shipbuilding industry, you may notice that the EU Commission always considers market protection each time non-European nations give aids to their domestic industry."

Finally, one participant regretted that, when their ministry attempted to organise a training session for its judges, DG Competition was not very cooperative in sending their training staff over. This ministry official encouraged DG Competition to regularly send speakers to training sessions for judges in Member States, in order to promote competition culture at national level.

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

DG Competition Stakeholder Survey – Member State Ministries Report

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)

DG Competition Stakeholder Survey – Member State Ministries Report

- 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?

DG Competition Stakeholder Survey – Member State Ministries Report

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

DG Competition Stakeholder Survey – Member State Ministries Report

- 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?

DG Competition Stakeholder Survey – Member State Ministries Report

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

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

SHOW CARD 7

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

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

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

(EC, BA, CA, NCA)

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

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

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

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

(All)

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

DG Competition Stakeholder Survey – Member State Ministries Report

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

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

SHOW CARD 8

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

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

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

IF NEEDED, explain that:

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

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

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

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

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

(All)

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

DG Competition Stakeholder Survey – Member State Ministries Report

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

SHOW CARD

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

- On what grounds did you give this answer?

D. COMMUNICATION AND PROMOTION OF COMPETITION CULTURE

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

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

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

(C, BA, CA)

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

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

(C, EC, BA, CA)

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

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

(All)

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

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

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

DG Competition Stakeholder Survey – Member State Ministries Report

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