

Eurobarometer Qualitative study

**DG Competition
Stakeholder survey**

National Competition Authorities 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. This specific report is based on interviews with representatives of national competition authorities. All participants 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. A total of 26 in-depth interviews lasting on average 75 minutes were thus carried out, conducted face to face wherever possible. The interviews took place in June and July 2014. This report was finalised in December 2014.

SOUNDNESS OF LEGAL AND ECONOMIC ANALYSIS

The large majority of participants working within national competition authorities consider the decisions made by the Commission to be clear and understandable. Decisions are considered to be well grounded and based on solid legal and economic reasoning. This is supported by the fact that decisions are most often upheld by the European Court of Justice. The NCA representatives questioned are however unsure of how well laypersons understand decisions and question whether lengthy documents are usable by all groups.

Many participants noted a good balance between economic and legal analysis. It appears clear to them that both are taken into consideration, although at times, it is felt that they are not in harmony and that compromises should be made. Involvement of the Chief Economist's team is felt to insure quality economic input. It is also believed that DG Competition has made increasing use of external experts, specialised research / modelling techniques, and market surveys.

Most markets and sectors are considered to be well understood by DG Competition; within these markets, DG Competition is thought to be able to handle very complex cases (e.g. electricity market, financial markets). However, new market sectors and national or specialised market issues which require more investigation are believed not to have been handled as well; in these cases, the use of national experts is inconsistent and the NCAs questioned that in-house expertise, knowledge and resources are not being maximised. High staff turnover in DG Competition is also considered an issue and something that could be linked to a lack of a consistency in the level of expertise.

The majority of participants agree that Commission decisions are predictable and consistent with previous rulings. Even in cases where there is no legal precedent to follow, or where the Commission takes decisions regarding new markets, the Commission is thought to be consistent in following the principles of existing legislation. Participants expressed a desire for consistency and objectivity within each case, with a logical flow from the facts to the decision. Beyond this, increased predictability is not sought.

Settlement decisions are considered less clear, because of the shorter format of the decision. A minority also noted some decisions appear to be more politically motivated.

Fines imposed by the Commission are seen by most as broadly predictable and as being clearly based on the comprehensive guidelines published by DG Competition. Mitigating circumstances are believed to make fines somewhat unpredictable at the outset of a case which is considered entirely acceptable and expected. If fines are too predictable, it is thought that companies could too easily weigh up the costs of non-compliance and determine whether it would be profitable.

TRANSPARENCY AND PROCEDURAL FAIRNESS

A majority of participants consider DG Competition to work transparently and believe that the level of openness, cooperation and sharing of information is satisfactory. A quarter of participants believe DG Competition has improved its timeliness, procedures and delivery of information around decisions in the recent past. The NCAs surveyed are particularly positive about the manual of procedures which they feel has improved the transparency of decisions and provided disclosure of procedural steps.

When evaluating transparency, participants focused on key aspects of the relationship, such as willingness to provide documentation as required, access to information in a timely manner, and clarity of processes and procedures including priorities.

Whilst most agree that DG Competition listens to the NCAs questioned and provides information in a timely manner, there are areas where participants see a need for improvement. It is thought that complex documentation needed for key meetings should arrive earlier in order to give stakeholders enough time to review and prepare for meetings adequately. It was said that time taken to publish non-confidential versions of decisions does not always impact on the work of the NCAs questioned (specifically mentioned by six NCAs in the sample), but could potentially impact negatively on third parties, such as businesses and associated institutions and should be shortened where possible.

DG Competition is praised for involving NCAs in consultations when creating new rules. DG Competition is also seen to be duly following its own procedural rules, as obliged to do so by the regulations. However, it was said that there remains some room for improvement, given that almost a third of participants can provide at least one example where regulations have not been as strictly adhered to.

DG Competition's investigations and consultations are considered somewhat burdensome for the NCAs questioned and even more so for businesses. Complying with requests, completing lengthy questionnaires, cooperating with or being involved with initiatives, are all thought to require considerable time and resources. To reduce the burden, participants suggested holding virtual meetings and videoconferencing more often, to avoid the need for frequent travel to Brussels. Others suggested more care be taken in requesting information, especially at the beginning of investigations, to ensure requests are focused only on what is necessary.

ECONOMIC EFFECTIVENESS

DG Competition is regarded by the majority as effective in detecting infringements, particularly as a result of the leniency policy. This is supported by the large number of cases seen to be uncovered and investigated by DG Competition, which the majority believe to be initiated by complaints and whistle-blowers.

Most believe fines, especially larger fines, are an effective deterrent for companies. However, some believe that depending on the amount of harm and the circumstances, fines are not as effective as criminal prosecution, which impacts on individuals. The number of recidivists is cited as an indication that fines are not acting as a deterrent for some companies.

Amongst the few who offered an opinion on the subject of existing antitrust laws, most feel that they have an impact on business transactions, either by modifying transactions at the outset or once a complaint is initiated. Guidance derived from the outcomes of antitrust cases is also thought to lead to better business practice, (including pre-consultation, compliance programmes) and to improve business competitiveness, as well as competition culture.

Most agree that the Commission's decisions are, on the whole, delivered within a reasonable time frame and are becoming more efficient, albeit within the limitations of the complexity of the cases and the need to follow procedures. Participants did not specify whether anti-trust, mergers or State aid cases in particular are considered to be delivered within equally reasonable time frames, just that it is felt that the efficiency of delivering certain, more complex decisions is limited by their complexity. Amongst the improvements suggested are reducing the length of pre-notifications in mergers, completing anti-trust cases more quickly, intervening earlier in some instances and applying for interim measures more often.

The majority believe DG Competition focuses on the right sectors, but a few feel that some sectors are inevitably going to be missed, particularly if complaints or whistleblowing does not trigger investigations. The sectors and topics raised by participants as requiring more scrutiny include the pharmaceutical sector, entertainment sector, media communications sector, as well as SMEs and public procurement in all sectors.

DG Competition is largely seen as adapting both to technological changes (in terms of the way it operates) and globalisation (taking a more global perspective in developing policies and its decisions. It is seen to be using technology to work more efficiently with the NCAs questioned and undertaking cases which reflect an interest in emerging and global markets.

Most participants agree that DG Competition's work has an impact on markets both directly and indirectly, raising awareness and maintaining deterrence. Furthermore, enforcement tools, settlements and commitment decisions are considered effective and efficient in the right circumstances. Most also agree that the Commission is able to enforce decisions and penalties, as they have no evidence that the Commission has any difficulty in doing so.

The majority agree that DG Competition contributes to economic growth by allowing markets to function properly, although it is thought that other factors also impact on economic growth.

COMMUNICATION AND PROMOTION OF COMPETITION CULTURE

Most agree that the external communication from DG Competition is overall clear and understandable from an NCA perspective, although it may be less clear to non-professional audiences. Almost all participants mentioned the value of the website, which is considered to be clear, effective and the preferred channel for information.

Most participants are also aware of the work that DG Competition is involved in at an international level. The competition policy in the EU is felt to be held in high regard by other countries. It is thought that DG Competition is particularly active within the OECD and ICN, where it is seen as influencing the development of competition policies and fostering the position of the EU.

A large majority of the NCAs questioned held that DG Competition promotes competition culture successfully amongst professional audiences; however, some audiences are seen as being less well catered for. In particular, the general public is thought to lack awareness of the initiatives undertaken by the Commission and to have limited understanding of the decisions being made. As a result, many participants suggested DG Competition needs to be more proactive in targeting this audience.

Other audiences are also perceived as in need of more support and better tailored communication, including trade associations, chambers of commerce, SMEs, and consumer associations. A few participants also noted that newly joined EU Member States may need to be specifically targeted, particularly sector regulators and political organisations in these countries.

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 national competition authorities (sometimes referred to as 'NCAs' in the rest of the report). Further reports cover the views of:

- Economic consultancies
- Lawyers
- Business and consumer associations
- Companies
- Member State ministries

1.2. *Methodology and sampling*

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

Due to data protection considerations, potential participants were initially contacted by DG Competition and invited to participate in the study. Details of those organisations willing to take part were provided to TNS Qual+.

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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 26 interviews with representatives of national competition authorities.

The following national competition authorities participated in this study:

National Competition Authorities	Location
Belgian Competition Authority	Belgium
Commission on Protection of Competition Republic of Bulgaria	Bulgaria
Office for the Protection of Competition	Czech Republic
Danish competition and consumer authority	Denmark
Federal Cartel Office	Germany
Estonian Competition Authority	Estonia
The Hellenic competition commission	Greece
National Commission of Markets and Competition	Spain
Competition authority	France
Croatian Competition Agency	Croatia
The Competition Authority	Ireland
Commission for the protection of competition	Cyprus
The Competition Council of Latvia	Latvia
Competition Council of the Republic of Lithuania	Lithuania
The Hungarian Competition Authority	Hungary
Italian Antitrust Authority	Italy
Authority Consumer & Market (ACM)	The Netherlands
Federal competition authority	Austria
The Office of Competition and Consumer Protection	Poland
Portuguese Competition Authority	Portugal
Competition Council of Romania	Romania
Slovenian Competition Protection Agency	Slovenia
Antimonopoly Office of the Slovak Republic	Slovakia
Finnish Competition and Consumer Authority	Finland
Swedish Competition Authority	Sweden
Competition and Markets Authority	United Kingdom

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

Equal coverage of Member States in terms of national competition authorities and Member State ministries was sought and largely achieved in the case of the NCAs questioned.

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 is open and discursive in nature. So, while we have striven to indicate how widely held these perceptions and views are held, such information should be treated with some caution. 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 is of no concern.

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

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

A series of quantitative questions were included as part of the interview process, to provide an overall summary of participant views on key aspects of DG Competition's performance. Not all participants felt able to provide a rating for all the elements due to lack of personal knowledge. The data on raw scores plus an overall mean based on the number of participants rating each aspect are included within the report. As illustrated in the example below, the figures in the last line represent the number of participants who answered with the score mentioned immediately above (scale; in this case, no participant gave a score of '1', '2', '3' or '4', while four participants gave a score of '5', 17 gave a '6' and five participants gave the highest score of '7'.

Commission decisions were not legally sound						Commission decisions were very legally sound
1	2	3	4	5	6	7
-	-	-	-	4	17	5

1.3. Participant background and selection

The participants were almost exclusively senior employees within the national competition authority in their countries. They occupied positions such as Director General, President, Chairperson, Head of Department and Director / Deputy / Assistant Director or Supervisor. The participants were in contact with DG Competition either themselves directly or indirectly through their employees.

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

Mean score = 6.0

Commission decisions were not legally sound						Commission decisions were very legally sound
1	2	3	4	5	6	7
-	-	-	-	4	17	5

Most participants agree that decisions made by the Commission are legally sound and contain well-articulated legal analysis. Decisions are seen to be clearly based on legislation.

The fact that many of the Commission’s decisions are upheld in court is seen as further confirmation that the Commission makes legally sound decisions. Two participants noted that the number of decisions upheld has improved in the past five years.

"The decisions are very well taken. Even in the 10% of cases where we personally might have a slightly different opinion, you can't criticise the fundamental consistency of the Commission's decisions."

"I think that the Commission's decisions are actually very robust; and the courts confirm those decisions, so they are a reference to us."

A few of the participants feel that there has been an improvement in the sense that decisions have become more concise.

One participant sees the fact that some decisions are rejected by the court as a sign that Commission decisions are not always legally sound. However, this participant still gave the Commission a score of six.

2.1. Clarity and comprehensibility of decisions

- Most participants praise the logic and clarity of the Commission’s decisions, although some question how easily non-professionals understand them -

Overall, the large majority of participants working within national competition authorities see the decisions made by the Commission as clear and understandable. Decisions are considered by most to be well grounded and based on solid legal and economic reasoning. This is supported by the fact that decisions are most often upheld by the European Court of Justice.

Several participants mentioned that arguments behind Commission decisions are clearly articulated in the accompanying documentation. It is believed that decisions are well explained, even in cases where the logic behind decisions is considerably complex.

"They even try to write their economic analyses with an accessible language. Praise be to them for that."

Many participants also noted there is a good balance between economic analysis and legal analysis. It is thought to be clear that both are into consideration, although a small minority of participants noted that at times, legal and economic analysis are not in harmony and it is evident where compromises are made.

As a result of the complexity of decisions, it is thought that some of the accompanying documentation can be very long (up to 800 pages, with an average of 300 or 400 pages). Whilst most participants agree this is necessary to ensure arguments are explained in detail, around a third of participants raised concerns about how understandable the information and the rationale are to persons outside national competition authorities. It is perceived that companies which may or may not have legal resources and other laypersons may struggle to understand the details. Even within the NCAs questioned, participants with legal backgrounds have some reservations in interpreting the economic analysis.

"In my opinion, they are usually very thorough, approximately 500 pages. Indeed, these cases are also bigger and cover a larger area geographically but in my opinion these are written in simple language and thoroughly explained."

"I don't think it would be likely that a layman could read a decision of 300 pages and say that he fully understood the economic and legal issues raised. For those of us in this field, I would say things are very well understood. For the consumer or company involved I doubt they fully understand what we do."

A couple of participants also mentioned that decisions are not always consistently explained. They commented that settlement decisions are often less well elaborated, given the shorter format of the decisions (e.g. 20-30 pages). It is thought that this could make the decisions - and the logic behind them - less clear.

Not many improvements were suggested, as participants are mostly satisfied with the clarity of the Commission's decisions. Two participants stated that they seek shorter decisions and one suggested that detailed executive summaries could be provided for longer decisions (those above 300 or 400 pages). Two participants suggested simplifying procedures if at all possible, especially on more complex cases. One participant feels that simpler terminology could be used, although it is agreed that the nature of the content may make this difficult.

2.2. Predictability of decisions

- Commission decisions are mostly considered predictable and consistent with existing legislation -

The majority of participants agree that Commission decisions are most often predictable and consistent with previous rulings. Even in cases where there is no legal precedent to follow, or where the Commission is ruling in new markets, it is believed that the Commission is consistent in following the principles of existing legislation where possible.

"They are predictable in the sense that they are very much in line with existing legislation and previous case law. And when they're not in line with the latter, it is duly explained."

Predictability is seen to be very important to participants working in NCAs, as it helps them foresee the outcome of cases and provides reassurance that the Commission is basing decisions on established and recognised principles and existing legislation. This is also seen to ensure that businesses are able to understand how their cases are being analysed.

"Let me praise the Commission here, because a large proportion of their rulings are commitment decisions these days, which is precisely the result of their consistent and predictable legal practice over the years. The businesses that are under infringement proceedings now know very well what they can expect. Financially, as well as from a PR standpoint, it is better for them to come to an agreement with the Commission and address the concerns, instead of waiting for the lengthy legal proceedings to conclude that they are indeed infringing."

Several participants mentioned that there are cases where decisions are less easy to predict; however this is expected, as participants recognise that some cases are unique and need to be investigated from a new perspective. Some also believe that decision-making should not become entirely predictable. It is recognised that to do its job properly, DG Competition needs to approach each case as potentially unique and that each case needs to be investigated as such.

"If the outcome was foreseeable, the Commission would not necessarily conduct its task carefully."

"However, the Commission has to take stances on new situations and it is quite right that it does so. If the nature of the issue is new, it is very important that the Commission makes new definitions of policy."

It is thought that if decisions are too predictable, this would imply that new evidence or information is not being assessed thoroughly enough within the case. Predictability is also not expected or desired by participants in new market sectors where the rules are evolving and the case might be the first of its kind.

Overall, participants want consistency and objectivity within each case, with a logical flow from the facts to the decision.

The following issues were raised by individual participants:

- One participant raised issues around settlement decisions, which can appear less predictable, given that negotiations are held between the Commission and the companies involved. As a result, it was stated that the NCA may not have access to all the relevant information. This is thought to be exacerbated by the short format of reports accompanying these decisions.

"Sometimes it's hard to see the consistency of decisions after settlement, simply because the parties agree to admit to the infringement and accept the fine they're given. In these cases, the decisions are much shorter. You don't know exactly how the fines are calculated. It's much less clear. So there can be some difficulties seeing how these decisions are consistent with the Commission's general practice."

- One participant feels that case allocation is not predictable and is sometimes decided following political motivations. For example, it was noted that a merger case which has strong national connections is taken by DG Competition. It was also stated that there are sometimes cartel cases - which in theory could involve two or three national authorities and countries working together - but which again are handled by DG Competition.
- Similarly, another participant noted that the Commission's decisions sometimes appear to be based on political motivations which it is thought makes them less predictable.

"After all, it is a political organisation... I think decisions to deal with cases are sometimes politically motivated."

2.3. Predictability of fines imposed

- Fines imposed are considered broadly predictable and thought to be based on comprehensive guidelines published by DG Competition -

The fines imposed by the Commission are seen by most to be broadly predictable. Around a third of participants specifically mentioned that DG Competition has produced comprehensive guidelines which explain the methodology and reasoning behind the fines it sets and follows. This is said to make the calculation of fines transparent and consistent.

However, fines are not necessarily predictable at the outset of a case and, in fact it was mentioned that they are not always expected to be. Indeed, many participants claim that there are mitigating circumstances that need to be considered before fines are finalised. As one participant noted, *"there is no mathematical certainty to the final amount of a fine"*. This is not only acceptable to most participants, but also widely expected as each case needed to be judged individually.

As an example of this, three participants specifically noted that in cartel cases fines vary appropriately depending on involvement and size of the company. The final fine is determined by the company's turnover and a percentage determined appropriate by the Commission (e.g. up to ten percent). Most participants feel that these calculations are based on documented guidelines and are both well-explained and consistent.

Other extenuating circumstances are understood to be applied before the final fine amount is determined. For example, participants noted that a company that has led or participated in a cartel during many years would be fined more than a small company which recently joined the cartel. Several participants mentioned that the seriousness and duration of the offence needs to be considered before the Commission finalises the fine.

The fact that such circumstances lead to variance in fines is not seen as unpredictability, as there are still clear guidelines on how these circumstances are treated.

A small minority of participants specifically noted that fines should not be totally predictable, as this would mean that businesses could easily weigh up the costs associated with failure to comply with legislation versus the expected benefit of higher profits.

"If the fine is too predictable, it becomes a price."

"The Commission finds a good compromise between, on one hand, being consistent to create legal certainty and, on the other hand, being surprising to keep penalties deterring."

Therefore, it is felt that the final amount of the fine should be consistent, but not entirely predictable prior to the case being investigated.

One respondent considers fines to be less predictable when they are set in settlement procedures.

2.4. Understanding the markets

- DG Competition is considered competent and proficient in some market sectors; however, it is criticised for a high staff turnover and a lack of knowledge of local markets -

✓ Rating: market knowledge

Mean score = 5.7

DG Competition do not know the markets at all						DG Competition know the markets very well
1	2	3	4	5	6	7
-	-	-	1	7	14	2

There is general regard for DG Competition’s ability to understand markets and market sectors.

DG Competition is thought to have both highly qualified staff and the necessary tools and processes in place to ensure that in most cases the Commission understands the market to a satisfactory degree before making a decision. Some participants specifically mentioned and praised the use of market surveys and other specialised research / modelling techniques to understand sectors and local markets. There is also general support for using these more.

"We saw how in-depth their analysis is when they were assessing the market. They were going back [several times], analysing how the market is changing. It's not just relying on case law. It's something that they already did before, but now they do the analysis [often] from the start or at least they update it."

"Reading the Commission's decisions shows that they certainly carried out analyses and market surveys and know this sector."

"The only thing is that they no longer carry out sector surveys. They carried out a survey in 2007 or 2008 on the pharmaceutical and on the energy industries. But there has been no sector survey since 2010. It's a pity because it's a tool we use a lot and other national authorities do too."

One participant mentioned that DG Competition has a very good understanding of many markets and sectors, within which it appears to be able to handle very complex cases (e.g. electricity market, financial markets). However, it is perceived that new sectors, as well as local or specialised market issues require more investigation from DG Competition. In cases involving such markets, the NCAs questioned often mentioned that their expertise and knowledge should be used more by the Commission.

"When it comes to European markets, perhaps the Commission has a better insight; but when it comes to [our market], I think we are a very experienced authority that is capable of dealing with such issues."

Several participants also think that DG Competition’s market knowledge could be further deepened by an increased use of sector enquiries; and in merger cases, by more extensive economic input. One participant provided an example of where this has been done successfully:

"The pharmaceutical market is a market where their particular knowledge came from the fact that they did a sector enquiry, so that helped quite a lot. So maybe the Commission could make a bit more use of that tool – that would help to give them more in-depth knowledge."

High staff turnover is also considered an issue. Despite highly qualified staff and good resources, rotating people in senior positions (sometimes resulting from the transfer of staff between departments) is thought to have resulted in a loss of market knowledge and expertise. It is also believed that there variance in staff knowledge and one participant mentioned noticing that there is more junior staff working on cases.

In terms of improvements, staff retention - especially senior analysts - is considered key. There is also a call for more specialised boards or employees being responsible for certain sectors. Whilst this is thought to have been achieved in some areas, participants believe it needs to be more widespread.

"For instance, in the course of the last telecommunication mergers, there were always the same employees from the Chief Economist team involved."

Two participants questioned the capacity of DG Competition to deal with the workload it is allocated. There is also support for improving the way in which local resources and knowledge is accessed and used. It is thought that a stronger cooperation and deeper local analysis should be called upon.

2.5. Quality of economic analysis

- The majority of participants praise the high quality of economic analysis included in the Commission decisions -

✓ Rating: quality of economic analysis

Mean score = 5.8

DG Competition's economic analysis is very poor						DG Competition's economic analysis is very good
1	2	3	4	5	6	7
-	-	-	-	8	12	4

The majority of participants are very satisfied with how well the economic analysis is conducted by DG Competition and integrated into decisions.

They gave clear relevance to economic analysis in decision making, which is both expected and considered valuable to the overall output.

In terms of achieving high quality economic input, good staff is considered key by several participants who specifically mentioned the impact of the Chief Economist's team on the quality of the economic analysis. Several feel that the appointment of this role ten or so years ago has led to an improvement in the quality and relevance of economic analysis.

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According to several participants, ensuring the ongoing quality of economic analysis necessitates the increasing use of external experts, the use of new modelling techniques, and of relevant surveys. This is believed to include market analysis at a local level to highlight differences, as well as research into understanding the bigger picture. One participant feels DG Competition is pioneering the use of certain economic tools.

Only two participants referred to the quality of economic analysis somewhat less positively, suggesting it is either 'quite good' or 'average'. Both of these respondents are satisfied with the quality of DG Commission's economic analysis overall and gave a score of five. One declined to comment further as economics is not their field of expertise, the other believes that DG Commission's economic analysis could be improved were it to utilise the knowledge of the sectorial regulator more often where it is available. Two additional participants were unable to comment in detail, as they do not consider themselves expert enough in the field of economics.

3. TRANSPARENCY AND PROCEDURAL FAIRNESS

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

- Most participants considered DG Competition to be transparent in the way it worked, especially since the publication of the Manual of Procedures -

The majority of participants consider DG Competition to work transparently and praised in particular the level of openness, cooperation, sharing and accessibility of information.

Most participants are positive and supportive of the Manual of Procedures published by DG Competition which outline Best Practice and include reference to State of Play meetings (associated with antitrust cases). This documentation is thought to have improved the transparency of decisions and to have provided disclosure of procedural steps taken when DG Competition is investigating cases.

"DG COMP has disclosed very detailed notices like Best Practices, explaining how cases are handled and how DG Competition works. This enlightens people who are not specialists in the field. In our case, there is a regulation which states the stages that any case should pass through, so I think even with us, the transparency is satisfactory."

When assessing the level of transparency delivered by DG Competition, participants tend to focus on the following key elements of the working relationship:

- Having access to information and documentation being disclosed when required
- Clarity of the process and procedures, including priorities
- Information provided to stakeholders in a timely manner

For most participants, DG Competition achieves satisfactory results across these key areas. It is believed that DG Competition is generally open and cooperative when it comes to documentation, notwithstanding confidentiality issues which surround some cases. It was also noted that DG Competition is also mostly consistent when it comes to working procedures, and the Best Practice manual assists with this. Information is considered to be shared in a timely manner. Therefore although there it is thought that there is always room for improvements, for the most part, participants think DG Competition is achieving transparency across these key criteria.

In addition, some participants also noted that they feel the following elements contribute to the level of cooperation and sense of transparency of DG Competition:

- DG Competition listens to the NCAs questioned and responded to feedback
- DG Competition staff are approachable and provide advice as required
- DG Competition answers questions when asked

One participant held it is also essential that the rights of all individuals involved are clear and understood; again, from this perspective, DG Competition is believed to match his/her expectations.

Even amongst those that are broadly positive, some issues were raised. Transparency is considered by several of the NCAs questioned to be better in merger control cases than in cartel / antitrust cases, where steps are thought to be less clear and intermediate decisions not as well communicated. One participant believes better transparency is achieved for national cases, compared to those involving a number of Member States. Another one noted that settlement decisions are not as transparent as other decisions, given how negotiations are conducted, and that this is of concern because these decisions are perceived to be on the rise.

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Some participants also noted that DG Competition appears to work in a more closed manner in complex cases. This is seen to be acceptable however, as the Commission needs to ensure it can make a decision without external influences, especially in highly complex or political cases.

"It is not so much a lack of transparency as it is reticence. But the case of [name of company hidden for confidentiality reasons] is very complex from the political point-of-view. They sort of reveal the reasons but they probably do not reveal everything; and this makes sense."

Three participants noted that DG Competition's intention to take up a case is sometimes not thought to be transparent and is communicated too slowly - leading to double-work.

"The Commission exerts a power of evocation: once it opens an investigation into the facts, national authorities are automatically deprived of jurisdiction. Sometimes the fact that it delays starting this procedure, and that we can't keep up with what it [the Commission] plans to do, means that we allocate resources pointlessly and waste our time."

"It is important to have better communication: sometimes we don't know if DG COMP has decided to take on a case until seeing the statement of objections."

A minority of participants are more negative overall. Three participants consider the transparency of DG Competition's work to be limited, which they illustrated by a lack of timely access to documentation and a lack of information around intermediate steps and decisions. One of these participants noted that press releases detailing actions should be issued systematically. Another mentioned that lack of transparency is exacerbated by very long timelines, particularly in antitrust cases. One participant also believes DG Competition does not have a strong interest in collaborating with the NCAs questioned.

"Of course, you do not just dish out a fine of 3 billion in 3 days. That's not trustworthy. But it does not have to take 5 years if it can be done in 3 – that would not affect the trustworthiness."

One participant considers DG Competition to be working without any transparency at all. He/she stated that DG Competition works without binding deadlines around the provision of information or the way it makes its decisions.

Two participants were reluctant to comment on the level of transparency, as they feel they were not in a position to do so.

Improvements were suggested both by participants who are satisfied with the level of transparency as well as those who are not. Suggestions to improve transparency encouraged DG Competition to:

- Inform NCAs more quickly of its intention to take up a case
- Publish decisions sooner on its website
- Provide tracking data on project developments / procedures
- Reduce timelines around antitrust cases
- Share information more readily at initial stages of a case / investigation
- Ensure the consistency of the information provided by the staff
- Maximise the collaborative approach with NCAs and other institutions

3.2. *Listening and informing in a timely manner*

- Whilst most agree DG Competition listens to the NCAs questioned and provides information in a timely manner, some believe there is room for improvement -

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

Mean score = 5.5

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

Around half of the participants are positive about how timely DG Competition is in communicating with stakeholders and informing them about decisions. This includes a quarter of participants who specifically mentioned that DG Competition has improved its timeliness, procedures and delivery of information around decisions. State of Play meetings and the Statement of Objections for each party are seen to being key to ensuring information needs are met.

In terms of listening to NCAs and other stakeholders, over a third of participants feel that DG Competition listens adequately. However, a small minority of the NCAs questioned feel they need to be proactive to seek out the information they require.

Two participants raised concerns about DG Competition appearing to listen to too many stakeholders (at least occasionally), as well as giving too much attention to complainants.

Although generally positive, around half of the participants specifically noted that documentation should be sent more quickly, as it is felt that stakeholders are often not given enough time to review complex information before important meetings. It was also stated that invitations to State of Play meetings are also not always received early enough to allow for reasonable forward planning.

3.3. *Publication of non-confidential decisions*

- It is thought that the time taken to publish non-confidential versions of decisions might impact other third parties -

Participants hold mixed views regarding the time taken by the Commission to publish non-confidential versions of decisions. Around a quarter of participants feel that non-confidential versions of decisions are published quickly enough; conversely, around a third of the NCAs questioned feel this document takes too long and hold they are impacted negatively by such delays. The remaining participants did not express their views, either because it is not relevant to their role or because they were unsure of the specific time frames.

Regardless of whether participants are positive or negative about the time frame, six respondents specifically noted that delays in publishing non-confidential versions of decisions is not seen to impact on national competition authorities directly, as they have access to confidential decisions much earlier than this.

However, several participants cited reasons why non-confidential versions of decisions are required, such as cases where a national competition authority needs to quote the decision or if an appeal is required. There is also general consensus that other third-party stakeholders (such as companies) are likely to be negatively impacted by the long time frames associated with non-confidential decisions. As a result, participants urged the Commission to take actions to improve time frames.

"The Commission feels responsible for a case until a decision is made. Once they reach a decision and send out the ruling to the parties concerned, they consider the matter settled from their perspective. They issue a press statement and that is where it all ends. But time should be spent on dealing with the aftermath of the ruling as well. I admit that this is a hard struggle with the companies as to what constitutes a trade secret... Maybe more manpower would be needed..."

"It's never fast enough. Anything but "now" is not fast enough for the companies involved."

Whilst many participants would like to see faster publication of non-confidential versions of decisions, there are mixed views on whether this would be possible. Some participants believe DG Competition's processes could be streamlined and feel the legal deadlines it works to could be improved. Others feel that the complexity of the work and the workload means it would be difficult to improve on the existing timelines.

3.4. Stakeholder consultation on new rules

- DG Competition is seen as very good at involving NCAs in consultations when creating new rules -

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

Mean score = 6.3

DG Competition has not involved me at all in the creation of new rules						DG Competition has involved me very much in the creation of new rules
1	2	3	4	5	6	7
-	-	-	1	2	10	11

Most participants believe that DG Competition regularly consults with NCAs in the process of creating new rules. Participants feel they always have the opportunity to be involved: they are invited to speak, to respond in writing, as well as to participate in workgroups, European Competition Network forums, or advisory committees. The majority of participants also feel that consultations take place sufficiently in advance of changes to enable them time to fully understand the subject. A few of participants pointed out that inviting NCAs to consult on new rules is built into the regulations and therefore is to be expected.

"All their notices, draft regulations go through advisory committees, in which all national competition authorities take part."

"They consult all these groups. It is also good to have common knowledge and to share experiences, to hear the views of experts from NCAs. Following this process, they consult the legal services and other inter-departmental groups of experts involved."

Many participants think that the level of consultation has remained the same over the last five years, while a few believe the frequency has increased. Two participants mentioned that the consultation process has opened up to include locations other than Brussels, and one participant noted a growing trend of consultations with companies.

"I think it has stayed the same, because I think this has always been their policy. I do not remember if five years ago the policy was different, so I think it stayed the same."

Many participants mentioned that, although they want to participate in these consultations, they do not have the time and resources, particularly in smaller NCAs. This is felt to be exacerbated if the material for review does not arrive in time or if the volume of material provided is significant.

Importantly, most feel that when they do respond to a consultation request, they are heard. Since it is known that consultations are made ahead of guidelines being drawn up, most have the impression that there is a great opportunity for changes to be made. Many also understand that receiving responses from all Member States would necessarily result in some compromise being required. A few participants mentioned that although they feel they are heard, they disagree with the ultimate outcome. Most see this as a result of necessary compromise, although some question whether they are actually listened to.

"They wouldn't necessarily take on everyone's views all the time, but they definitely listen and there are a number of occasions where we've seen our arguments reflected in the approach taken. Sometimes this hasn't happened but there have been reasons given for why that isn't taken on board. There are necessarily compromises when you work with 28 Member States!"

A couple of participants mentioned being disappointed not to have received a response to their feedback, although they recognise that the amount of feedback received would make this difficult.

"It's not as if they do not invite us. But they have already decided what they want to do."

"Very many stakeholders are involved, and they do not explain, why one opinion should be supported, but the other one should not."

One participant referred to consultations that take place via public hearings, which he/she considers as less appropriate. Since the issues are considerably complex, according to this participant it would be better for DG Competition to focus on feedback from experts and stakeholders.

Whilst most are generally happy with the consultation process, one participant suggested as an improvement to allow for the possibility of having direct contact with the team working on the document.

3.5. Observance of procedural rules

- DG Competition is seen to be duly following procedural rules -

Almost all participants believe DG Competition duly follows procedural rules. Many participants further pointed out that DG Competition seems particularly good at following procedural rules, with one claiming it follows them to the point of “near obsession”.

“They are sensitive because they know that they have to behave in a very correct manner, so that they won’t be sued for some infringement of procedural rules. In this sense, all officers are very observant. It would just be silly if the case ended up being taken to court because of a very stupid nuance.”

Several participants referred to processes related to file access and file security as examples where it is felt DG Competition followed procedures consistently and offers the appropriate level of security. Some also mentioned the strict adherence to time frames laid out in the procedures. Others pointed out that DG Competition appears to adhere to the rights of all parties to be heard.

Evidence of DG Competition following procedural rules is seen in the fact that it seldom loses in court, and when it does, it adapts its rules and moves swiftly on.

“Every so often they get knocked back a bit in court. Then they just adapt it and move on. Losing a case is a big deal for them so the incentives are for them to comply.”

However, almost one third of participants were able to offer an example where rules are thought not to be followed or the rules themselves are seen to cause issues, implying they believe that there is still some room for improvement.

More specifically, several participants claimed that draft documents are often transmitted too late before advisory or consultative committees, leaving national authorities too little time for preparation.

“If there’s one thing to improve, it’s the delay in sending drafts. Before a consultative committee meets, there is a deadline for submitting drafts that must be met. Especially since some of them are 800 pages long. And sometimes we’ve received them just three days before.”

Additionally, a few participants reported that information has been leaked before being officially released.

3.6. Burden on businesses and organisations

- DG Competition investigations and consultations are considered somewhat burdensome for NCAs, but more so for businesses -

Investigating and responding to consultations are both considered to be somewhat burdensome for the NCAs questioned. Complying with requests, completing lengthy questionnaires, cooperating with or being involved in initiatives are activities considered to require considerable time and resources.

“For consultations, we have two people working full time. But we’re keen to do this. It’s a significant workload...”

"I think both the Commission and us, we try to do a proper assessment, get facts that are relevant and try not to overdo things. But you always run the risk of being accused of not discovering something important. It is a two-edged sword. As in all things you need to find the proper balance."

The majority of participants consider investigations to be too burdensome for businesses in terms of resources and costs. They are also seen to require additional legal resources at a cost to the company. A few participants feel that the amount of information required at the start is too extensive. A couple of participants suggested that a company could request compensation for costs incurred if no wrongdoing is found. A few participants however believe that things have improved for businesses in the last five years.

"It's always an issue when questionnaires are sent or interviews made. It requires their time and often need outside legal advice, which often becomes expensive for them."

On the other hand, it is acknowledged that:

"This system of decentralization in case of antitrust based on Regulation 1 and the package of modernisation on State aid both have the same goal: to simplify procedures in terms of efforts and time."

In terms of possible improvements to reduce the burden on NCAs and businesses, a few participants suggested holding more virtual meetings or videoconferencing as a way to reduce the burden of frequent travel to Brussels. A few suggested that more care could be taken in requesting specific information.

"It's a natural thing – if you're not the person who's got the burden of answering, you'll tend to be less strict in terms of really thinking through what really is essential, and what you really need to have."

"Today the email is widely used and we also use written comments in order to save money and this is a very efficient way of working. But since the Member States are heard in all decisions, this implies many trips to Brussels for meetings that often last half a day or even sometimes only an hour. This requires investing time and people who go there who are then not working on other things. But I know that this effort is being studied by DG COMP to encourage the use of videoconferencing. I think this should be put into practice as soon as possible."

A few participants referred to the need to have long enough time frames for answering questions, in order not to place additional time pressure where resources are limited. For example, it is felt that questions for market tests in the case of mergers can be very time-consuming. One participant suggested that the Commission should produce a document explaining how legislation has been revised (not just sending the new legislation), in order to save time analysing legislation.

4. ECONOMIC EFFECTIVENESS

4.1. *Effectiveness of detection policy*

- DG Competition is regarded as effective in investigating infringements, particularly as a result of the leniency policy -

A majority of participants believe DG Competition is good at detecting infringements, often discovered due to complaints and whistleblowing:

"Yes, we believe the Commission is successful in that [detection]."

"I think their detection rate is very good and they have a lot of cases."

"It doesn't just happen out of the blue. There's a lot of work involved in detecting companies that are doing business in an unfair way, and usually they are only revealed if they turn themselves in, or somebody else does."

The leniency program is seen as an effective part of the detection policy and many believe complaints procedures and leniency requests lead to the majority of cases being uncovered, particularly in relation to cartels. One participant mentioned that DG Competition is effective in detecting infringements because it is thought that it focuses on the most severe and therefore most obvious infringements.

In contrast, a few participants felt that the effectiveness of the detection policy is relatively low or at least difficult to quantify. This is believed to be mainly because DG Competition is seen to focus on large companies operating across borders and therefore it is thought to be unable to focus on everything else. One participant noted that DG Competition's detection activities could be enhanced if they could use criminal investigative methods.

"I think that they have really tried to prioritise in areas where there is significant and economic interest and where they can make a difference. I would say that they are pretty good, but it is hard to know how much they are detecting because you don't know what is under the bonnet really."

A couple of participants suggested improvements in the area of detection, including closer cooperation with NCAs to enhance detection and investigation. One participant suggested DG Competition communicates more about cases which are compatible with antitrust laws, in order to provide clear guidance to companies. A few participants also mentioned the need to constantly improve technology associated with detection.

4.2. *Deterrent effect of fines*

- Most believe fines - especially larger amounts - are an effective deterrent for companies -

Many believe that fines - particularly the very large fines - imposed by the Commission are a good deterrent. Many also noted that fines have increased considerably over the last five years and, hence, have become even more of a deterrent. Some hold that fines are particularly effective in the case of large cartels.

"The Commission's fines are generally high. I think that it has a deterring effect on other entrepreneurs."

"We always admire the Commission for having the ability to impose such big fines."

However, a few participants feel that fines are not always sufficient and that, in some cases, criminalisation and/or prison would be a greater deterrent. A few participants mentioned that fines paid by companies do not impact individuals personally; and in some cases, even large fines can be less than the potential profits.

"There are many who believe that fining has reached a limit and we have to turn to more drastic measures and hit managers directly and not focus on the money in the company's accounts. That is my personal view."

"Financial sanction isn't exactly effective, as evidenced by the list of the recidivists."

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

- Amongst the few who could offer an opinion, most felt existing antitrust laws have an impact on business transactions -

Almost two-thirds of the participants did not feel that the question was relevant to them or that they were not qualified to offer an opinion. Most thought the question was more relevant to companies rather than to institutions.

Of the ten participants who were willing or able to offer an opinion, most feel that the existing antitrust rules strongly impact on business transactions, either by modifying plans at an early stage or by changing behaviour once a complaint or procedure is initiated. Some participants claim that consulting with DG Competition prior to acting or making business decisions is becoming good business practice. Companies are also beginning to adopt compliance programmes and to develop a culture of fair business competition.

"The pre-investigation period is quite long, so companies have some time to change their behaviour."

However, one participant feels that even if it has an impact on businesses, if a company can see a financial advantage in the long term, it might still behave in an anticompetitive way. Furthermore, one participant pointed out that in the case of a cartel or a monopoly, there is no way to abandon it.

"If a company sees that the profit is lucrative, it will do it. It makes no difference how compliant it is."

On the other hand, one participant considers that antitrust rules can sometimes lead companies to feel they cannot communicate or work together.

Only one participant suggested an improvement, namely greater outreach activities to ensure more businesses are made aware of the consequences of non-compliance.

4.4. Timeliness of decisions

- Most participants agree that the Commission’s decisions are usually delivered within a reasonable time frame and that the process leading to adoption has become more efficient -

✓ **Rating: timeliness of decisions**

Mean score = 5.2

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
-	-	-	3	13	6	1

The majority agree that the Commission’s decisions are most often processed within reasonable time frames, taking into account both the complexity of some cases and the procedures to be followed. There is an impression across the NCAs interviewed that the Commission is becoming more efficient, but that there is still room for improvement.

"Probably yes, they are processed within a reasonable time. Could it be done faster? Yes, probably."

A few participants mentioned the increased flexibility of the Commission in the use of commitment / settlement decisions in recent years, which they feel has led to more timely decisions.

"For some years, the Commission has used a settlement procedure as a way of having a more rapid impact on the markets."

A few hold mixed opinions depending on the types of cases; generally speaking, they feel cartel cases are becoming quicker, but antitrust procedures are taking longer. A couple of participants pointed out that they feel merger decisions have to be adopted within strict deadlines.

A small minority of participants suggested that the pre-notification period in mergers be shortened and simplified. It is also thought that the Commission could also intervene earlier in some cases (e.g. the online booking case); that in some instances, work could be completed more quickly (e.g. antitrust cases) and parties could make more use of interim measures procedures.

4.5. Focus on the right sectors

- A majority believe DG Competition focuses on the right sectors, although it is thought that there will always be some sectors missing -

The majority of participants believe that DG Competition focuses on a good spread of sectors, including the most important sectors, as well as sectors chosen by other competition authorities (e.g. electricity, gas, communication, IT, building and construction and financial services). Most also agree that DG Competition focuses on sectors with important transnational and economic impact (e.g. financial services, energy and telecommunications), as well as important consumer impact (e.g. pharmaceuticals, food and energy).

Two participants appreciate the “*procedural correctness*” in choosing certain sectors, and the detail DG Competition is said to provide about why certain sectors are chosen.

“I think that by and large they focus on the correct sectors. There are some sectors that you are always getting complaints and leniency applications from.”

“Large cases like Google are more suited to intervention by the Commission rather than by individual member countries.”

Whilst most support the priorities of DG Competition, there is a sense that some sectors could ultimately be missed. Although, as a couple of participants pointed out, it is thought that areas of less focus for DG Competition might be areas of greater focus for NCAs.

“We, for example, will not focus on e-commerce.”

A few pointed out that DG Competition has a limited choice about the sectors they investigate, because it is recognised that cases are often initiated by complaints or leniency requests. Also, they perceive it as difficult to know about all the sectors examined because in the case of cartels, files are kept secret.

One participant suggested that DG Competition also focus on SMEs, because of their perceived importance to the economy and their impact on consumers. Another participant suggested DG Competition also focus on the pharmaceutical, the entertainment, and the media communications sectors, which are believed to be very important in their country.

4.6. Adaptability to technological changes and globalisation

- DG Competition is largely seen as adapting to technological changes and globalisation -

Most participants regard DG Competition as relatively adaptable to both technological changes and to changes brought about by globalisation. In terms of technological changes, participants referred to DG Competition using technology to work more efficiently, employing technology in investigatory work, and communicating with NCAs.

The majority believe that DG Competition uses technology to streamline process management and to provide electronic access to files and to video conferencing for NCAs; overall, it is felt that DG Competition undertakes investigations using sophisticated tools. Most also agree that, whilst it is thought that there is always room for improvement, DG Competition is limited by their available resources, the large size of the organisation, and the need to strictly adhere to regulations. Further, one participant noted that, whilst DG Competition could continually improve its use of technology, it is also up to Member States to keep up to date.

“I can imagine there being quite a lot of bureaucracy and them having difficulty implementing new technology when it comes to e.g. detection policy.”

Only one suggestion was made about ways to improve DG Competition’s adaptability in the area of technology, which is to set up remote meetings / videoconferences more often.

“There are some ideas to save money on trips and for the committees to be held via streaming.”

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Regarding DG Competition’s activities and case work, the majority feel that it is taking an interest in relatively new and/or global markets, e.g. the telecommunication sector and global online companies.

"The decisions concern the right areas of business; the fields they deal with are relevant and they are also fields of rapid technological development. I have no complaints."

Several participants also mentioned that DG Competition calls on specialists to study new trends. It was noted that published reports indicate that the Commission is going through rapid changes in technology and globalisation, including targeting new emerging markets, online sales and global financial markets.

"They have recourse to settlements in the new technology markets. Even if there’s a problem with the timescale of what they do, you can see that they are picking the right areas. The same in merger analyses, they take account of the special features of the digital market."

4.7. Impact on the markets

- Most participants agree that DG Competition’s work has an impact on markets both directly and indirectly, thus raising awareness and acting as a deterrent -

✓ **Rating: impact on the markets**

Mean score = 5.2

Not at all effective in making markets function better						Very effective in making markets function better
1	2	3	4	5	6	7
-	-	1	3	12	7	2

Most of the NCAs questioned agree that infringement cases, as well as the policy and regulatory work of DG Competition, have a considerable impact on the market. It is felt that infringement cases have a direct impact on parties involved, because they learn from what they have done wrong and make commitments to behave differently. Furthermore, it is felt that such cases act as a deterrent and provide the market with practical solutions for good business behaviour. Participants believe that sector investigations impact the market as a whole and provide the market with a better understanding of competitiveness globally, e.g. electricity markets and unification of credit card fees.

"A big impact, since very often global companies are involved. For example, the US competition authority is not concerned that [a market-leading company's] activities were anticompetitive, but DG COMP addressed the problem."

"When they [case decisions and sector investigations] are published, various agencies and people can draw conclusions about trends and what can be expected in the market. So they have a major impact."

A few participants pointed out that, by comparison, other factors such as economic slumps or booms, national legislation and regulatory interventions are seen to have a greater impact on the market.

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

- Enforcement tools, settlements and commitment decisions are considered effective and efficient in the right circumstances -

The majority of participants recognise the need for a range of compliance instruments (settlements, commitment decisions, fines and even criminal proceedings) to suit different situations, especially where large fines are not thought to be the best solution. Most noted that settlements and commitments offer much greater procedural efficiency than normal decisions, particularly in fast moving markets.

"I think it is best to have the most comprehensive tool-kit available, so an appropriate tool can be selected for each specific case."

"Rather than spending five years finding evidence and writing a fine, it's better if the perpetrator confesses."

Commitment decisions in antitrust cases are believed to be particularly efficient in processing cases and allowing companies to rectify previous behaviour. Commitments are also seen to have a swifter impact on the market, compared to a lengthy court process. A few participants differentiate between cases where harm is limited and commitments can be justified, and others where harm is considerable and fines are more powerful.

"It may be difficult to do this in abuse-related cases [compared to other types of anti-trust cases]. But the commitment decision speeds things up."

Settlements in cartel cases are considered important, because they allow sanctions in the short term (when companies acknowledge the facts) and hence accelerate the process. This increase in efficiency appears to mean that more cartels are ultimately stopped and thus more completed cases could act as a deterrent to the market. However, a few also pointed out that some settlement procedures do not lead to shorter timescales compared to traditional procedures and could in the long term lead to a lack of case law.

"These are useful tools. But we think that these settlements often take the place of interim measures. Settlements can lead to faster decisions, but for us there's a small risk of loss of clarity."

Several participants believe that these tools need to be used judiciously to be effective and in some cases would not be appropriate. In particular, one participant is concerned that, if used too frequently, companies might learn to rely on them or even abuse them. Thus, it is felt that there needs to be a balance between these enforcement tools and fines.

Another participant mentioned the settlement option should not be abused and therefore should not be offered to the company that initiates or leads a cartel.

"If too many issues are being settled, companies learn that you are able to eliminate wrongdoings by promising not to do it again."

4.9. Enforcement of decisions

- Most participants agree that the Commission is usually able to enforce decisions and penalties imposed -

Most participants believe that the Commission has sufficient tools and resources to enforce its decisions. Such tools are seen to include enforcing prohibitions and imposing heavy fines in antitrust cases.

Many also mentioned the fact that the Commission is perceived to monitor the impact of decisions and to impose fines for non-compliance, e.g. in the Microsoft case.

"Certain decisions are made and the company has to follow them."

"I don't know, but it seems to me that it has the means for enforcement. I can't remember if there are additional fines or not."

However, a couple of participants mentioned that, in some cases, appeals delay the enforcement or even overturned the decision altogether, e.g. EU Court.

One participant cited the importance of having bilateral agreements to enforce decisions globally with non-Members States - including Switzerland, Japan and the US.

4.10. Contribution to the EU's economic growth

- Most participants agree that DG Competition contributes to economic growth, by allowing markets to function properly-

Mean score = 4.3 out of 5

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 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	15
	4	6
	3	4
	2	1
Does not contribute at all	1	-

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The majority of participants agree that competition is a crucial factor in driving economic growth, given its effect on productivity, quality and innovation. In that respect, many hold that the work of DG Competition and NCAs is beneficial for economic growth, at a national and international level.

"The basic principle is that the work of a competition authority has a beneficial impact on growth."

"When you remove restrictions from the market, the competition is allowed to function freely. When you remove these obstacles new companies are admitted to enter the market and offer lower-priced and better products. It increases the volume on the market and growth."

"They are behind a lot of the innovation and deregulation of telecom and energy. The telecom really springs to mind, because there is so much growth and innovation there."

5. COMMUNICATION AND PROMOTION OF COMPETITION CULTURE

5.1. *Clarity and comprehensibility of external communications*

- The external communication from DG Competition is considered clear and understandable by most -

Most participants agree that DG Competition's communication with NCAs and other stakeholders is clear and understandable.

"It communicates very well, both to us and to the public. There are plenty of notes, press releases, and summaries of the texts that try to summarise and explain. It's approachable for people who are not specialists in competition law. So yes, it's intelligent."

"In general, the communication is clear - you get an overview and main directions and also what is allowed and what is prohibited, in my opinion it is quite good."

Participants have the general impression that DG Competition is moving towards better communication, which translates – particularly through the website - into their publication of guidelines, access to speeches from conferences, communication of background to decisions, etc.

Many feel that communication with the general public is reasonably accessible, through promotional materials, the website, and advertising. Several also mentioned DG Competition's apparent efforts to simplify the language used.

"With reference to the feedback received from people, I think that the Commission has a good website and there is a lot of information."

A few issues were raised in relation to specific communications that are not thought to be as clear or understandable. It is believed that short press releases that do not communicate the detail of a particular case make the information less clear and therefore less useful to the NCAs questioned. One participant mentioned that, although it is felt that communication about initiated procedures is always clear, decisions are harder to find.

"If the case is complicated, DG COMP should give us adequate information so that we understand what it is all about. Jargon and slogans are not enough then."

However, it is thought that improvements could be made regarding communication to the general public. Some participants made suggestions to improve DG Competition's external communication. One mentioned the use of television spots aimed at the general public.

Several participants suggested the Commission could be more active with Member States and communicating competition matters with national authorities. One participant feels that the ECN is the best way for DG Competition to communicate with NCAs. Another suggested that communication with NCAs could become more informal and external statements could be less cautious in their tone and content.

"They are very politically aware, they do not want to hurt anyone and always want to word things very carefully."

5.2. Choice of communication and media channels

- **Almost all participants mentioned feeling that the website is clear, effective and that is their preferred channel for information -**

Almost all participants consider DG Competition's website as the most appropriate channel for NCAs and other stakeholders to access information. The website is believed to hold enough information, both in terms of breadth and depth. The information is also found to be relatively easy to access. The fact that the website is thought to be kept up to date and to provide access not only to a database, but also to copies of speeches from conferences and other information is seen as being particularly important. A few participants noted that, whilst the information on the website would be useful to other stakeholders, some of the content would probably be too complex or detailed for everyone.

Most are very satisfied with the website as the main channel of communication, but a couple of participants suggested it could be improved. One participant suggested adding a keyword search function to the database; another believes that document searches should be delivered in the same language as the document sought.

"We often have a hard time finding specific things on their website...too much information, too crowded."

Personal contact via telephone, email, meetings or participation in working groups were also cited by many as being viewed as effective and efficient ways to communicate with DG Competition.

Many are not aware of other communication channels. Those who are often cited press releases, which are considered to be fast but not detailed enough. A few participants specifically mentioned additional publications that they use as sources of information about DG Competition decisions and/or general information about competition regulation. These included the ECN brief, the Annual Report and newsletters of DG Competition, as well as publications of external experts and consultancies such as Global Competition Review, Competition Policy, www.concueros.com, as well as the M-Lex electronic news system.

Interestingly, most participants would not endorse the use of social media as an appropriate channel for DG Competition. Some said it is not serious enough, others not high level enough, and in one case, not respectable enough. However, a small number of participants feel social media - namely twitter - might be an appropriate way to reach the general public.

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

- The Commission is considered to be active and well regarded on the international stage, with a presence at key international events and conferences -

✓ **Rating: promotion of competition culture**

Mean score = 5.7

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	3	7	7	8

Most participants are aware of the work that the Commission is involved in at an international level and feel it does a very good job promoting competition culture and policy convergence. The Commission is also seen as being effective in promoting competition culture internationally. One participant also noted that the Director General is thought to be prominent and well-respected.

In terms of activities, participants referred to the Commission attending or delivering speeches at many important international conferences and global networking events. It is considered particularly active in organisations such as the OECD and the International Competition Network (ICN), where it is said to influence the development of competition policies and to foster the position of the EU.

"The European Commission is very active and very visible, so it's difficult to expect more."

"We are also involved in the International Competition Network and OECD. We learn about these by taking part in meetings, where we can see the role played by the Commission. What you should know about the Commission is that it's one of the best known competition authorities in the world, so everybody pays attention to what they say. They are well-respected."

DG Competition's work is also praised in relation to its involvement and constructive cooperation with emerging nations such as BRICS (Brazil, Russia, India, China, and South Africa). In that respect, EU competition policy is seen as a reference point for decisions by competition authorities in these countries and as influencing competition culture in the markets of these countries. Nine participants specifically mentioned BRICS.

"[Concerning BRICS:] The EU law has a strong effect there. For example, DG Competition participated in developing Chinese competition law."

Six participants also specifically mentioned the cooperation activities between DG Competition and the US. This relationship is considered valuable; given the US is seen as a pioneer in competition law; as such, many things are thought to have been adopted by the EU from the US.

Given the good work that is perceived as being done and the resulting achievements, most participants are keen for DG Competition to continue with international activities. Only one participant is concerned about the level of resources being used to promote and develop international relationships and feels that this needs to be kept under control. Two other participants noted that, although international relationships and partnerships are valuable, DG Competition should not be side-tracked from its core aims and responsibilities within the EU.

DG Competition's activities to promote competition culture are mostly seen to be of good quality, and a minority even feel there has been significant improvement in the past five years. Specific mentions include training seminars, the development of documents about competition culture, and the work DG Competition is perceived to have done in training judges. The website is also seen to be a valuable resource. In addition, it is known that DG Competition has also recently published a list of Frequently Asked Questions.

Despite being broadly positive, many participants raised areas for improvement and feel that, whilst DG Competition is seen as promoting competition culture successfully at a high level, it is felt that some audiences are ignored, or at least less well catered for.

In particular, the general public is thought to lack awareness of the initiatives undertaken by the Commission and to have limited understanding of the decisions being made. As a result, many participants suggested DG Competition needs to be more proactive in targeting this audience and understanding its needs and requirements. It is thought that the aim should be to raise awareness of competition activities, decisions, and competition culture in general. One participant however referred to an existing publication designed to inform the general public, which the respondent felt needs to be updated.

"So the Commission is active in a lot of fields, but European citizens should be reached, too. It's high time to prepare a new brochure or a short film to inform the general public."

Other audiences were also mentioned as targets for better communication. A number of participants support the need to improve communication with small businesses. Another participant noted more needs to be done amongst trade associations, chambers of commerce, medium-sized enterprises, and consumer associations. One participant mentioned newly joined EU Member States may need to be specifically targeted, particularly sector regulators and political organisations within these countries. It was noted that some work has already been done in countries which have applied for membership (such as Macedonia, Serbia) and this was praised by those that were aware of it.

6. OTHER REMARKS

About half of the participants made a closing remark on finishing the survey. Some of these remarks reinforce the overall support interviewees show for the work of DG Competition, while others pointed to major challenges facing the organisation or areas for improvement.

One participant also commented positively on the present research for the stakeholder survey.

"It is good that DG COMP is doing this kind of research. This in itself shows things are getting better."

Some participants raised what they believe to be key challenges for DG Competition to consider. These include the following:

- One participant acknowledged the challenges associated with being responsible for the effective functioning of the entire European Competition Network (ECN). This participant does not think DG Competition has reached its full potential regarding supervision and cooperation between the Member States
- Two participants noted the considerable diversity across Member States in terms of competition knowledge and experience and the resulting differences as issues to be addressed

One official from an NCA of a newer Member State pointed out:

"The new EU Member States look at DG COMP as a higher, slightly idealised institution. These new member countries might also need political support from this experienced European institution in strengthening national competition authorities' effectiveness, the standards of participation, productivity, etc."

Other comments focused on specific potential improvements:

- Keep surveys as short as possible
- Delegate national cases to national authorities more often
- Inform NCAs in good time when DG Competition decides to investigate a case, in order to avoid wasting time (two participants)
- Organise virtual meetings to assist NCAs more often

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)

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- 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?

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

SHOW CARD 2

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

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

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

(C, EC, BA, NCA, MSM)

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

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

SHOW CARD 3

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

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

B. TRANSPARENCY AND PROCEDURAL FAIRNESS

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

B1. Do you think that DG COMP works transparently?

(All)

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

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

(All)

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

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

(All)

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

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

(L, C)

SHOW CARD 4

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

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

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

(All, especially BA, CA)

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

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

SHOW CARD 5

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

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

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

(All)

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

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

(C, NCA, MSM)

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

C. ECONOMIC EFFECTIVENESS

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

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

(L, C)

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

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

(All)

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

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

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

(L, C)

SHOW CARD 6

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

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

(All)

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

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

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

SHOW CARD 7

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

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

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

(EC, BA, CA, NCA)

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

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

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

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

(All)

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

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

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

SHOW CARD 8

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

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

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

IF NEEDED, explain that:

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

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

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

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

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

(All)

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

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

SHOW CARD

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

➤ On what grounds did you give this answer?

D. COMMUNICATION AND PROMOTION OF COMPETITION CULTURE

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

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

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

(C, BA, CA)

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

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

(C, EC, BA, CA)

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

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

(All)

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

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

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

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

SHOW CARD 9

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

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

CLOSING REMARKS

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

OUTLINE NEXT STEPS: production of aggregate report Q4 2014

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

Thank respondent and close interview