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

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

Qualitative study – TNS Qual+
Eurobarometer Qualitative study

DG Competition
Stakeholder survey
Aggregate 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 analyses, its transparency and procedural fairness, its economic effectiveness, and finally, its communication and international advocacy.

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

The study targeted DG Competition’s professional stakeholders, in particular law firms, economic consultancies, business associations, companies, national competition authorities and EU Member State ministries. All stakeholders were knowledgeable about DG Competition’s work, either through direct involvement in case work as part of DG Competition’s enforcement activities or, indirectly, by having influenced or benefited from policy work. A total of 120 in-depth interviews lasting on average approximately 75 minutes were carried out, 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

Most participants from national competition authorities, Member State ministries, economic consultancies, law firms and business associations strongly agreed that the Commission’s decisions are legally sound as they are based on clearly articulated legal analysis. This is also confirmed by the fact that the decisions are often upheld in court when challenged.

Overall, the Commission’s decisions were praised across all stakeholder groups for being clear and comprehensible, although business associations had more mixed views on this topic. In four of the stakeholder groups – law firms, national competition authorities, business associations, and companies – some participants questioned how understandable decisions are for lay people and even sometimes for themselves.

In four of the six stakeholder groups – economic consultancies, law firms, national competition authorities and business associations – the majority of participants considered that the Commission’s decisions are very predictable. Differences were noted in the predictability of different types of cases and some participants thought that decisions are more predictable in the case of mergers.

Not all participants felt they had enough experience to comment, but the majority of economic consultancies, national competition authorities and law firms said that the fines imposed by the Commission are generally predictable, as they are based on comprehensive guidelines published by the Commission.

Although DG Competition’s understanding of the markets was generally considered to be good by most participants, the opinion was that this varies by sector. Furthermore, several participants held that staff turnover within the lifetime of a case, has a negative impact on continuity of the case teams knowledge of the markets and the case. At the same time, they also added that DG Competition staff could be commended for their willingness to learn and acquire new knowledge.
The quality of economic analysis was seen to be high across all stakeholder groups and was regarded as comprehensive, highly detailed, based on the best available data and therefore trustworthy.

TRANSPARENCY AND PROCEDURAL FAIRNESS

Participants had very mixed views regarding the transparency of DG Competition’s work; they referred to different levels of transparency at different stages of the investigative process and for different types of cases. When participants discussed transparency, they referred to a number of different information and communication needs that they have, such as getting reassurance that the confidentiality of certain information will be preserved, knowing how DG Competition uses the information that they provided, receiving information promptly and having enough time to prepare for cases or respond to information requests.

Participants found that DG Competition generally follows the procedural rules it has set out, but mentioning individual exceptions.

Participants expressed mixed views about whether the non-confidential versions of decisions are published swiftly enough.

The majority of participants were of the view that in most cases DG Competition listens well and informs them in a timely fashion. However, this was not true in all instances and for all types of cases and there remains room for improvement. National competition authorities were the least satisfied with the timeliness of information delivery.

The level of satisfaction with DG Competition’s consultation on new rules was overall very high across all different stakeholder groups. DG Competition was seen as having become more open to participation by different stakeholders. Of the different stakeholder groups, companies seemed to be more sceptical about the consultation processes and did not always participate in these consultations.

The majority of stakeholders said that DG Competition’s information requests place a very heavy burden on businesses, requests that require very high resources and often too short deadlines to provide the information.

ECONOMIC EFFECTIVENESS

The majority of participants in nearly all stakeholder groups thought that DG Competition is effective in detecting infringements. DG Competition was seen to have detected a high number of cases compared to other authorities. Leniency policy was regarded as an effective part of the detection policy. However, a minority of participants in four of the stakeholder groups – economic consultancies, law firms, business associations and companies – expressed concern about the reactive nature of DG Competition’s detection policy and felt that more could be done to be proactive in this regard.

Overall, most participants believed that fines, especially larger fines, are an effective deterrent for companies as they try to avoid being in a position where they could be penalised. However, a minority of participants thought that fines are too large. In each stakeholder group, a small minority of participants also put forward ideas for alternative forms of sanction, because fines are not addressed to individuals.

Law firms and economic consultancies clearly had more experience of companies modifying their plans to comply with EU antitrust rules than other stakeholder groups. It was widely held by participants with relevant experience across all stakeholder groups that EU antitrust rules have a substantial impact on companies’ plans.
Mixed views were expressed on the timeliness of the Commission’s decisions. Many felt that the process of taking decisions takes too long, while others felt that this was understandable, depending on the type of case, or that the time it takes to arrive to decisions was appropriate.

DG Competition was seen to generally focus on the right sectors and to have a balanced and wide-ranging portfolio.

Apart from business associations, stakeholders generally thought that DG Competition has adapted well to technological changes and globalisation, albeit slowly. DG Competition was seen as using technology more effectively in its own investigative work and some participants said that DG Competition is taking more of an interest in new global emerging markets.

There was widespread agreement that DG Competition’s work generally promotes competition, raises awareness and acts as a deterrent. Several participants thought that the impact of this work is being impeded by factors such as slow decision-making or over-regulation.

Many participants did not have experience with settlement and commitment decisions, but these tools were generally considered to be effective and efficient. There was wide consensus among participants that the Commission is usually able to enforce its decisions, although perhaps less so in the case of State aid.

Participants generally thought that the enforcement of competition policy has a positive effect on economic growth. However, some thought that the exact impact is difficult to assess and there might be many other factors involved.

**COMMUNICATION AND PROMOTION OF COMPETITION CULTURE**

Most participants were of the view that DG Competition’s external communications are generally clear, understandable and of high quality. Reports were considered to be well-structured and well-written and DG Competition shows strong engagement with the content of what is being communicated.

DG Competition was seen as using a wide variety of communication channels, all of which are appropriate. In most stakeholder groups, DG Competition’s website is held in high regard and participants were impressed by the breadth and depth of the information the website contains. However, other stakeholder groups, especially law firms and economic consultancies, had a more mixed view of the website and added to the suggestions of how the website could be improved. Across all stakeholder groups, the majority believed that DG Competition should generally refrain from using social media.

The vast majority of economic consultancies, lawyers, national competition authorities and Member State ministries were aware of DG Competition’s work in the promotion of competition culture and policy convergence at international level. These participants thought that DG Competition is doing good work in this area and acknowledged that it is not always easy to promote a culture of competition in a complex global economy.
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 DG Competition will use the findings of the study to:

- Have more targeted and dynamic communication and interaction with its professional stakeholders and with the general public
- Detect areas of possible improvement in its cooperation and interrelations with stakeholders
- Manage and prioritize 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 it 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 had been carried out among similar stakeholder groups.

The focus of the study is 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 by concrete involvement in case work as part of DG Competition’s enforcement activities or indirectly, by having influenced or benefited from policy work. A separate study directly addressed citizens at large in all EU Member States.

This report focuses on the views of the six different groups of stakeholders interviewed:

- Lawyers (L)
- Economic consultancies (EC)
- Business associations (BA)
- Companies (C)
- National competition authorities (NCA)
- EU Member State ministries (MSM)
1.2 Methodology and sampling

The study consisted of 120 in-depth interviews (IDIs) lasting on average about 75 minutes. Interviews were conducted face to face wherever possible, at the participant’s place of work or another suitable location.

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

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

The interviews conducted were distributed across the various stakeholder groups as follows:

<table>
<thead>
<tr>
<th>Stakeholder Type</th>
<th>Interviews completed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lawyer</td>
<td>34</td>
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<tr>
<td>Economic consultancy</td>
<td>5</td>
</tr>
<tr>
<td>Business association</td>
<td>21</td>
</tr>
<tr>
<td>Company</td>
<td>27</td>
</tr>
<tr>
<td>National competition authority</td>
<td>26</td>
</tr>
<tr>
<td>Member State ministry</td>
<td>7</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>120</strong></td>
</tr>
</tbody>
</table>

Interviews were conducted during the months of June and July 2014. This report was finalised in December 2014.

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

<table>
<thead>
<tr>
<th>Country</th>
<th>Interviews</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria</td>
<td>1</td>
</tr>
<tr>
<td>Belgium</td>
<td>54</td>
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<tr>
<td>Bulgaria</td>
<td>2</td>
</tr>
<tr>
<td>Switzerland</td>
<td>1</td>
</tr>
<tr>
<td>Cyprus</td>
<td>1</td>
</tr>
<tr>
<td>Czech Republic</td>
<td>3</td>
</tr>
<tr>
<td>Germany</td>
<td>5</td>
</tr>
<tr>
<td>Denmark</td>
<td>2</td>
</tr>
<tr>
<td>Estonia</td>
<td>1</td>
</tr>
<tr>
<td>Greece</td>
<td>3</td>
</tr>
<tr>
<td>Spain</td>
<td>3</td>
</tr>
<tr>
<td>Finland</td>
<td>2</td>
</tr>
<tr>
<td>France</td>
<td>6</td>
</tr>
<tr>
<td>Croatia</td>
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<tr>
<td>Hungary</td>
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<td>Ireland</td>
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</tr>
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<td>Italy</td>
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<td>Latvia</td>
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<td>Netherlands</td>
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<td>Portugal</td>
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<tr>
<td>Romania</td>
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<td>Slovenia</td>
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<td>Slovakia</td>
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</tr>
<tr>
<td>United Kingdom</td>
<td>12</td>
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<tr>
<td><strong>Total</strong></td>
<td><strong>120</strong></td>
</tr>
</tbody>
</table>

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

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

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

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

<table>
<thead>
<tr>
<th>Commission decisions were not legally sound</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
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<th>6</th>
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<td>-</td>
<td>-</td>
<td>-</td>
<td>4</td>
<td>14</td>
<td>12</td>
<td>1</td>
</tr>
</tbody>
</table>

### 1.3 Participant background and selection

The **lawyers** interviewed specialised in competition law and some had twenty years of experience or more. All the participants were partners in their firms and a number were senior partners and influential in their field. The majority of participants were in frequent contact with DG Competition. Most participants based in Brussels deal with case teams on at least a weekly basis. Some of the more senior partners had less frequent contact with DG Competition but usually at a senior management level. Participants from other parts of the EU tended to have less contact with DG Competition but levels of contact varied from as little as ‘once or twice a year’ to ‘once or twice a week’.

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

The **economists** representing economic consultancies all held senior positions and had significant experience. They tended to be responsible for teams of economists. All had extensive experience of working with DG Competition. The initial list of potential respondents for this stakeholder group was drawn by DG Competition. A further narrowing down of economic consultancies was done in accordance with the most frequent contacts of DG Competition’s Chief Economist Team.

For the majority of **business and consumer associations**, antitrust and State aid control were the main areas of expertise and interaction with DG Competition. About a quarter also mentioned involvement in mergers or cartels. Their positions, roles and activities have included: complainant, addressee of a decision, representing/defending members of their association, beneficiary or provider/conduit of State aid, involvement in cases of antitrust, mergers and class action as well as monitoring guidelines and policies and consulting and responding on behalf of their members.

In the case of approximately half the sample, their contact with DG Competition extends back over a decade and some have had more than twenty years’ experience. Most had had contact within the past few months and several participants had been in contact in the weeks prior to the research interview.
Working on new guidelines had increased their involvement with DG Competition. DG Competitions' initial list of potential business and consumer association respondents aimed to represent various EU-wide business sectors, including SMEs. The selection was based on DG Competition’s existing contacts within these organisations.

The participants representing companies all played key roles in relation to competition issues either at a senior executive level, in the legal department or in market monitoring. They all had personal experience of direct contact with DG Competition and backgrounds in law, management or economics. The majority of the companies included in the study had irregular contact with DG Competition (becoming more regular as required).

However, some companies had very regular ongoing contact with DG Competition because of an investigation or activity of their business. Frequency of contacts varied from occasionally (once or twice a year) to several times a week. Some had not been in recent touch with DG Competition. Others had been involved in one or several cases for years. Most had backgrounds either in law or management/economics. They all had personal experience of, or direct contact with DG Competition.

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

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

The national competition authorities (NCAs) were almost exclusively senior employees. 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 directly themselves and 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.

Participants from the Member State ministries were clearly very familiar with the legal aspect of EU competition laws. Many functioned as intermediaries on competition matters between their country and the European Commission. Most were also involved in the national State aid coordination. None dealt with issues relating to mergers and cartels. For most of these participants, involvement with DG Competition dates back several years. All were in regular contact with DG Competition, but depending on issues at hand some periods of contact had been more frequent and intense than others.

The majority of the ministries included in the study were involved in finance, economic affairs or business issues. The respondents are in personal contact with DG Competition and most have a representative role at some Brussels meetings in a consultative capacity. The list of potential respondents provided to TNS Qual+ by DG Competition was based on the replies from the EU Member States Permanent Representation to the EU. These replies were the result of a request from DG Competition to help find interested and knowledgeable experts from the respective Member States.
Representatives of the following organisations participated in the research:

<table>
<thead>
<tr>
<th>Organisation</th>
<th>Organisation</th>
<th>Organisation</th>
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<tbody>
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<td>Air France</td>
<td>Competition Council of Romania</td>
<td>Liberty Global plc</td>
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<td>ACI Europe</td>
<td>Competition Protection Office Slovenia</td>
<td>Linklaters</td>
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<td>Contrast</td>
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<td>Alix Partners</td>
<td>Czech-Moravian Guarantee and Development Bank</td>
<td>McCain Foods Belgium</td>
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<td>Czech Office for the Protection of Competition</td>
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<td>Deloitte</td>
<td>Morrison &amp; Foerster</td>
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<td>Autoridade da Concorrência – Portugal</td>
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<td>O’Melveny and Myers</td>
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<td>Autorité de la Concurrence de la République Française – France</td>
<td>E.ON SE</td>
<td>Outokumpu</td>
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<td>Authority for Consumers &amp; Markets - ACM (Netherlands Competition Authority)</td>
<td>EE&amp;MC Germany</td>
<td>Pensa and Jadek</td>
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<td>Baker &amp; McKenzie</td>
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<td>Philips</td>
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<td>Bank of Ireland</td>
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<td>BDI</td>
<td>European Generic Medicines Association</td>
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<td>Belgian Competition Authority</td>
<td>European Retail Round Table</td>
<td>Schiphol</td>
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<td>The Belgian Competition Service of the Federal Public Service Economy</td>
<td>EVCA</td>
<td>Secretary of State for the European Union. Ministry of Foreign Affairs and Cooperation</td>
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<td>Beplex</td>
<td>Ferrovia</td>
<td>Service of the Commission for the Protection of Competition in Cyprus</td>
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<td>Shearman</td>
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<td>Sidley Austin</td>
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<td>Fooddrink Europe</td>
<td>Simmons &amp; Simmons</td>
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<td>Stibbe</td>
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<td>Gazdasagi Versenyhivatal (GVH) - Hungary</td>
<td>Sub-directorate General of Regional Incentives. Spanish Ministry of Finance and Public Administration</td>
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<td>Bundesministerium für Verkehr und digitale Infrastruktur (Federal Ministry for Transport and Digital infrastructure - Germany)</td>
<td>Gianni, Origoni, Grippo, Cappelli &amp; Partners</td>
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<td>Clifford Chance</td>
<td>Independent Retail Europe</td>
<td>VVGB Advocaten</td>
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The remaining participants asked for their input to be provided anonymously.

***

DG Competition and TNS Qual+ would like to thank all those who participated in this research for their time and their contributions.
2. SOUNDNESS OF LEGAL AND ECONOMIC ANALYSIS

✓ Rating: legal soundness of decisions

Mean score = 5.3

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<th>Commission decisions were not legally sound</th>
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Scores by stakeholder type:¹

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<th>Business assoc.</th>
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National competition authorities, Member State ministries, economic consultancies, law firms and business associations strongly agreed that the Commission’s decisions are legally sound. The decisions were seen as clearly based on legislation and containing well-articulated legal analysis. Most of the Commission’s decisions are upheld in court, which further confirms that they are legally sound.

"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.” (NCA)

"Its [legal soundness] has got to be at the top end. I think their lawyers are very good… they ought to know their case law probably better than we do… That doesn’t mean that things won’t be challenged.” (L)

"Currently DG COMP analyses are extremely high quality, also compared to other EU sections. It has become much better…” (BA)

Some Member State ministries held that it was occasionally difficult to see how different pieces of information were weighted and therefore how the decision was reached.

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

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

¹ As only one consumer association agreed to participate in this study, it has been included in the business associations report and counted as part of this category in the quantitative questions.
Companies were the most sceptical about the legal soundness of the Commission’s decisions. Only around one third believed that the Commission’s decisions are legally sound, while the rest of participants are less sure of the adequacy of the legal arguments presented by the Commission. Some companies noted that political motivations and influences are evident, the soundness of legal arguments tends to be less clear. Some companies noted that occasionally the Commission seems to decide the case upfront and then works back from there (building a legal argument), rather than the other way round.

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

2.1 Clarity and comprehensibility of decisions

- The Commission’s decisions were viewed in general as very clear and comprehensible, yet with differences across the different instrument areas -

Overall, the Commission’s decisions were praised across stakeholder groups for being clear and comprehensible. However, concerns were raised by some stakeholders. In particular, business associations had more mixed views on this topic than other groups.

The majority of stakeholders thought that the Commission’s reports are detailed, well-structured and clearly set out the Commission’s concerns. Decisions are well-reasoned and explained and based on comprehensive analysis. There is a clear adherence to established processes and guidelines. The language is clear and professional. Decisions are most often upheld by the European Court of Justice, which was seen as confirming participants’ views on the quality of decision-making.

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

"Very clear and understandable in general.” (BA)

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

Participants held diverging views on the clarity and comprehensibility of decisions that vary between the different types of competition cases. Lawyers thought that in the area of mergers the strict time frame tends to result in more efficient work and swift decisions.

However, an economic consultancy felt that in merger decisions, not all the relevant aspects are always taken into account. A few business associations commented that the economic analyses in State aid cases are sometimes very complex.

In the area of State aid, lawyers thought the decisions are much more discretionary, less understandable and less open to challenge, resulting in the feeling that recipients of aid and complainants do not have equal rights.
In antitrust and cartel cases, lawyers felt that the reasoning is generally good, but an economic consultancy thought that these cases are often based on analyses which are not detailed enough and lack a sound legal basis.

In four of the stakeholder groups – law firms, national competition authorities, business associations, and companies – some participants questioned how understandable the decisions are for lay people and even sometimes for themselves. This is because of the complexity of the decisions and the legal language used. In addition, Member State ministries felt that notifications and guidelines are sometimes also written in complex language.

"I don’t think it would be likely that a layman could read a 300-page decision 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." (NCA)

Other examples mentioned by participants where decisions were seen as less clear included the following:

- One participant referred to a case that they were involved in, where the statement of objections was unclear and where the State of Play meetings did not give the client an adequate opportunity to respond to the complaints against them; (EC)
- One participant referred to having wanted more communication and clarity from the Commission regarding intermediate decisions; (EC)
- Some lawyers thought that the Commission does not have enough insight into every market sector in which they take decisions. This means that it can take too long to reach a decision and that intermediate decisions are published less often; (L)
- Some lawyers commented on simplified procedures, where the Commission publishes less detailed decisions. They expressed regret at losing knowledge of precedents and at a perceived lack of transparency in these cases; (L)
- Some companies questioned whether the Commission really listens to company viewpoints or takes them into consideration in making final decisions; (C)
  "They say that they consider our point of view but you hardly find a clue of that in the decision" (C)
- Member State ministries thought that the reasoning behind decisions is sometimes not clear enough. It was also mentioned that the short summaries which are published in all languages are often not enough. (MSM)

2.2 Predictability of decisions

- In four of the six stakeholder groups the Commission’s decisions were thought to be very predictable -

In four of the six stakeholder groups – economic consultancies, law firms, national competition authorities and business associations – the majority of participants regarded the Commission’s decisions as very predictable, with some individual exceptions.

Participants mentioned different reasons for predictability: decisions are based on regulations and guidelines; at the beginning of the investigation the parties are told what analysis the Commission will carry out; there is consistency in the logic of the Commission’s analysis; and new cases are often based on old ones or on court decisions.
“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.” (NCA)

“My experiences are quite positive, I see no major upsets.” (BA)

Only around a quarter of companies felt that the Commission’s decisions are predictable, consistent and clearly based on previous decisions. The remaining participants raised instances where decisions were less predictable and where unexpected variables had affected the outcome. Some said that it was sometimes difficult to understand how the Commission had applied rules. Decisions might also be less predictable in the case of new or evolving markets. The Commission’s market knowledge could also have an impact on decision-making as well political influences.

“The Commission shifted its stance over the whole case. Could not deny the impression that a political dimension played a role. And there was criticism about the decision from the other country which, after pressure from the outside world, resulted in the decision being modified.” (C)

Views of Member State ministries were mixed. Some believed that the Commission’s decisions are predictable, others questioned the discretion in the use of evidence underlying decisions. For example they noted that DG Competition occasionally chooses precedents that support its position, or refers to studies done outside of Europe.

“A lot of discretionary leeway gives them the freedom needed to make effective decisions, but can also lead to surprising decisions.” (MSM)

Differences were noted in the predictability of different types of cases. Lawyers, business associations and one economic consultancy considered decisions in merger cases to be very predictable. In antitrust and cartel cases there is usually a statement of objections which makes it easy to predict the outcome. However, another economic consultancy and a company disagreed that merger decisions are predictable.

In the case of State aid, some lawyers and business associations thought that decisions could be unpredictable as they might be at risk of being politicised and becoming less objective. However one economic consultancy and one company thought that State aid control is predictable.

“In State aid it is difficult to predict decisions. It’s very political and there are other issues involved.” (L)

Some lawyers and two economic consultancies singled out decisions regarding cartels/antitrust cases as predictable, while one company thought this is not the case.

Exceptions to the predictability included: when cases are very complex or controversial; when cases concern new markets or industries which might require a shift in approach; and when it is unclear how DG Competition would define a specific market (e.g. pan-European or a national market definition).

Each exception was mentioned by a single economic consultancy or lawyer. Lawyers felt that there is less consistency in market areas where there have been new developments, and occasionally a lack of clarity behind the reasons why cases are chosen.

“Final decisions are reasonably predictable. What is less predictable is how they pick a case, for instance sometimes it seems to be more about media value instead of economic impact.” (L)
National competition authorities did not want decisions to be entirely predictable as that might imply that new evidence or information was not assessed throughout the case.

### 2.3 Predictability of fines imposed

Those respondents who were in a position to comment, thought that fines are generally predictable; nearly all stakeholder groups acknowledged the legal soundness of the Commission’s decisions.

The majority of economic consultancies, national competition authorities and law firms held that fines are generally predictable. Participants noted that fines are based on comprehensive guidelines published by the Commission that make their calculation transparent and consistent, thereby reinforcing predictability.

Some of those who believed that fines are generally predictable claimed that predictability evolved during the procedure. It is more difficult to predict fines accurately at the outset of a case because the exact amount could be influenced by factors such as the turnover of the company in the year before the adoption of a decision, new information emerging during a case, or mitigating circumstances. Circumstances might therefore lead to variance in the fines.

“Our job is to reduce them [the fines], but the initial fine they come up with is usually reasonably predictable.” (L)

A small minority of national competition authorities believed that fines should not be fully predictable as that would help businesses calculating the cost of non-compliance with competition rules.

“If it [the fine] is too predictable, it becomes a price.” (NCA)

Several lawyers, business associations and one economic consultancy thought that the fines are too high and disproportionate to the harm being committed. The Intel case where the fine amounted to EUR 1 billion was mentioned as an example.

“I think some of the fines are disproportionate to the harm being committed... predictably disproportionate, but wrong.” (EC)

A number of business associations were unable to comment on the predictability of fines as they had never been fined or involved in a fine imposed on a member organisation. However, those who commented thought that although guidelines exist there is too much discretion in how a fine is determined and the amount arrived at; this results in fines being unpredictable. One participant complained that different members of a cartel are fined differently.

Similarly, most companies had little direct experience and therefore declined to comment or spoke more generally from what they saw in the media, or mentioned fines that have affected their market sector. They had very mixed views on whether fines were predictable or not.

One Member State ministry held that fines are predictable, since there are clear criteria that set their amount.
One participant felt that the application of the State aid rules has been broadened and now incorporates many State activities, not all of which are transparent. For example, granting land for free. If this is incompatible, the money has to be refunded. In some cases it is difficult to follow and it is very complex to calculate the recovery rate that has to be applied to establish the current value of the disadvantage.

2.4 Understanding the markets

- Although DG Competition’s understanding of the markets was considered to be good, it varies by sector and staff turnover was seen as having an impact on continuity -

✓ Rating: market knowledge

Mean score = 5.0

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Scores by stakeholder type:

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Market understanding was generally considered to be good, but can vary between sectors and across case teams. DG Competition was seen as having the staff and processes in place to make sure it has the necessary market knowledge.

“*They know the facts. Even if you are not pleased with the decisions, you have to admit they are very serious and rigorous.*” (EC)

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

“*You see how in-depth their analysis was when they were assessing the market. They were going back, analysing how the market was changing. It’s not just relying on case law. It’s something that they already did before, but they do the analysis from the start, anew or at least they update it.*” (NCA)

“I think they’re incredibly knowledgeable. They got to grips with what is quite a difficult market to understand very quickly and with very bright people on the case team. This made the meetings with them easier... we were talking the same language.” (C)
Participants in all stakeholder groups offered opinions on which sectors they thought DG Competition does and does not understand well. However, the common theme across reports appears to be the variability in these responses: if a stakeholder group or participant mentioned a certain sector as well-understood, there was almost certain to be an opposing view by participants in the same or a different stakeholder group.

Similarly, while some participants held that DG Competition’s staff’s knowledge is broad but not deep, there were participants who argued the opposite, that DG Competition knows a lot about certain sectors, but not about others. However, despite this variability, common themes that emerged across stakeholder groups were the impact of staff turnover and the seniority of teams on market knowledge, as well as DG Competition’s staff’s willingness to acquire market knowledge.

Among Member State ministries, national competition authorities, business associations and law firms, several participants commented on the issue of staff turnover. High level of staff turnover contributes to a loss of market knowledge/expertise. Participants recognise that DG Competition has taken steps to address the problem, for example, case manager positions have been introduced. However, fluctuation in the case teams remains a challenge. Rotation in management positions was also considered to negatively impact market knowledge.

National competition authorities, law firms and companies all discussed the relationship between seniority of staff and market knowledge. Some held that more junior staff with less market experience are not always supervised adequately and this has an adverse effect on the case teams' performance.

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

The willingness of DG Competition staff to learn quickly in cases where they might lack knowledge was commended by economic consultancies, law firms, business associations and companies. Staff either try to improve their knowledge quickly or bring in relevant experts who know the market well. Staff were also seen as willing to meet and discuss with various industry sectors.

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

Suggestions for further improvement were offered by participants from different stakeholder groups:

- More two-way communication with Member States; (MSM)
- Obtaining even more input and expertise from national authorities; (MSM)
- Keeping teams together for longer, which may also curtail staff turnover; (MSM)
- There was also a call for active use of inter service consultations with specialized knowledge for certain sectors. Whilst this has been achieved in some areas, it needs to be more widespread; (NCA)
- DG Competition should keep abreast of developments in specific markets like digitalisation, for example through site visits or attending industry conferences; (BA)
- DG Competition should maintain regular contact with staff in other Directorate-Generals; (BA)
• Two participants suggested that in order to improve the process of acquiring market knowledge, DG Competition should better target and focus the questionnaires they send out, rather than asking for general information which then takes time for parties to prepare; (EC)

• DG Competition needs to focus on providing more fixed teams for specialised sectors. This is already happening in some sectors; one company noted it had worked with specialised teams in the banking sector; (C)

• Other participants suggested that to improve its understanding of enterprise culture, DG Competition needs to recruit more people with working experience in the business sector; (C, BA, L)

• Retention of staff was also important particularly at senior levels. Participants suggested that working conditions, including wages, need to be attractive to recruit and retain good staff. (C, NCA)

2.5 Quality of economic analysis

- The quality of economic analysis was seen to be high across all stakeholder groups -

✓ Rating: quality of economic analysis

Mean score = 4.9

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Overall, the quality of DG Competition’s economic analysis was seen to be high by the vast majority of law firms, national competition authorities, Member State ministries, economic consultancies and business associations.

Among companies, views were more varied and reflected how well participants believed DG Competition understands different market sectors (especially their own). However, DG Competition’s economic analyses were regarded as comprehensive, highly detailed, based on the best available data and therefore trusted. Some lawyers, business associations and companies thought that the economic analyses have improved in recent years.

“Criticism would have been more justified 15 years ago. They have made an effort to inject more economic analysis into policy-making. The balance is better today.” (BA)

“To us, their economic analysis seemed to be very sound, and the people doing it really seemed to know what they were doing.” (C)
However, different stakeholder groups have also made various negative comments on the economic analyses related to DG Competition staff and to the Chief Economist(s).

Lawyers felt less confident about the quality of analyses conducted by junior team members who were not supervised by more senior DG Competition staff. More specifically, the team’s lack of knowledge and specialisation can result in delays in such situations.

Additionally, it was viewed that the quality of the economic analyses varies across teams. Lawyers pointed out that changes in the case team result in instability and delays. Ideally, a team should stay in place for a period of ten years.

Economic consultancies also tended to agree that the quality of economic analyses may be lower when more junior teams are involved. Their belief is that DG Competition brings together more competent teams for larger cases involving big companies, while smaller cases tend to be assigned to junior staff members.

“Competent experts are requested and will only agree to join in an interesting, large case where companies provide useful tools, for example market simulations which DG Competition cannot offer.” (EC)

Most participants believed that the introduction of the Chief Economist’s position in 2005 has had a positive impact on decisions. For example, company representatives and Member State ministries were positive about DG Competition staff and the quality of their economic analysis. Staff were seen to ask good questions and being capable of getting to the bottom of complex cases.

“I think this is a facet they have invested in heavily in recent years. The appointment of a Chief Economist. Economists are very important. And have become more important. And the authority of economists has also increased.” (C)

Member State ministries, national competition authorities and business associations also had a positive view regarding the role and impact of the Chief Economists on processes and outcomes.

However, some participants held different views about the influence of Chief Economists. While most of the lawyers thought they provide a good service and have a lot of experience and expertise, some did not find them to be very helpful, as lawyers do not always have access to the Chief Economist.

Additionally, one participant would like to see the appointment of an independent Chief Economist, outside the Commission, providing a more objective view. One Member State ministry expressed concern that this focus on economics might overshadow other factors, such as the social dimensions, that might be important to consider when taking a decision.

“The files and decisions are based on solid preparatory work. You feel the impact of the Chief Economist’s team.” (MSM)

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

“The grant and aid policies have many social objectives. Giving an economic evaluation of local development is complicated. It forgets about other public objectives that are just as important.” (MSM)
DG Competition was commended by a national competition authority and Member State ministries for making use of external experts.

Business associations thought that DG Competition’s analyses sometimes rely too heavily on models, while national competition authorities commended the use of new modelling techniques.

Business associations thought that economic analyses are good in some sectors, e.g. banking, but not in others. Companies praised the use of sectorial surveys as a way to gather comprehensive information on a market.

Suggestions for improvement were offered by some stakeholder groups:

- DG Competition should more consistently focus on the differences between Member States and relevance of local markets. There was a feeling among a minority of participants that the broader view is more often taken rather than the impact of what was happening locally; (NCA)
- It appears the Commission sometimes refers to the actual analysis, but participants are unable to read it as it is not enclosed as part of the documentation – a situation they would like DG Competition to redress; (MSM)
- One participant suggested that experienced economic analysts should proactively take part in small cases and do their own market simulations; (EC)
- One participant suggested that more economists should be recruited; (EC)
- One participant suggested that teams should be allocated more working time to handle projects; (EC)
- One participant commented that a more hierarchical structure is needed in project teams and a greater mix of junior and senior staff is needed; (EC)
  
  “The kind of black and white perceptions [of junior staff] are sometimes dangerous. The lack of experience in the details of certain markets is often the cause.” (EC)
- A number of participants wanted DG Competition to take a more global view of markets (extending its analysis beyond the EU); (C)
- Other participants wanted DG Competition to address high levels of staff rotation, particularly among senior staff. More stable teams would help expand and deepen market/economic understanding especially if teams specialised in sectors; (C)
- Some participants suggested that more market surveys are required to assist in predicting/determining the consequences of decisions (e.g. what would happen in a certain scenario) and that decisions need to be made with a clear understanding of the economic consequences; (C)
- One participant wanted the Commission to consider generating feedback from companies on proposed decisions before they are published. This would mean sharing confidential information which the participant understood would raise considerable procedural issues for the Commission. (C)
3. TRANSPARENCY AND PROCEDURAL FAIRNESS

3.1 Overall level of transparency of DG Competition’s work

- Very diverse views regarding the transparency of DG Competition’s work at different stages of the process and in different types of cases -

Participants had very diverse views regarding the transparency of DG Competition’s work and referred to different levels of transparency at different stages of the investigative process and for different types of cases. Business associations, Member State ministries and companies were divided between those who thought that DG Competition’s work is transparent and those who thought that it is not.

Lawyers were also divided, but the overall opinion was that DG Competition is not very transparent. However, economic consultancies and those from national competition authorities had a very different view and praised DG Competition for working transparently. They held that the level of openness, cooperation, sharing and accessibility of information was good.

“[I have] observed an open mind... they listen to the different parties... and are strongly motivated to consider your response.” (EC)

“Normally everything that needs to be known is known and the only thing missing [that is not shared] is the name of a complainant, but that isn’t really necessary.” (MSM)

“I think we have a generally open relationship, and we generally have a good idea of what’s going on. And for a regulator they’re really quite transparent. Comparing them to national authorities, they [DG COMP] are much better.” (C)

When participants discussed transparency, they referred to a number of different information and communication requirements that they have. In line with the overall mixed views on transparency, participants also had mixed views on these different elements.

Confidentiality relates to transparency and business associations felt that although it is important to keep the necessary information confidential, this does not mean that DG Competition’s work cannot be fully transparent. The need to keep information confidential can be offset by regular communication with DG Competition. Economic consultancies commended DG Competition for keeping information safe among the different parties.

“Transparency and confidentiality are equally important, there has to be a trade-off between the two, so there cannot be full transparency.” (BA)

There was some criticism among business associations and companies about a perceived lack of transparency in how the information that they provided to DG Communication was used. Some companies mention they were required to provide large amounts of information without fully understanding what it would be used for and DG Competition provided little, if any, feedback on how the information was analysed and used in the final decisions. This also meant that the communication process was not interactive.

In addition, after a decision had been reached, participants did not have access to all of the information that led to the decision. A few Member State ministries said that they did not spontaneously receive notice of the closure of cases or an explanation of what had happened to complainants.
Some Member State ministries were of the view that DG Competition readily provides general information, but specifics are more difficult to come by. Participants would like more information on the rationale and arguments that underpin decisions.

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

For some companies, transparency was also associated with the independence of data/information and judgement. DG Competition collates and evaluates its own data which means the final decision is seen as lacking independence. In this, it compared unfavourably with US institutions.

“DG Competition does not handle the materials they are receiving (like documentation and expert opinions) independently since at the same time they also produce their own material which supports their own views and there is not an independent party included like there usually is in the US [or other countries] – in the court of law there is always a court which evaluates independently the opinions of both participants and after that reaches its verdict.” (C)

Participants had different experiences of the accessibility of DG Competition staff. One economic consultancy thought that staff members are available, while others regretted that bureaucracy makes it difficult to set up meetings with staff quickly. Companies that were positive about transparency, praised the approachability of DG Competition staff: even if information is not available or accessible to the company for some reason, staff usually remain easy to contact and willing to communicate with companies.

The Best Practice/Manual of Procedures was praised by a small number of companies, most of the national competition authorities and many of the lawyers. It was seen as an effective way to keep parties informed about processes and procedures and what to expect during investigations.

“DG COMP has disclosed very detailed notices like Best Practices, about how cases are handled, explaining how the 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”. (NCA)

Some participants commented on the State of Play meetings, of which they had mixed experiences. Some lawyers and one company had found them very useful platforms for interaction with DG Competition and for bringing transparency to cases. Other lawyers and one economic consultancy felt that the meetings are not always useful.

In many cases lawyers felt that these meetings take place simply to meet procedural requirements, as they sometimes involve people who do not know the case very well. One economic consultancy said that DG Competition’s staff are not always an equal match with the company’s experts in terms of market expertise and more senior staff would be helpful.

One economic consultancy commented that the State of Play meetings would be a good opportunity for transparency if they worked better – if key documents were circulated in advance. Similarly, some national competition authorities said that invitations to these meetings are not always received early enough to allow for preparation and planning.
Some lawyers thought that the State of Play meetings are the only occasions when information is conveyed. But these lawyers believed that the meetings are of limited use as they felt that DG Competition would maintain its views even if there was good evidence to the contrary.

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

Differences in transparency were observed between different types of cases. Lawyers, economic consultancies and national competition authorities thought that in mergers the guidelines and timing requirements are very well applied, resulting in transparency and clarity. For national competition authorities and lawyers, steps are less clear in cartel cases and immediate decisions are not well communicated. Lawyers thought that State aid cases are the least transparent as they are regarded as very political, compromising transparency.

3.2 Listening and informing in a timely manner

- Although DG Competition was seen by the majority of participants as listening and informing them in a timely manner, there is room for improvement -

✓ Rating: informing in a timely manner

Mean score =4.9

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Scores by stakeholder type:

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<th>Business assoc.</th>
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The majority of participants were of the view that in most cases DG Competition listens well and informs them in good time. However, this was not true in all instances or for all types of cases.

“DG Competition listens carefully to stakeholders.” (EC)

“They normally receive everyone, and listen and pay attention to what you ask for. There is very open communication.” (MSM)

National competition authorities were the least satisfied of all stakeholder groups with the timeliness of information and around half said that there was room for improvement as documents often fail to arrive in time to allow stakeholders to review complex information before important meetings.
Lawyers were the most vocal when distinguishing between how DG Competition listens to and informs stakeholders in different types of cases. Participants from law firms commented that in their experience the communication processes are clearest in the case of mergers because there is a time frame to work to. Economic consultancies also had positive experiences of mergers.

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

Lawyers thought that in cartel cases, where no timelines exist, DG Competition could benefit from more structure. Although ‘best practices’ exist, the timelines are not communicated to the parties. Furthermore, sometimes an antagonistic relationship exists between the Commission, businesses and their lawyers where the Commission is seen as keeping its cards close to its chest as long as possible. There was some suggestion that there should be an independent decision-maker for cartel cases.

“It depends very much on the case-handler. They could give more information and speed up the process. This would create goodwill and give DG Competition a positive image.” (L)

Participants from the law firms believed that in antitrust cases, because of the volume of investigations, the Commission has a draft timeline that is not shared with the different parties. Once the case team is ready for the meeting, parties are often left with very little time to prepare and to answer the questions raised during the meetings. However, economic consultancies had positive experiences of DG Competition’s handling of antitrust cases.

Member State ministries singled out notification and complaints cases as being well handled by DG Competition; questions are usually answered and staff are open to discussion.

Member State ministries, national competition authorities and business associations felt that they would like DG Competition to be more proactive as they felt that information is not forthcoming unless they explicitly ask for it.

“If we ask for a meeting they always respond, but they do not work proactively.” (BA)

In a small minority of cases participants mentioned negative experiences of DG Competition’s communication:

- Cases where participants felt they were not informed, where staff were not helpful, or where they were unsure whether their views were fully taken into account. (EC)
- One participant mentioned a decision taken in the case of a complaint, for which only the appellant received the decision directly while the stakeholder did not. (MSM)
- Another participant was upset to receive the information about the adoption of a decision via a press release. (MSM)
3.3 Publication of non-confidential decisions

- Mixed views about whether the non-confidential versions of decisions are published swiftly enough -

Responses were very mixed about whether non-confidential decisions are published swiftly enough, depending on the stakeholder group. In the case of business associations, economic consultancies and lawyers the majority thought that it takes too long for these decisions to be published. Lawyers stressed that the parties need to be able to apply the decisions as soon as possible after the decision is made.

“They [DG Competition] take their time. Our members are not happy with the time frame, a shortened time frame would be appreciated.” (BA)

“I can’t see any reason for it to take six months, nine months, a year, two years, three years to publish a decision. That’s not a good process. The decision clearly exists and it can’t take that amount of time to redact confidential information. All the other competition authorities publish their decisions much quicker.” (EC)

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

Member State ministries had experience of non-confidential decisions being published in less than a month to a year after the decision – the latter was seen as too long.

Most of the national competition authorities were noncommittal in their answers, because the publishing of non-confidential decision was not relevant to their role, or they were unsure of the specific time frame. Delays did not affect them directly, but might have an impact on third parties and in light of this, the Commission needs to look at whether anything can be done to speed up decisions.

“I know it sometimes takes two or three years before publication. So really...It’s true we get them straight away. But for them it could be difficult to change.” (NCA)

Some business associations did not know when a decision had been made and therefore could not assess the time between the decision and publication. Most of the companies, however, took a completely different view and thought that the non-confidential versions of decisions are published swiftly, or at least swiftly enough for their purposes. They understood the need for the redaction of confidential information and this was often believed to be what drives the extended timelines where they were evident.

There was some acknowledgement, although only in a minority of cases in certain stakeholder groups – business associations, companies and lawyers – that the time it takes to redact the confidential parts of a decision is not entirely under the Commission’s control as they are not the only party involved in this process.

“In fairness I suppose you have to remember as well here that there is a third party involved in these discussions as well, which is the host state. Obviously the bank would have issues about certain redactions and there is a process to be followed, but you also have got the departments, finance in [our] case... then you have the Commission, so there are three parties.

I suppose we can just talk from our side and we see speed of response, we adhere to the deadlines but that doesn’t always translate into a speedy decision.” (C)
Very few stakeholder groups differentiated between different types of cases. Companies thought that non-confidential versions of decisions take too long to be published in antitrust cases, while lawyers held that in merger cases the publication of non-confidential decisions is done in a timely manner, but not in cartel cases.

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

Participants from the law firms offered suggestions as to how DG Competition could improve the publication of non-confidential decisions:

- it could be more prescriptive about what constitutes confidential information;
- the publication process could be streamlined in order to prevent parties involved in a case - including DG Competition - from slowing down the publication process;
- DG Competition should adhere more strictly to its own guidelines on the time frame for publishing decisions; and
- decisions should be published in English.

3.4 Stakeholder consultation on new rules

- There was a high overall level of satisfaction with DG Competition’s consultation on new rules, although some participants felt that their views are not always taken into account -

✓ Rating: stakeholder consultation on new rules

Mean score = 5.5

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Participants were generally quite satisfied with the way in which DG Competition consults with stakeholders on the creation of new rules. DG Competition was seen as transparent in this regard and has become more open to the participation of different stakeholders.

“I think the tendency now is to involve more stakeholders. In the past, this was decided by a limited group of people, who were probably lawyers and people very close to the Commission. But the Internet has allowed them to reach a larger group in the market. This is a major improvement.” (C)
Economic consultancies and lawyers were particularly satisfied. Nearly all the economic consultancies had been part of these consultation processes many times, for example the drawing up of damages guidelines. Lawyers thought that DG Competition listens to stakeholders and that stakeholders take these consultations seriously.

“There is no new piece of relevant legislation that is not announced to the public and comments are received.” (L)

Business associations were also very satisfied and the use of the website as a medium for consultation was applauded for the time it saves, although it is important that participants still need to be informed about prospective areas for consultation.

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

A few national competition authorities pointed out that inviting national competition authorities to consult on new rules is built into DG Competition regulations and is therefore expected. Many had wanted to participate in these processes and were generally satisfied when they did, but they were not always able to do so because of time and resource constraints, or because the documents did not reach them promptly.

Of the different stakeholder groups, companies seemed to be more sceptical about the consultation processes, or took a more strategic approach. While the majority of participants were aware they had been invited to consult on the development of new rules, many had not responded often and some had not responded at all. Some did not do so because they believe they have little influence on the outcome. Many had responded to one or two consultations, but lacked the resources to respond more frequently. Generally, companies were keener to engage in consultations that would have a direct impact on their future operations. A minority were not aware that they had been invited to consult on new rules.

“We choose largely not to respond, on a resourcing basis.” (C)

Member State ministries felt that the consultation process has been enhanced by the introduction of voluntary working groups to create proposals for Commission guidelines.

A small minority of Member State ministries, national competition authorities and companies said that they would like some feedback on why their considerations have not been taken into account, as generally DG Competition does not indicate which contributions they have taken into account and why.

“You get a written draft, but if you ask them about a remark which they dropped, they just tell you: ‘We don’t like it’ - with no further explanation.” (MSM)

Participants had differing views on the outcome of the consultations – whether they felt that their views are taken into account or not. Some business associations wondered if consulting them is just a formality because DG Competition is perceived as approaching companies first. One economic consultancy was not sure whether DG Competition is always open to different views.

Some economic consultancies, national competition authorities and Member State ministries said that although they do not always agree with the outcome of the consultations, they are satisfied that they have been consulted and feel that they have been heard. However, two lawyers and some national competition authorities and business associations did not believe that their comments have much impact. They thought that DG Competition knows what it wants to achieve and is not open to changing its views.
“They [DG COMP] do not always take our comments into account.” (L)

“There are consultations because they need to be done. They [DG COMP] are not looking for our input to these consultations, it’s purely bureaucratic.” (BA)

“It’s not as if they do not invite us. But they have already decided what they want to do.” (NCA)

3.5 Observance of procedural rules

- DG Competition generally follows procedural rules, although participants mentioned individual exceptions -

Participants generally felt that DG Competition is very thorough in following procedures. Economic consultancies and companies thought that DG Competition is procedurally-orientated. Economic consultancies also said that members of case teams are very professional, strict and serious and that following DG Competition’s procedural rules is therefore part of the serious working culture of DG Competition.

For national competition authorities, evidence that DG Competition follows procedural rules is reflected in the fact that it seldom loses in court and when it does, it adapts rules going forward. Business associations felt that where rules and guidelines are clear, as in the case of mergers, procedures are followed well, but in State aid cases there are fewer rules for DG Competition to follow.

“Yes, absolutely, they deal with highly sensitive business secrets. Nothing can go wrong or they must pay damages.” (BA)

“Overall [our] experience is good, we lawyers are aware of their [DG Competition’s] internal rules. They are very good at following their own rules.” (L)

“When there are two sides to a merger and both waive their right to appeal, they (DG) always wait for 14 days, just for the hypothetical option that a third side might object.” (NCA)

“They really comply with their rules. I have no reason to doubt it.” (C)

There was overall consensus that DG Competition handles sensitive information with the necessary care. One business association expressed concern about a new rule, on which they had not been consulted, that allows DG Competition to share confidential information with other regulators.

National competition authorities felt positive about oral hearings and all parties being given an opportunity to be heard. Lawyers had mixed views about the extent to which parties are given due hearing during the process. Some lawyers felt that indeed DG Competition is willing to listen to all arguments.

But others raised a number of concerns, including the fact that although the hearings are an opportunity to present a case, very little is seen to change as a result and the fact that the oral hearings are held quite late in the process which means that their impact is fairly limited.
Although during oral hearings the hearing officer, which is part of the Commission, acts independently from DG Competition, business associations felt that in cartel cases, the process is not satisfactory, as they perceived DG Competition to be acting simultaneously as “judge, jury and prosecutor”.

Despite the overwhelming sense that DG Competition does follow procedural rules, participants brought up some examples where this did not appear to have been the case:

- The rules for defining markets are not always followed. Case teams often take old cases and just translate them to a new case without doing any further economic analysis; (EC)
- DG Competition was also seen by a minority of lawyers to take occasional short cuts in cases that were quite complicated; (L)
- Another concern mentioned by a minority of lawyers involved the time frame in which cases are concluded – the overall time frame is too long, but parties are given too little time to prepare information requested of them; (L)

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

- A minority of law firms felt that, although access to files is regulated by published guidelines, some uncertainty remains as to what one can have access to. According to them, some information is left out of the files, such as internal deliberations and other parts are deleted on grounds of confidentiality; (L, NCA)
- A few participants reported that information was leaked before being officially released, although not everyone was convinced leaks came from DG Competition; (NCA, C, EC)
  "At one point, a draft report (featuring objections), which could have come from the Commission, fell into the hands of a newspaper. You never know how such things happen, but it was very damaging in this case.” (C)
- One participant claimed there are were issues with respect to deadlines in transmitting of draft documents; (NCA)
  "These procedural rules only concern us when we’re organising consultations. If there’s one thing, it’s the delay in sending drafts. Before a consultative committee meets, there is a deadline for submitting drafts. Especially since some of them are 800 pages long. And sometimes we’ve received them just three days before.” (NCA)
- Another participant talked about informal telephone conversations being chosen for efficiency in resolving certain issues, but being outside normal procedures; (NCA)
- Some Member State ministries believed that DG Competition abuses the State aid procedural rules to extend deadlines to its advantage. For example, in order to legally extend a deadline, it may request additional information and so trigger a new deadline; (MSM)
  "The Commission has to reply to a request within two months, and it normally takes three years. What they do is ask you for information before two months have passed, which interrupts the deadline.” (MSM)
A few of companies thought that DG Competition does not duly observe the principle of fair judicial proceedings and good governance. One participant noted they were not fully informed before a hearing; (C)

Although the procedural rules allow it, one participant complained about DG Competition 'stopping the clock' on the procedural timeline for merger cases; (C)

Another participant noted that rules are sometimes not followed depending on political issues or the involvement of the case team; (C)

One participant mentioned an instance where DG Competition had commented publicly about the number of the merger candidates, making the whole merger process more difficult for the company. (C)

### 3.6 Burden on businesses and organisations

- A majority of stakeholders said that DG Competition’s requests place a very heavy burden on businesses, especially in terms of time and resources that are needed -

The majority of stakeholders said that DG Competition’s requests and activities place a substantial and often excessive burden on businesses. Business associations also claimed that they themselves experienced too heavy a burden.

The three most frequent complaints related to the relevance of the information requested, timelines and resources, all of which are interconnected. Very general requests for information require a lot of work, as stakeholders have to devise various scenarios. The amount of information requested in the form of very long questionnaires is also of concern, as they require a lot of detail and have to be completed quickly, with little notice.

Business associations mentioned what they considered to be an additional major obstacle – DG Competition asks for information in a format that is different from the way it is collected or kept by businesses. Economic consultancies said that DG Competition places a heavy burden on the parties because it makes decisions in a way that requires a lot of detail. These participants also felt that some of the information requested is unnecessary.

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

“We regularly receive questionnaires featuring 190 questions. And you are given a week or less than a week. That is a massive burden.” (C)

“On sector inquiries, that is very burdensome for companies. The volume of information that is asked for is too great and then there is the format of information that they want and that is different to what companies have.” (BA)

“These days they request a lot of data they do not use!” (EC)

“We had a case recently where what they [DG Competition] were originally looking for became very different to what they looked for subsequently, and the case they presented was very different to the one they had initially suggested. That has wasted a huge amount of time... and money... and resources. It could have been dealt with better by spending more time at the beginning engaging with the parties.” (L)
“DG Competition assumes that companies can deliver business data for the past 20 years by simply pressing a button and that is unrealistic... it is completely ridiculous. They don’t realise what they are asking.” (L)

“It’s always an issue when questionnaires are sent or interviews conducted. It requires their [companies’] time and legal assistance which is all an expense for them.” (NCA)

A common theme mentioned by participants - although in some cases a minority - in company, economic consultancy and law firm groups, related to staffing at DG Competition. Some believed burdensome information requests are the result of junior employees not understanding the impact of their requests, the case or the sector, or not being properly supervised. A few of companies pointed out that when case teams change, the new team requires updated information which means double the work for the company.

“This is the consequence of a too flat structure (not enough hierarchy) and too many junior workers asking people [our clients] to give them this, give them that...” (EC)

Two companies mentioned the very burdensome State aid procedure for assembling dossiers and providing evidential documents (several months of research, with extensive coordination between departments).

“I spent whole weeks and months on it. The time it takes to prepare the documentation is considerable. To justify financing projects, we have people who do nothing but that. It takes a lot of coordination between the legal services, subsidiaries.” (C)

National competition authorities felt that although DG Competition’s requests can also be somewhat burdensome for them, this is understandable and expected as part of the process. But for those in smaller national competition authorities these requests were considered to be too demanding in terms of time and resources.

“For consultations we have two people working full time. But we’re keen to do this. It’s a significant workload. But the more work we have, the more it means that we are involved.” (NCA)

However, there were some participants who thought that the burden is not too great, or is at least understandable. Some business associations considered requests for large amounts of information as reasonable when DG Competition is consulting on guidelines or gathering information to better understand a company or industry. In these instances they cooperated with goodwill.

Economic consultancies held that this burden on companies and the demand for higher quality data could be justified to some extent if it assists the Commission in making the right decisions and lawyers to some extent understood that DG Competition might want to err on the side of caution and therefore ask for a lot of information.

Some Member State ministries thought that DG Competition’s requests for information are clear and targeted.

“There is a lot of work, but it must be done. DG Competition does not know everything. They need to use the business contacts and businesses need to answer questions and provide information.” (BA)

On the whole, Member State ministries felt that companies are more likely to bear the burden of providing information than the ministries.
Different suggestions in order to lessen the burden on companies and streamline the processes were made by participants:

- Several stakeholders mentioned that they would like to be kept informed of progress once they have provided DG Competition with the information; (MSM)

- Many suggested there should be a longer time frame for responses or prior warning about an impending tight timeline; (C)

- Many recommended that requests for information should become more targeted, both in terms of the level of detail and of the nature of the information required; (C, EC, NCA)

- In merger cases, some participants regretted having been consulted too frequently about a merger between two third parties; (C)

- One participant suggested that using experts in sector cases would minimise the need for companies to provide so much data (C)/Working with experts in the field who have a good understanding of the market; (L)

- A few participants suggested that DG Competition should consider avoiding the holiday period when sending multiple questionnaires; (C, L)

- One participant suggested being able to complete questionnaires over the phone; (C)

- One participant suggested breaking down the long questionnaire process into smaller separate sections; (C)

- It would be better to hold more face-to-face meetings, rather than sending out forms for completion (EC, L)/more virtual meetings or videoconferencing as a way to reduce the burden of frequent travel to Brussels; (NCA)

- Greater clarity is needed on what the next steps are in the investigation, as uncertainty creates a burden for parties; (EC)

- Stabilising and supervising the investigative teams so that they gain more experience and self-confidence; (L)

- Instead of DG Competition initially asking for a lot of data, the process could be reversed by asking for little data and then requesting more, but relevant information. (L)
4. ECONOMIC EFFECTIVENESS

4.1 Effectiveness of detection policy

- Across all stakeholder groups, a majority viewed DG Competition as effective in detecting infringements, especially via its leniency policy -

Except for most Member State ministries, who were unable to answer this question, the majority of participants viewed DG Competition’s detection policy as fairly effective, often thanks to complaints and whistleblowing. DG Competition’s success is evidenced by a high number of annual detections compared with similar authorities. DG Competition was seen to focus on the most relevant issues and was regarded as doing good work despite its heavy workload.

“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.” (NCA)

“I think they are good; they find the most relevant cases and the use of the complaints procedure is effective.” (BA)

“They seem to be pretty good at uncovering cartels. Non-cartel stuff is much more complicated, also abusive dominance – it’s a lot harder to tell what abusive dominance is. I think they do a pretty good job in detecting the most obvious breaches of competition law.” (C)

The leniency programme was considered to be an effective part of detection policy. Many believed that complaints procedures, as well as immunity and leniency requests lead to the majority of infringements being uncovered. Several national competition authorities and economic consultancies said that the leniency programme is particularly effective for cartels.

“They find them thanks to the leniency policy and it works very well. Without it, it would be much more difficult. They cannot detect all cases, but they handle as many cases as they can, with their limited resources.” (BA)

However, despite this positive assessment of DG Competition’s work, some participants - albeit a minority from economic consultancies, law firms, business associations and companies – were concerned about the reactive nature of the detection policy. This was seen as the direct consequence of DG Competition relying heavily on complaints and its leniency policy.

Several participants feared that some sectors might come under more scrutiny than others as a result. The LIBOR case was raised by a business association as an example of an infringement that went undetected for a long time, until academic researchers discovered and reported anomalies. Some participants thought that DG Competition should play a more proactive role by initiating investigations of its own and continuously monitoring key sectors.

“I know that many cases are based on complaints. I am impressed when the Commission launches an investigation on its own initiative.” (C)
Among companies, more serious concerns were raised about DG Competition’s detection policy. Some thought that investigations to detect infringements are inefficient, because they are too thorough in proportion to the suspected offence. They also accused DG Competition of suspecting an entire sector (e.g. the pharmaceutical industry), when the offence only related to a particular group of companies.

Two lawyers mentioned the difficulty of detecting violations relating to State aid, given the number of Member States and their individual governance systems.

Suggestions of ways for improving detection policy were put forward by participants from different stakeholder groups:

- A few participants (NCA) recommended even closer cooperation between DG Competition and national competition authorities, to enhance detection and investigation;
- One participant (NCA) suggested that DG Competition should communicate more about cases which are compatible with antitrust laws, to provide clear guidance to companies;
- DG Competition should develop clear guidelines around what constitutes a cartel; (L)
- A few participants (NCA) mentioned the need to constantly improve the technology used in detection;
- One way of improving effectiveness could be to publish a press release when an enquiry is launched, in order to encourage companies to review their internal processes; (L)
- The general public could also be better educated about the meaning of competition and State aid, especially in countries where these might be contentious; (L)
- One participant (C) suggested DG Competition could improve the way it listens to stakeholders, in order to better understand the particularities of a situation or a market. This participant also urged DG Competition to take a less accusatory attitude towards a sector or a group of players and instead strengthen dialogue with them;
- One participant (C) pointed out that too little attention and recognition is paid to the efforts of companies to prevent unlawful actions;
- Finally, one participant (L) stressed that it is important for DG Competition to check all the information submitted to them carefully.

“They [DG Competition] must be more active in testing the value of evidence.” (L)

4.2 Deterrent effect of fines

- A widespread consensus might indicate that fines are an effective deterrent, although a minority of participants also suggested other forms of sanction -

Overall, most participants believed that fines, especially larger fines, are an effective deterrent for companies, which try to avoid being in a position where they could be penalised. A national competition authority and some companies mentioned that fines have increased considerably in recent years and have become even more effective.

“The Commission’s fines are generally high. I think that it has a deterrent effect on other entrepreneurs.” (NCA)
“Yes, for sure: 10% of the turnover is dissuasive!” (EC)

“For companies, these are nightmare scenarios that have an impact for many years.” (L)

Some national competition authorities and economic consultancies thought that fines are particularly effective in the case of cartels.

A few law firms, business associations and companies said that the fines are too large. However, most business associations acknowledged that the Commission does not have many other tools at its disposal and that large fines do ensure compliance.

There was support, albeit from a minority in each stakeholder group, for alternative forms of sanction, such as criminalisation, leading to imprisonment and fining of individuals. Alternative forms of sanctions were proposed because fines have no direct impact on individuals personally and in some cases even large fines were lower than the potential profits. However, participants who supported alternative sanctions acknowledged that applying these would not be straightforward, as infringements are not always clear-cut and any measures would need to be applied equally across all sectors.

“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’s my personal view”. (NCA)

“There is no other real solution than fines. In the US, people go to jail. But here it’s not realistic. It is too complex and I don’t think it’s feasible. So we are left with fines.” (L)

According to most Member State ministries, fines are not really an issue in the area of State aid, but sanctions take the form of a requirement to repay the money. Most believed that the threat of sanctions often deters misconduct.

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

4.3 Impact of existing EU antitrust rules on planned business transactions

Most participants with relevant experience said that EU antitrust rules have a strong impact on company plans.

Law firms and economic consultancies reported about several businesses which had substantially modified or abandoned their business plans to ensure compliance with EU antitrust rules. Two of the five economic consultancies had seen this happen more than ten times in the last five years, as had nearly one-third (11) of the lawyers interviewed. Lawyers mentioned they generally help their clients decide whether it is necessary to modify their intentions. Sometimes, clients just check whether what they are intending to do would be acceptable.

As examples, economic consultancies mentioned a company changing top managers who were involved in a cartel, or discussing plans that amounted to cartelization, which they were then advised against. Sometimes, plans were unnecessarily abandoned for fear of intervention by the Commission.
“Yes it happened [that clients had changed their plans] because I thought that the Commission would not approve. People don’t want to do deals that the Commission will block, because you spend a couple of years trying to do a deal, you look like an idiot and it costs you a lot of money.” (L)

“This happens all the time. I counsel companies on how to structure agreements in order to comply with the rules.” (L)

Although changing plans due to EU antitrust rules was not relevant to all companies, those who commented mostly believed that antitrust rules do have an impact on business transactions, by often prompting companies to change their plans at an early stage. Therefore, companies might decide against a transaction altogether. Some participants in this stakeholder group said that this issue was not relevant, or that they had very limited experience as they simply do not engage in potentially problematic transactions.

“Of course, you always perform an internal analysis. You ask yourself: what must be reported and do we foresee any problems? Are we prepared to deal with the problems for the sake of the transaction?” (C)

Only a few business associations expressed themselves on this question, as they found it difficult to answer on behalf of their members. However, one had given legal advice on compliance with competition law that had occasionally led to changes in members’ plans.

“Some actions lead to changes in the market, such as a voluntary code of conduct with retail organisations. The companies make huge investments in compliance rules and they know what the rules are.” (BA)

Among the national competition authority stakeholders, only about one-third offered a view. Most of these said that the existing antitrust rules affect business transactions either by prompting companies to modify them at an early stage or to change behaviour once procedures are initiated. One national competition authority and one economic consultancy claimed that companies do not always abandon plans that are profitable even if they know they might breach antitrust rules – they are prepared to risk the fine.

“If a company sees that the operation is lucrative, it will do it. It makes no difference how compliant it has been.” (NCA)

Only two Member State ministries responded to the questions and both thought that caution over complying with EU antitrust and other rules influences both the provision and receipt of grants.

### 4.4 Timeliness of decisions

- Mixed views on the timeliness of the Commission’s decisions -

✓ **Rating: timeliness of decisions**

Mean score = 4.0

<table>
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Participants had mixed views on the timeliness of the Commission’s decisions. The majority of those from business associations, companies, Member State ministries and law firms thought that the decisions generally take too long. An example mentioned was the Intel decision that took 5-6 years. Participants from economic consultancies said that the timeliness of decisions depends on the type of case; the majority of national competition authorities thought that decisions are processed in a reasonable time frame and that the Commission is becoming more efficient, although there is still room for improvement.

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

According to business associations overly lengthy procedures could undermine the impact of the decision, especially in a dynamic industry such as IT. Companies also noted that if a decision is not taken quickly enough, it cannot always prevent harm and the delay leaves companies in a situation of legal uncertainty. Similarly, lawyers mentioned that businesses sometimes postpone or cancel their plans before a decision is reached.

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

However, as we have seen, not all participants thought that it takes the Commission too long to reach a decision. Some business associations and companies thought the process is neither too long nor too short, but reasonable, or at least understandable considering the complexity of the cases. Some companies also mentioned examples where decisions had been sufficiently quick to have a strong impact on the market (e.g. Microsoft).

"The Commission must tread extremely carefully and that takes time. I understand why it [delays in decision-making] happens, although I don't think it is ideal." (C)

A few business associations felt that a considered, appropriate decision is more important than the time it takes. A minority of companies and business associations said that decisions could actually be taken too quickly, without correctly analysing the market or having real impact. The 2007 decision against MasterCard was mentioned as an example. Similarly, economic consultancies and lawyers believed that decisions that are taken too quickly might be unsound; a reasonable compromise regarding acceptable time frames thus needs to be found.

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

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

Participants from most stakeholder groups also expressed opinions on the time it takes the Commission to take decisions on specific types of cases. In the case of mergers, economic consultancies, law firms and national competition authorities thought that the timing is reasonable, as there is a strict time frame that needs to be followed. However, some companies felt that decisions on mergers still take too long.
Opinions were divided about State aid cases. One company thought that these cases take too long, as there are no strict time frames associated with the process; some of the lawyers agreed with this view. However, other lawyers thought that these cases are indeed resolved within a reasonable time frame.

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

Most economic consultancies and law firms thought that cartel and antitrust cases take too long, while representatives of national competition authorities mostly said that cartel cases are being resolved more quickly, but antitrust procedures are taking longer.

“There needs to be a sense of urgency to their decisions, which I think is lacking.” (EC)

According to most Member State ministries and lawyers, the complaints process takes too long.

Member State ministries said that notifications are seen as a way of dealing with manageable issues, facilitating decision-making within a reasonable time frame.

The following suggestions to improve decision-making processes were advanced by participants from several stakeholder groups:

- Divide cases into smaller units and handle them in parallel; (BA)
- Apply stricter time frames for inquiry questionnaires; (BA)
- Simplify the rules for State aid procedures; (BA)
- Leave enforcement up to national courts; (BA)
- Send out a first draft of the decision and make intermediate decisions available earlier; (BA, C)
- One participant suggested the Commission should give in-principle approval and then have 30-40 days to carry out the investigations, with the option of a further investigation if necessary; (C)
- One participant suggested improving the level of resources and processes to minimise bureaucracy; (C)
- A minority of participants suggested that DG Competition should consider more cases with less intense pre-investigation and/or employ more resources at the Commission. This would also help avoid late delivery of documents; (NCA)
- The Commission could also intervene earlier in some cases (e.g. the online booking case) (NCA).
4.5 Focus on the right sectors

- DG Competition was seen to focus on a balanced and wide-ranging portfolio of sectors -

A consensus was observed across stakeholder groups on the fact that DG Competition generally focuses on the right sectors. It was seen as having a balanced portfolio that includes a broad range of sectors, including banking, telecommunications, energy and manufacturing.

“They’ve picked a good range of sectors.” (EC)

About half of the Member State ministries did not feel knowledgeable enough to answer this question; however, those who did, thought that DG Competition has a stronger presence in newer sectors such as communications, in more “delicate” sectors such as banking and in large sectors such as energy and the environment.

“It covers all the economic sectors from commerce, to buying and selling shoes, to investment in hospitals. When the sector is new, it [DG Competition] gets involved.” (MSM)

“Yes [they’re looking at the right areas]. They’ve got to prioritise, they’ve only got the resources they’ve got.” (C)

There was some suggestion by a minority of business associations, companies and lawyers and by one economic consultancy that sometimes political pressure influences DG Competition in choosing which cases to pursue. Politicians, business lobbies or competitors (including other countries) with disruptive intentions can all exercise such pressure. For example, one lawyer mentioned that DG Competition focuses on the pharmaceutical sector, rather because of political influence, which has as purpose reducing the price of medicines.

Opinions were divided as to which sectors are or should be the focus of DG Competition’s scrutiny. Unsurprisingly, business associations and companies tended to disagree with DG Competition’s focus when their industries are the recipients of unfavourable attention, e.g. aviation and pharmaceuticals.

“Each industry sector will say it is focusing on the right sector. I feel they are overactive in the air transport sector and less in the automotive sector.” (BA)

Several lawyers thought that DG Competition should mostly focus on the following sectors: insurance, food, healthcare, high-tech goods and services, the industrial or consumer products or services sector and energy.

National competition authorities thought that DG Competition also focuses on sectors chosen by other competition authorities, e.g. electricity, gas, communication, IT, construction, or financial services. Most agreed that it also addresses sectors with major transnational and economic impact (e.g. financial services) or consumer impact (e.g. pharmaceuticals, food and energy). A few participants pointed out that areas in which DG Competition focuses less might be areas of greater focus for national competition authorities.

Finally, a few lawyers and NCAs mentioned that DG Competition has little choice about the sectors it investigates, because cases are often initiated by complaints or leniency requests.
4.6 Adaptability to technological changes and globalisation

Apart from business associations, most stakeholders thought that DG Competition has adapted well to technological changes and globalisation, albeit slowly. The question was interpreted differently by participants: the phrase ‘technological changes’ was interpreted as referring both to DG Competition’s own internal use of technology and to its response to technological changes in the markets (e.g. the Internet, e-books).

On the other hand, globalisation was seen as referring to the position of Europe in relation to other countries or regions, as well as DG Competition’s interest in global markets. Some mentioned that technological changes and globalisation overlap at times, given that new global markets often belong to a technological sector.

National competition authorities, companies, Member State ministries and law firms thought that DG Competition is using technology to work more efficiently and is employing it in its investigative work and communication with stakeholders. However, some companies also suggested that DG Competition has not made sufficient progress towards electronic procedures, such as an electronic complaints mechanism.

“Providing the annual reports for State aid and electronic notifications eases the overall process.” (MSM)

According to several national competition authorities and law firms, DG Competition’s activities and recent cases reflect the fact that they are taking an interest in emerging global markets (e.g. Google, Amazon) and telecommunications cases and that they have specialists who study new trends and follow new developments.

“The decisions concern the right areas of business; the fields they deal with are relevant and they are also in fields of rapid technological development. I have no complaints.” (NCA)

Some economic consultancies and Member State ministries pointed out that DG Competition has also integrated new developments in its market analysis. For example, the analysis of the retail sector has integrated e-commerce and traditional transactions. However, two Member State ministries thought that DG Competition is sometimes late to see market changes.

Participants from companies - especially those in the digital/technology sectors - were slightly more sceptical and a few thought that DG Competition is reluctant to adapt to new market changes until these changes become more significant; they noted that this was contrary to how businesses usually work.

“They took a long time to understand what the Internet was and how it impacted on retailing in general – it took ten years for them to issue proper guidelines on Internet restrictions and that’s really too long.” (C)

Referring to how DG Competition adapts to globalisation, some companies and an economic consultancy complained that DG Competition regards markets as European rather than global, which does not correspond to the reality in many sectors. Similarly, several Member State ministries said that, although DG Competition has good relations with the US and Canada, it is too focused on competition within the EU market, forgetting about competition on a global scale.
"The Commission is a toothless tiger against large global companies, especially from the US. We need to find a better way to deal with these large corporations according to our European market philosophy." (EC)

"They want to avoid movement within Europe, for example stopping production being moved to another country in Europe, and they forget about the competition in India." (MSM)

Business associations put forward similar reasons for their more negative view of DG Competition’s ability to adapt to changes in technology and globalisation; they suggested that DG Competition, which is often hampered by a lack of resources, often reacts belatedly to market changes.

"No, enforcement is always behind market changes. Such as changes in the payment market, like Internet payments and the use of credit cards online. This changes too rapidly for DG Competition to follow." (BA)

DG Competition does not always take sufficient account of the different competition rules existing outside the EU. One example is the lesser degree of control in the US over State aid to companies which in turn compete with companies in Europe.

### 4.7 Impact on the markets

- There was widespread agreement that DG Competition’s impact on the market is significant by promoting competition, raising awareness for competition rules and enforcing them. This impact may be impeded by slow decision-making and over-regulation -

✔ **Rating: impact on the markets**

Mean score = 4.8

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Scores by stakeholder type:

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</table>

In all stakeholder groups, DG Competition’s work was seen as having a strong impact on the markets, although reasons for this answer differed slightly.

For economic consultancies, DG Competition’s work has a strong impact on the markets: the Commission is an authority whose decisions are taken seriously and companies take competition rules into account. They said that DG Competition has broken up many cartels and has successfully introduced more competition in the telecommunications industry.
However, some argued that the impact on the markets is limited by slow decision-making processes. In addition this impact was not considered equal across all sectors, because DG Competition was seen as focusing more on some sectors than others.

Lawyers mostly agreed that DG Competition’s rules are incorporated into business decision-making, which in turn has an impact on the market. Here again, DG Competition was seen to have different impacts on different market sectors. Competition law is of greater importance to all listed companies.

However, several lawyers had the impression that, in some cases, a company had been singled out for investigation, while others continued to engage in similar practices. Additionally, a few participants said that the Commission occasionally over-regulates or proposes disproportionate remedies which might discourage business initiatives.

For national competition authorities, infringement cases have a direct impact on the parties involved, as they learn what they have done wrong and undertake to do things differently. Such cases also act as deterrent in the market. Sector investigations impact the market as a whole, leading to a better understanding of what constitutes competitive behaviour. Some participants thought that markets could also become fairer and more professional as a result of DG Competition’s work.

“[There is] A big impact, since global companies are very often involved. For example, the US competition authority was not concerned that the Microsoft search engine was linked to Windows, but DG Competition addressed the problem.” (NCA)

Business associations also said that DG Competition’s impact on the markets has been significant, because it promotes compliance among companies and acts as a deterrent to anti-competitive behaviour. However, some questioned the effectiveness of this impact. Like many national competition authorities, some suggested that bottlenecks appear when decisions are delayed, thus impeding progress. Some also thought that DG Competition puts too many constraints on businesses and even on Member States that want to protect their national industries. Furthermore, DG Competition was regarded as too centralised and not influential enough in some Member States.

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

Most Member State ministries believed that DG Competition has a substantial impact on the market, by controlling the grants awarded and annulling illegal grants that distort the market. Most thought that DG Competition has succeeded in achieving a good balance between the better functioning of its markets on the one hand and avoiding artificial competition supported through State aid, on the other.

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

In order to further improve impact, a more holistic approach was often recommended, by considering global markets and not focusing on Europe only.

Of all the stakeholder groups, companies were the most sceptical of the impact of DG Competition’s work. Some held that, because DG Competition is often slow to act, the impact of its work is delayed and even sometimes non-existent; the Brent enquiries (in the US) and the LME Warehouse enquiries were cited as examples.
Some even argued that DG Competition’s actions might have a negative impact on the markets, because they focus on the consumer rather than businesses and because DG Competition focuses on Europe only, while companies have the global market in mind.

“It’s weakening European industry, because the rules are too strict. Our competitors don’t have the same constraints. So it increases our production costs.” (C)

Additionally, several national competition authorities and law firms pointed out that DG Competition’s work is not the only factor that influences the markets and that aspects such as politics, the economic crisis and national legislation also play a role.

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

- Settlements and commitment decisions were generally considered effective by participants, but some concerns were expressed -

None of the Member State ministries felt that this question was applicable to them. In other stakeholder groups, the overall sentiment was generally positive. These tools were considered a flexible, effective and practical alternative to long court processes - a compromise offering procedural efficiency, particularly in fast moving markets and an easy way to conserve resources and shorten processes.

“I think it’s best to have the most comprehensive toolkit available, so an appropriate tool can be selected for each specific case.” (NCA)

“Both [settlements and commitment decisions] are good tools. They allow DG Competition to close an investigation more quickly.” (L)

General concerns about commitments and settlements were related to finding the balance between them and the standard procedures. Indeed, several participants argued that companies might learn to rely on these tools or even try to abuse them, so they need to be used judiciously. Furthermore, some held that such decisions often lack detail and do not sufficiently reflect how DG Competition interprets certain laws. It was also unclear how enduring the commitments are, if they become less relevant or the market changes.

“If too many issues are being settled [by commitment], companies learn that you are able to eliminate wrongdoing by promising not to do it again.” (NCA)

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

Apart from business associations, most stakeholders from other stakeholder groups clearly distinguished between the two types of tools.

Settlements in cartel cases were considered to be important and effective by most national competition authorities, companies and lawyers, as they speed up decision-making and allow for quick sanctions. These settlements often act as a deterrent to the market. Some participants argued that they might change market behaviours and even market structures in the future.

However, several participants highlighted a number of concerns with settlements:

- Several lawyers also said that settlements could lead in the long-term to a lack of case law;
A few economic consultancies were similarly concerned that such decisions may become arbitrary, as they cannot be cross-checked;

Some national competition authorities and companies were concerned that the use of settlements downgrades the process to an economic decision, thereby reducing the impact that unlawful behaviour has on people’s lives;

Some lawyers said that, in the end, the amount of savings you achieve on the fines is relatively low.

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

“A more effective way to change the market situation is the use of fines.” (BA)

Commitment cases were regarded as good and effective by a majority of economic consultancies, law firms, companies and national competition authorities, because they result in quick resolutions and provide clarity for the different parties about what they need to do to become compliant. They were also considered as having a more rapid impact on the markets compared to a lengthy court process.

Some NCAs pointed out that commitment cases do not necessarily lead to shorter timescales than traditional procedures - for example in the Google case. Finally, some companies questioned whether commitment decisions would have the same deterrent effect as decisions leading to a fine and were uncomfortable with the idea that a company that has committed an infringement could reduce the value of its fine.

However, a potential problem with commitment cases, highlighted by economic consultancies and lawyers, is the lack of precedents for the future and consequently a lack of legal clarity, because the decisions are not detailed. Some national competition authorities differentiated between cases where harm is limited and commitments could be justified and others where harm is considerable and fines would be a more powerful tool. Companies tend to view commitment decisions more positively than settlements.

4.9 Enforcement of decisions

- A wide consensus exists that the Commission can enforce its decisions, although perhaps less so in the case of State aid -

Overall, there was strong agreement that the Commission’s decisions are well enforced. Participants mentioned that the Commission has many tools at its disposal, such as issuing fines, court processes and other sanctions. Most felt that the current “enforcement” culture has had the intended effect on the market, by curtailing illegal practices, as companies have taken the necessary measures following decisions by the Commission.

“Quite simply, we would never contemplate a deal that has to be approved by the Commission.” (BA)

“They’re hard as nails. I wouldn’t breach my commitments with the Commission.” (EC)

“You really get the impression that they don’t give up easily – once a decision is final, they work hard on seeing it through [i.e. applying it].” (L)

“The Commission has a very powerful tool: the sanctions that can be imposed.” (MSM)
However, several business associations and law firms thought that the Commission’s ability to enforce decisions is less successful in the case of State aid. They claimed that decisions take too long to be made and communicated and that the illegal aid is not consistently recovered by Member States.

“On the EU level, decisions need to trickle down to the Member States and this is not always successful.” (BA)

“In the area of State aid, it is a nightmare because Member States are reluctant and it is a difficult area to enforce things.” (L)

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

- Most participants recognised that competition policy is one of the factors that contribute to economic growth, although its impact is hard to quantify -

Mean score = 3.6 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 Commission’s enforcement of competition policy to the EU’s economic growth.

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

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Scores by stakeholder type:

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There was widespread agreement among all participants that the enforcement of competition policy by the Commission has contributed to the EU’s economic growth, although many offered caveats to this consensus.

On the one hand, many participants pointed out ways in which competition policy has contributed to economic growth or created the conditions for economic growth. They believe that regulation has created a more efficient economic system, which in turn has resulted in economic growth. A more efficient economic system would be noticed through: positive effects on productivity, quality and innovation, guaranteed free market, ensuring companies were more effective and forcing inefficient firms out of the market.

“If there is no competition, the economy will suffer, it will reduce the scope of innovation and finally, it will have an impact on consumers.” (BA)
“They [DG Competition] were behind a lot of the innovation and deregulation of telecoms and energy. The telecom sector is one that really springs to mind because there is so much growth and innovation there.” (NCA)

“If DG Competition didn’t do its work, we would have a lot of cartels.” (L)

“Yes it contributes to growth: DG Competition creates a level playing field and avoids the abuse of power.” (C)

On the other hand, several business associations felt that the enforcement of competition policy makes the economic system more complicated, compared with the more pragmatic and liberal approach of competitors outside the EU, to the advantage of those competitors.

“There’s no flexibility, too many constraints. They [DG Competition] have the merit of creating the rules and we do need them, but they lack flexibility.” (BA)

A few economic consultancies pointed out that the impact of competition policy enforcement on economic growth might not be the same across all industries.

“This varies according to the project. For example, in the energy sector DG Competition could have a positive impact.” (EC)

Finally, some legal firms and companies thought that the extent of competition policy’s contribution to economic growth remains unclear and difficult to quantify. Some economic consultancies and national competition authorities stressed that the enforcement of competition policy is not the only contributor to economic growth.
5. COMMUNICATION AND PROMOTION OF COMPETITION CULTURE

5.1 Clarity and comprehensibility of external communications

DG Competition’s external communications were generally regarded as clear, understandable and of high quality.

A majority across all stakeholder groups felt that DG Competition’s communication is of high quality: informative, clear and understandable, with readable documents and well-structured reports.

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

"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." (NCA)

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

However, several business association stakeholders said that occasionally communication is not as clear as it could be. They felt communications are too general and untargeted. The language used is sometimes seen as too technical.

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

Participants spontaneously mentioned that they were aware of the following forms of communication from DG Competition: weekly reports of the Commission’s work, published documents on DG Competition’s website, newsletters, guidance documents, announcements and press releases, advertisements for investigation, conferences, seminars and speeches delivered by DG Competition.

In three of the stakeholder groups (national competition authorities, companies and business associations), a minority of participants touched on DG Competition’s communication with the general public. Many NCAs felt that communication with the general public through promotional materials, the website and advertising is reasonably accessible and that DG Competition makes an effort to simplify the language used. On the other hand, some companies and business associations thought that information might be harder for a lay audience to digest, as it can be quite technical and complicated.

Participants also offered suggestions for improvement or raised areas of concern. These were mentioned in different stakeholder groups, either by single respondents or by a small minority of participants:

- Easier identification of and access to the person in DG Competition who is in charge of a case; (EC)
• More detailed and frequent press releases; (L)
  
  “We do not expect direct communication. The press releases could be more detailed and more frequent.” (L)

• Clearer communication on key terms or questions, such as: what is a ‘public service’? How is a company defined? When is infrastructure included in State aid legislation? Etc; (L)

• DG Competition could also: use television spots to communicate with the general public; be more active with Member States, communicating competition matters with local authorities; be more informal in its communication with national competition authorities; (NCA)
  
  “They are very politically aware: they do not want to hurt anyone and always want to word things very carefully.” (NCA)

• DG Competition should communicate more about the current issues concerning the competitiveness of Europe; (C)

• DG Competition should be more proactive in terms of providing information (companies have to search the website); (C)

• There should be more communication at a national and international level, as well as more face-to-face contact; (BA)

• There should be better cooperation between DG Competition and other DGs; (BA)
  
  “They should cooperate more with other DGs to develop a better understanding. With DG MOVE for our sector, with DG SANCO for healthcare, etc.” (BA)

• The Commission either deliberately or unintentionally uses the press to put pressure on businesses fairly early on in some investigations. That was seen as a political move on the part of the Commissioner. (L, EC)

  “I sometimes think they speak too early in order to create pressure and they use the press to put pressure on business.” (L)

5.2 Choice of communication and media channels

- DG Competition makes appropriate use of a variety of communication channels, but should generally refrain from using social media -

The majority of stakeholder groups believed that the communication channels used by DG Competition are both appropriate and varied. Participants referred to the use of mass media like the press and weekly newsletters, as well as more personal contacts such as the help desk, emails, phone calls, or even face-to-face contacts through conferences, seminars and meetings. Most lawyers also praised the Commissioner’s speeches and articles.

  “I feel well informed with weekly newsflashes, consultations and press releases.” (BA)

  “They do a good job: I get a lot of coverage. I do not feel [left] in the dark. Their press office does it well.” (L)

  “It’s OK, their website and press communication appears fast and I have a good opinion of it.” (NCA)
However, not all participants appeared equally aware of the varied channels of communication available, as there were individual requests for more face-to-face meetings and workshops.

“They should use workshops to explain how they function, why they do something and explain articles. Also, they should invite people and have face-to-face meetings.” (BA)

Most company stakeholders believed DG Competition has two target groups for its media and communications: professional stakeholders and the general public. These require different forms of communication and access to different media channels. Some participants thought that explaining the benefits of competition to the general public is in fact the biggest challenge, whereas communication with stakeholders is already reasonably good.

The website was a widely known communication channel, but participants had mixed views of its usefulness. Participants from the business associations, NCAs, Member State ministries and companies were most likely to value the website for the breadth and depth of the information presented and the way it is kept up to date.

“I only use the website: I can find relevant information there.” (BA)

Lawyers and economic consultancies had more mixed views – some lawyers saw the website in a positive light, while others thought improvements are necessary; economic consultancy stakeholders were more critical and discussed possible improvements above all.

“DG Competition’s website allows me to quickly find what I need.” (L)

Suggestions for improving the website tended to focus on improving the ease with which information can be found and its structure and on updating information more often or more quickly.

Across the different stakeholder groups, a majority of participants thought that DG Competition should refrain from using social media. The existing communication channels were seen to be sufficient. Social media were also sometimes regarded as insufficiently serious and thus not appropriate to use in sensitive cases.

“Maybe it’s just me, but I wouldn’t really read about State aid legislation on LinkedIn.” (L)

The small minority of participants who thought that social media could be a useful tool suggested using YouTube, or other social media channels to communicate with the general public and especially young people.

“Maybe they could use YouTube, talking about things in a video instead of reading about it and put things in laymen’s terms.” (BA)
5.3 Promotion of competition culture and policy convergence at the international level

- The majority of participants in four stakeholder groups were very aware of DG Competition’s activities to promote a competition culture and considered it is doing good work -

✓ Rating: promotion of competition culture

Mean score = 4.9

| DG Competition’s activities promoting competition culture are very poor quality | 1 | 2 | 3 | 4 | 5 | 6 | 7 |
|DG Competition’s activities promoting competition culture are very good quality | 2 | 3 | 10 | 19 | 29 | 26 | 12 |

Scores by stakeholder type:

<table>
<thead>
<tr>
<th>Stakeholder Type</th>
<th>Lawyer</th>
<th>Economic consultant</th>
<th>Business assoc.</th>
<th>Company</th>
<th>NCA</th>
<th>MS ministry</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mean</td>
<td>5.0</td>
<td>5.3</td>
<td>4.1</td>
<td>4.2</td>
<td>5.7</td>
<td>6.0</td>
</tr>
</tbody>
</table>

The vast majority of economic consultancies, law firms, NCAs and Member State ministries were aware of DG Competition’s work to promote a competition culture and policy convergence at international level and thought that it was doing a good job. Individual participants in these groups mentioned this as an area in which DG Competition has improved in recent years. In addition, there was individual acknowledgement that promoting a competition culture can often be difficult in the context of a complex global economy.

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

"Oh yes, they are out there very well – there’s a strong approach. They push, stimulate..." (MSM)

"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 is one of the best known competition authorities in the world, so everybody pays attention to what they say. They are well-respected." (NCA)

Interaction and collaboration with the US was cited by several participants as an example of DG Competition’s work in international cooperation and policy convergence. This relationship was considered valuable, since the US is a pioneer in competition law. Interactions with Brazil, Russia, India, China and South Africa (BRICS countries) were also mentioned; it was apparent that EU competition policy is used to guide decisions and educate these markets.
The globalised nature of business requires meetings and collaboration with the European Competition Network (ECN), the International Competition Network (ICN) and the Organisation for Economic Co-operation and Development (OECD) – all organisations in which the Commission was seen to be particularly active. Bilateral talks about State aid were also mentioned, but in a minority of cases.

“I know about the ICN [International Competition Network] conferences and bilateral contacts with foreign competition authorities.” (L)

Several lawyers said that they now engaged in more training with their clients on how to improve compliance with competition law. This means that the Commission has set the standard against which companies measure their compliance. Similarly, two NCAs claimed that the EU’s advanced competition policy is held in high regard by other countries.

A Member State ministry said that, although DG Competition is seen as trying hard to establish free competition, success is sometimes impeded by some practices and activities in the market. As an example, despite claims to the contrary, non-member states often grant large amounts of money to domestic companies which are direct competitors to EU companies.

Companies and business associations were much less aware of DG Competition’s activities to promote a competition culture. The majority of companies were unaware of these activities, although those who were held them in high regard.

Most of the business associations were unclear about what was meant by a competition culture and were unaware of the efforts being made by DG Competition. They regretted that there is not more communication around these efforts.

“I’ve never heard that talked about. It’s a good thing, but they’ve mistaken the scale. They themselves say that they only look at the European market. I have no knowledge of any collaborative work by DG Competition in this area. They don’t communicate much.” (C)

“I know nothing about this, there is no communication about this or I am not aware of it. There is no central communication, no dissemination of information.” (BA)

The following suggestions for improvement were made by participants from different stakeholder groups:

- Consult more with think tanks and experts; (L)
  
  “Maybe they can have think tanks, involve stakeholders and experts and consult with them.” (L)

- Have greater transparency in talks between DG Competition and national agencies; (L)
  
  “Transparency about how the network of international cooperation works could be improved. We know that they talk, but we have no information and there is no access to that, because it is regarded as an internal process.” (L)

- Engage more with the private sector. Moreover, this communication should be more positive, focusing on how the Commission can support companies to be more compliant, as opposed to concentrating on what companies are not allowed to do; (L)

  “A good example is their "outreach programme", where they try to engage with companies in the private sector.” (L)
• Use the EU's power as a regional body to limit US influence; (L)

“DG Competition in particular has a role to play to push the US authorities back a bit from thinking that the world is under US jurisdiction. It’s more difficult for national authorities to do that, while DG Competition has a bit more authority, speaking on behalf of the entire EU.” (L)

• Do even more to promote competition culture, as penalties and fines act as deterrents, but are not sufficient to bring about a change in culture; (L)

• Make use of local speakers or trainers as part of the team when they provide training on competition policy; (MSM)

• Do more to raise awareness of competition activities, decisions and competition culture in general among the public; (C, NCA)

“We are a society of citizens, not of companies. That also applies to DG Competition; they focus more on businesses, when it actually has an impact on citizens. I think their communication should consider how the public will be affected.” (C)

• Ensure that all audiences are well targeted and none are left behind, e.g. small businesses. (C)
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)
DG Competition Stakeholder Survey - Aggregate Report

- Did the results correspond with your expectations?
- Is there consistency in the Commission's decisions?
- How could the Commission improve the predictability of its decisions?

A3. Do you consider the amount of fines imposed by the Commission predictable?
(L, C)

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

A4. Taking into account the issues we have discussed so far, please can you indicate on this scale, based on your own experience, how legally sound the Commission’s decisions have been?
(L, C, NCA, MSM)

SHOW CARD 1

<table>
<thead>
<tr>
<th>Commission's decisions were not legally sound</th>
<th>Commission's decisions were very legally sound</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>2</td>
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<tr>
<td>3</td>
<td>4</td>
</tr>
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<td>5</td>
<td>6</td>
</tr>
<tr>
<td>7</td>
<td></td>
</tr>
</tbody>
</table>

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

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

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

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

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

SHOW CARD 2

<table>
<thead>
<tr>
<th>DG COMP do not know the markets at all</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
<th>6</th>
<th>7</th>
<th>DG COMP know the markets very well</th>
</tr>
</thead>
</table>

- 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

<table>
<thead>
<tr>
<th>DG COMP’s economic analysis is very poor</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
<th>6</th>
<th>7</th>
<th>DG COMP’s economic analysis is very good</th>
</tr>
</thead>
</table>

- 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**

<table>
<thead>
<tr>
<th>DG COMP has not at all informed me in a timely manner</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
<th>6</th>
<th>7</th>
</tr>
</thead>
</table>
| DG COMP has informed me in a very timely manner    | }
DG Competition Stakeholder Survey

- Aggregate Report

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

PROBE FOR:
- In cartels/antitrust
- In Mergers
- In State Aid

B4. To what extent do you consider DG COMP has involved you in their stakeholder consultations on the creation of new rules?
(All, especially BA, CA)

Why did you give this answer?
What experiences do you base this opinion on?
In what ways have they involved you / not involved you?

ASK IF was NOT involved in the creation of new rules:
Have you received information about these new rules? Why not?

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

SHOW CARD 5

<table>
<thead>
<tr>
<th>DG COMP has not involved me at all in the creation of new rules</th>
<th>DG COMP has involved me fully in the creation of new rules</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>2  3  4  5  6  7</td>
</tr>
</tbody>
</table>

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

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

Why did you give this answer?
What experiences do you base this opinion on?

PROBE FOR:
- Handling and protection of sensitive / confidential information, for instance in the "access to file" procedure
- Parties given due hearing during the process, including oral hearings
B6. Do you think DG COMP’s investigation work and/or consultations have been carried out so as to place the minimum necessary burden on the businesses (also Member State ministries, national competition authorities) involved?
(C, NCA, MSM)

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

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

C1. What do you think of the effectiveness of DG COMP’s detection policy, i.e. finding infringements?
(L, C)

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

C2. Do you think that DG COMP’s policy of using fines is an effective deterrent?
(All)

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

C3. Sometimes ensuring compliance with EU antitrust rules leads companies to substantially modify or abandon a planned business transaction (a business contract, a cooperation agreement, etc.) without the Commission’s intervention. In the last five years, have you / your company (or your clients) been in such a situation?
(L, C)

SHOW CARD 6

| Never | Once or twice | 3 to 5 times | 5 to 10 times | More than 10 times |
---|---|---|---|---|

- Can you tell me more about what happened?

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

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

➢ PROBE FOR:
   ✓ Distinguish between:
     • Cartels
     • Antitrust
     • Mergers
     • State Aid

➢ What suggestions do you have to improve the processes?

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

SHOW CARD 7

<table>
<thead>
<tr>
<th>Commission's decisions are not made in a timely manner</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
<th>6</th>
<th>7</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commission's decisions are made in a very timely manner</td>
<td></td>
<td></td>
<td></td>
<td></td>
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<td></td>
</tr>
</tbody>
</table>

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

C5. Do you think DG COMP focuses on the right sectors?
(EC, BA, CA, NCA)

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

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

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

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

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


DG Competition Stakeholder Survey - Aggregate Report

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

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

SHOW CARD 8

<table>
<thead>
<tr>
<th>Not at all effective in making markets function better</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
<th>6</th>
<th>Very effective in making markets function better</th>
</tr>
</thead>
</table>

➢ 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:
  o Company / Member State compliance with decisions
  o In area of State Aid: effective and timely 'recovery' of state aid that has been paid out illegally by Member States
  o 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

<table>
<thead>
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<th></th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
</tr>
</thead>
<tbody>
<tr>
<td>Does not contribute at all</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Contributes to a great extent</td>
<td></td>
<td></td>
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</table>

➢ On what grounds did you give this answer?
D. COMMUNICATION AND PROMOTION OF COMPETITION CULTURE

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

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

D1. Do you feel that DG COMP’s external communications are understandable and clear?  
(C, BA, CA)

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

D2. What do you think of the communication and media channels used by DG COMP?  
(C, EC, BA, CA)

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

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

(All)

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

PROBE on the awareness of such international cooperation activities for example with:
- United States of America
- BRICS countries (Brazil, Russia, India, China, South-Africa)
D4. Thinking about DG COMP’s activities aimed at promoting competition culture in general, how would you rate DG COMP’s performance on the scale shown here?

**SHOW CARD 9**

<table>
<thead>
<tr>
<th>DG Competition’s activities promoting competition culture are very poor quality</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
<th>6</th>
<th>7</th>
</tr>
</thead>
<tbody>
<tr>
<td>DG Competition’s activities promoting competition culture are very good quality</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

- 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