



INTERNATIONAL COMPETITION NETWORK

**Report on the Agency Effectiveness Project
Second Phase – Effectiveness of Decisions**

Prepared by

The Competition Policy Implementation Working Group

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Contributions to this report were received from agencies in the following ICN member countries:

Bosnia and Herzegovina

Brazil

Bulgaria

Chile

Colombia

Croatia

Czech Republic

Cyprus

El Salvador

Estonia

European Commission

Finland

France

Germany

Greece

Honduras

Hungary

Ireland

Japan

Kazakhstan

Lithuania

New Zealand

Panama

Poland

Romania

Russia

Serbia

Slovak Republic

South Korea

Spain

Switzerland

Taiwan

Turkey

Tunisia

United Kingdom

United States of America

TABLE OF CONTENTS

I. INTRODUCTION	5
II. METHODOLOGY	6
III. PRIORITY SETTING, STRATEGIC PLANNING, AND THE EFFECTIVENESS OF DECISIONS	7
1. Priority Setting and Case Handling	8
2. Case Handling Governance and Assessment	8
3. Decision Making Process.....	10
4. Role of the Legislation.....	11
IV. INSTITUTIONAL ORGANIZATION AND NATURE OF THE DECISIONS	12
1. Single Body vs Multiple Bodies	12
2. Administrative vs judicial	12
3. Sufficiency of Professional Personnel	13
4. The Agency Structure and Effectiveness.....	14
A. Monitoring and Effectiveness.....	15
B. Staff Organization and Effectiveness	16
C. Reviewing Process and Effectiveness	16
D. Multiple Bodies and Effectiveness	17
V. COMPLIANCE WITH REMEDIES AND SANCTIONS.....	18
1. Compliance and effectiveness	19
2. Monitoring Compliance	20
3. Enforcing Compliance	27
VI. LONG TERM IMPACT OF DECISIONS.....	28
VII. SELF-ASSESSMENT OF THE AGENCIES ON EFFECTIVENESS	32
1. Determinative Factors on the Effectiveness of Agency Decisions.....	32
A. Quality, proper implementation and monitoring of the decisions	32
B. Decisions' adequacy and deterrence to achieve the intended effects on the market	33
C. Compliance level of market players, adequacy of powers to ensure compliance, and quality of the professional staff.....	33
D. Managerial processes.....	34
E. Independence of decision making body	34
F. Additional factors.....	34
2. The Most Important Determinative Factors on Agency Effectiveness.....	35
3. Affect of Absence or Shortage of Any Factors on Agency Effectiveness	35
4. Effects on Other Parts of the Economy	36

VIII. ANNEX 1 - Table on Fines and Remedies.....37

I. INTRODUCTION

In 2008-2009 ICN year, the Competition Policy Implementation (CPI) Working Group began the second phase of its effectiveness work (as provided in the Work Plan) on the analysis of the relation between the definition of priorities and resource allocation, and the effectiveness of competition agencies' decisions with a focus on the compliance with agency decisions (*e.g.* payment of fines, compliance with behavioral and structural remedies imposed (such as divestitures, amendments to contracts, etc.)). This work is the continuation of CPI's 2007-2008 Effectiveness Project (Project), which is premised on the idea that the effectiveness of competition policies depends not only on the quality of agency decisions and knowledge of best practice but also on the enforcer's ability to address cases and effectively manage its workflow. As observed in that report¹ of the Project, effectiveness depends on a variety of factors, including the quality of decisions and the availability of human and financial resources.

The definition of 'effectiveness' in this year's work is limited to the case decisions taken by the agencies and does not take into account whether the agencies' strategic planning, communication capacity, competition advocacy, and/or organizational capabilities have an overall impact. Instead, this phase of the Project examines authorities' institutional powers to obtain compliance with decisions imposing remedies and sanctions. To collect this information, the CPI Working Group prepared a questionnaire, which was sent to all members. Therefore, the questionnaires focused on decision making procedures and on the monitoring and implementation stages of decisions.

The increase in the number of ICN members that responded to the questionnaire, rising from 20 agencies in 2007-2008 to 37 agencies in 2008-2009, likely indicates the growing recognition of the importance of this subject. It is hoped that this work will form a useful tool for competition agencies in their efforts to deal with compliance and the long term effects of agency decisions.

¹ Agency Effectiveness Project, presented at 7th International Competition Network Annual Conference, in Kyoto, Japan. Available at http://www.internationalcompetitionnetwork.org/media/library/CPI/CPI_WG_1.pdf

II. METHODOLOGY

This report on effectiveness of decisions is based on questionnaire responses from agencies² in 36 jurisdictions. In addition, this year non-governmental advisors (NGAs) were asked to complete questionnaires separate from those submitted to agencies, in order to get their perspective on the subject. This report is a summary of the responses to agency questionnaires, and will constitute a key input for the discussion panel and breakout sessions at the ICN Annual Conference in Zurich. The agencies that participated in the project represent both newer and more mature agencies from various regions, and thus the responses reflect differing experiences. Despite the difference in perspective among jurisdictions, numerous points of convergence also emerged.

The following sections put forward examples of promising or successful initiatives in the area of effectiveness and compliance. It should be noted that this report relies on a combination of anecdotal responses as well as statistical summaries. Individual agency anecdotal responses provide valuable insights into those agencies' experiences, but their conclusions cannot necessarily be generalized across agencies. Statistical responses are somewhat helpful in generalizing across agencies, but it should be recognized that different agencies may have applied different standards in responding to the questionnaire, and in many cases the sample size may not be large enough to draw statistically significant conclusions.

² Bosnia and Herzegovina (Council of Competition), Brazil (Council for Economic Defense - CADE), Bulgaria (Commission on Protection of Competition), Chile (Fiscalia Nacional Economica - FNE), Colombia (Competition Promotion, Superintendencia de Industria y Comercio - SIC), Croatia (Croatian Competition Agency), Czech Republic (Office for the Protection of Competition), Cyprus (Commission for the Protection of Competition), El Salvador (Superintendencia de Competencia), Estonia (Estonian Competition Authority), European Commission (Directorate General for Competition - DG-Comp), Finland (Finnish Competition Authority), France (Autorité de la concurrence), Germany (Bundeskartellamt), Greece (Hellenic Competition Commission), Honduras (Commission Competition), Hungary (Gazdasági Versenyhivatal), Ireland (Irish Competition Authority), Japan (Japan Fair Trade Commission - JFTC), Kazakhstan (Agency of the Republic of Kazakhstan for Protection of Competition), Korea (Korean Fair Trade Commission-KFTC), Lithuania (Competition Council), New Zealand (New Zealand Commerce Commission) Panama (Autoridad de Protección al Consumidor y Defensa de la Competencia), Poland (Office of Competition and Consumer Protection – OCCP), Romania (Romanian Competition Council), Russia (Federal Antimonopoly Service - FAS), Serbia (Commission for Protection of Competition), Slovak Republic (Antimonopoly Office of the Slovak Republic), Spain (Comisión Nacional de la Competencia -CNC), Switzerland (Competition Commission - Comco), Taiwan (Fair Trade Commission), Turkey (Rekabet Kurumu), Tunisia (Competition Council), United Kingdom (Office of Fair Trade - OFT), United States of America ((Department of Justice, Antitrust Division (DOJ), and Federal Trade Commission (FTC))

III. PRIORITY SETTING, STRATEGIC PLANNING, AND THE EFFECTIVENESS OF DECISIONS

A characteristic that is generally shared by competition agencies, regardless of size and experience, is the limitation of human and financial resources.³ All responding agencies recognized that prioritization is key to agency effectiveness. As explained by the US FTC, “to be effective, a competition agency must effectively be able to identify the most significant impediments to competition that are within its power to address, and to develop a strategy to deal with them.” In brief, prioritization may be understood as the process of deciding what to do and, equally important, what NOT to do.

Setting priorities can be a complex exercise and agencies may employ formal or informal processes for this purpose. Moreover, defining an agency’s strategy and setting priorities, as observed by the Finnish agency and the UK OFT, is a dynamic process. Many responses – such as those submitted by DG-COMP, the Irish Competition Authority, Poland’s OCCP, the New Zealand Commerce Commission, Romania’s Competition Council, UK’s OFT and the USFTC (which recently conducted a study that closely analyzed its strategic planning and priority setting process) stressed that their management engaged in strategic planning.⁴ The OFT has a dedicated Strategy and Planning Team which helps plan and delivery the OFT’s overall strategy. Finland has just appointed a Director to lead its task in setting priorities. Romania’s agency also noted that priorities may be set within each project and/or program.

The success of a competition agency depends heavily upon its skill in selecting priorities and designing a strategy for using its enforcement authority.⁵ Accordingly, the formation of the group of experts, the internal procedure to govern the formation of the case handling groups, the assessment of the quality of the reports and decision making are among the key attributes to an effective agency process.

³ This is discussed in the ‘Agency Effectiveness Report’ prepared for the Kyoto Annual Conference in 2008, p.26)

⁴ This matter was presented and discussed widely during the first phase of the Effectiveness Project in 2008 and it will not be further addressed at this stage. For more information, please refer to ‘Agency Effectiveness Report’ prepared for the Kyoto Annual Conference (2008).

⁵ Agency Effectiveness Report’ prepared for the Kyoto Annual Conference (2008), p.26

1. Priority Setting and Case Handling

The majority of responses⁶ indicated that expertise is taken into consideration when forming the group of case handlers responsible for a case. Teams to handle the cases are often composed of both lawyers and economists. Several responses indicate that agencies ensure that at least one lawyer and one economist participates in each case.⁷ In French agency, an expert from the Chief Economist's team and one from the legal services may be called upon to support any case team. A similar procedure exists at the New Zealand Commerce Commission. At the UK OFT, case teams are multi-disciplinary. In addition, case teams can draw on the expertise of a Steering Committee at key stages of the project. Case teams appoint members of the Steering Committee based on the type of expertise and experience they wish to draw on which can include legal, economic, policy and external communications and industry expertise.

Many agencies,⁸ such as those in Finland and Hungary, described the adoption of a sector-based structure for staffing cases. In Brazil, CADE has recently established working groups in charge of both conducting studies of the market within the group's sectoral expertise and advising the Board and its staff in cases related to each working group's subject. A similar initiative was carried out by the Slovak Antimonopoly Office. Initiatives of this sort are aimed at a efficient resource allocation.

2. Case Handling Governance and Assessment

Notwithstanding the specifics of each case, general internal procedures and legislation for case handling are followed in most jurisdictions, with the exception of three agencies.⁹

At the Czech agency, case-handling procedures are prescribed by the Act of Administrative Procedures, although there are no binding internal procedures within the agency. The OFT applies an "Effective Project Delivery" (EPD) framework to all of its projects which requires

⁶ Brazil, Bulgaria, Chile, Colombia, Croatia, Czech Republic, Cyprus, Estonia, European Commission, Finland, France, Germany, Greece, Honduras, Hungary, Ireland, Japan, Lithuania, New Zealand, Poland, Romania, Russia, Serbia, Slovak Republic, Spain, Switzerland, Taiwan, Turkey, Tunisia, UK OFT, US (DOJ and FTC). The other agencies did not address the question.

⁷ Colombia, Croatia, Cyprus, Czech Republic, Honduras, Ireland (for potential abuse of dominant cases), Slovak Republic and Switzerland and US FTC.

⁸ Estonia, European Commission, Finland, Germany, Greece, Hungary, New Zealand, Romania, Russia, Slovak Republic, Switzerland, Taiwan, Turkey, US (DOJ and FTC).

⁹ Only Cyprus, Estonia, and Tunisia stated the contrary.

that (i) the project is clearly defined; (ii) roles and responsibilities are clearly defined (iii) resources and accountability are clear (iv) project teams are multi-disciplinary and (v) clear governance arrangements are in place. EPD is part of recent organizational initiatives undertaken by the OFT and is closely linked to the OFT's prioritization and evaluation principles.

Agencies in Croatia, El Salvador, Finland, France, Kazakhstan, Panama, Poland, Slovak Republic, Switzerland, USDOJ, and US FTC all mentioned the existence of governance procedures.

DG-COMP's approach to prioritizing its case handling is as follows. Internal procedures are specified for each type of conduct it addresses. In cases of suspected anticompetitive conduct, an Initial Case Report is prepared on the basis of priority-setting criteria, which forms the basis for deciding whether the case should receive priority status and should have appropriate resources allocated to it (this process occurs outside of merger control, because in the EC all notified concentrations must be examined and there is little scope for prioritization). Similarly, the OFT prioritizes its cases by reference to the OFT's published prioritization criteria, taking also into account the impact of new cases on the balance of its portfolio of work.

Nearly all jurisdictions¹⁰ use formal or informal internal procedures to assess the quality of reports or files before decisions are taken. This is because the effectiveness of agency decisions is directly related to the consistency of the agencies' analysis in each case.

The quality of reports is assessed by expert teams, management councils, directors, department heads, and/or senior experts. At the Swiss agency, for instance, the task is performed by "horizontal bodies". The OFT's assessments of the quality of work is undertaken in collaboration with case teams at a number of levels, for example by obtaining input from Steering Committees (mentioned above). The US FTC uses a flexible committee that includes representatives of the case team, the management of the Bureau of Economics and Competition, and policy officials, who can all offer their views and decide whether cases should move forward. France's authority mentioned the relation between the quality of the reports and qualification of case officers as affecting prioritization, explaining that there is

¹⁰ Except Bosnia, which has not addressed this question.

also a two-step analysis for the assessment of the quality of the reports. At a rather earlier stage, an assessment takes place in an internal dedicated meeting where the relevant case and its impact are evaluated extensively. At a later stage the legal and economics team of the agency share their ideas concerning the case. Only the Slovak agency noted that it did not have formal quality assessment mechanisms. Although New Zealand does not have a formal mechanism in place yet, an assessment of the quality of reports is undertaken at a number of levels, the sequence varying with the scale of the project. The line manager is responsible for reviewing the written contributions of the project team members. For substantial or complex enforcement projects, draft reports are then assessed by the project Steering Group (the members of which are senior managers). In some cases a report, or sections of it, are referred to an external technical expert for review. There must also be agreement between the competition, economic and legal branches of the Commission before a report is considered by the Commission.

An interesting assessment tool, the “devil’s advocate panel”, creates the opportunity for the agencies own staff to challenge reports/files prior to an agency decision. Variations of the devil’s advocate concept are used with varying degrees of formality at DG COMP, and by agencies in Brazil, Honduras, Ireland, the Slovak Republic, Colombia, Russia and the US. The US FTC reported presenting economic and legal reports to an “Evaluation Committee” in the case of non-mergers and as a “Merger Screening Committee” in the case of mergers, to review the recommendations issued by the legal and economics departments. Likewise, the Czech agency informed that they are holding discussions with a roundtable of directors of the competition section and their advisors and the responsible case handlers. DG Comp, Czech agency, and French Competition Authority use a “fresh pair of eyes” system, in which the case is presented to a group of experts that have not dealt with the case previously. The UK OFT’s project teams also present their work to senior Directors and its Board for high-level oversight, advice and direction.

3. Decision Making Process

Most jurisdictions (28)¹¹ rely on taking decisions by a majority of votes within collegial bodies. The German Bundeskartellamt, for example, noted that this procedure helps assure

¹¹ In Colombia, Czech Republic, Estonia, Finland, Kazakhstan, Panama, and Poland decisions are taken by a single judge. France has a dual system in which only unproblematic cases should be adjudicated by a single member of the authority (President or Vice-President). In the UK, decisions are not taken by a single separate

quality and transparency. At least in five¹² jurisdictions, the head of the agency or a division determines the outcome in the event of a tie vote.

In Ireland, the board of the competition authority is responsible for rendering merger decisions, while decisions regarding anticompetitive behavior are made by the judiciary, acting through either a single judge or jury. Likewise, in New Zealand, the board has jurisdiction over merger authorizations and clearances, while everything else is decided by a single judge in court.

4. Role of the Legislation

Agencies were asked whether the clarity and quality of legislation affects priority setting, strategic planning, and the effectiveness of decisions. Responses to this question were likely affected by wide differences between the different legal provisions and legal systems of the various jurisdictions. As a result, the perception of the influence of national legislations on priority setting, strategic planning and effectiveness may vary substantially. Indeed, fourteen agencies¹³ did not answer this question.

Agencies from Colombia, France, Hungary, Lithuania, New Zealand, Poland, Romania and Switzerland believe that their legislation impacts priority setting. Among the responding agencies, only Cyprus said that the clarity and quality of legislation had no effect on priority setting, strategic planning and the effectiveness of decisions. The US FTC stated that the broad and general provisions of the U.S. antitrust laws have served the United States well because it allows the law to evolve in accord with improvements in economic understanding without requiring changes in legislation. Colombia underscores that “the clarity and quality of national legislation has a tremendous effect on both strategic planning and effectiveness of

decision making body within the OFT. The European Commission takes decisions by a simple majority of its members but it can also empower the Commissioner responsible for competition policy to adopt certain decisions. The US has both systems: at US DOJ, ultimate decision making on whether to bring enforcement action in the courts resides with the Assistant Attorney General and court decisions are initially made by a single judge, whereas the decision whether to bring a case is done by a decision-making body, as well as some case decisions..

¹² Brazil, Lithuania, Romania, Serbia, Spain. The rest has not provided such information

¹³ Bosnia and Herzegovina, Chile, Croatia, Cyprus, El Salvador, Estonia, European Commission, Finland, Greece, Japan, Kazakhstan, Panama, South Korea, Tunisia.

(their) agency's decisions". However, Colombia also stated that its antitrust legislation is not specific enough, demanding interpretation by the authorities.¹⁴

IV. INSTITUTIONAL ORGANIZATION AND NATURE OF THE DECISIONS

1. Single Body vs Multiple Bodies

The institutional framework of competition systems varies substantially. Investigative and adjudicative competences may be divided or shared not only between two or more agencies, but also with the judiciary. Regardless of the institutional framework, all jurisdictions reported having an appellate body, either administrative (2),¹⁵ judicial (24),¹⁶ or both (12).¹⁷

Twenty-two¹⁸ agencies, including those from Bosnia, Estonia, German Bundeskartellamt and the US FTC, combine investigative and adjudicative responsibilities in the same agency.¹⁹ The rest including Brazil, Korea, Japan and the US DOJ, declared the opposite. In Ireland, responsibilities are combined for merger control, and separated for conduct cases, which are adjudicated by courts. The US FTC has both the option of adjudicating within the Commission (with final appeal to the Court) or of seeking decisions in the courts.

2. Administrative vs judicial

While authorities differ in whether agencies, courts, or some combination of the two is entitled to impose remedies or sanctions, this distinction is not considered as an obstacle to

¹⁴ Differences between civil and common law legal systems can result in perceived differences in whether jurisdictions believe the quality and clarity of national legislation affects agency effectiveness, as the difference between the US FTC and Colombian shows.

¹⁵ Cyprus and Turkey

¹⁶ Colombia was considered as having a judicial appellate body since its decisions can be challenged before the Administrative Court.

¹⁷ Brazil, Czech Republic, Cyprus, El Salvador, Estonia, Honduras, Japan, Kazakhstan, Slovak Republic, Spain, Taiwan, and USFTC

¹⁸ Bosnia and Herzegovina, Bulgaria, Colombia, Czech Republic, Cyprus, Estonia, European Commission, Finland, Germany, Honduras, Ireland, Kazakhstan, Lithuania, New Zealand, Poland, Romania, Russia, Slovak Republic, Taiwan, Turkey, United Kingdom and US FTC. (US FTC can bring certain classes of cases to courts, such as preliminary injunctions and/or unusual cases where the law is clear and strong judicial remedies are needed).

¹⁹ In Ireland, only for mergers. . In the UK, the OFT is the first phase merger review body and refers mergers for a second phase review to the CC. The OFT can also make market investigation references to the CC.

effectiveness. Twenty-six agencies²⁰ are authorized to impose remedies or sanctions themselves, while in others, this competence is either shared with (8²¹) or exclusively vested (4)²² in the courts.

3. Sufficiency of Professional Personnel

There is a remarkable difference in the number of case handlers in each agency, even when considering differences in size of the jurisdiction or economy. It is reasonable to suppose that in addition to size, there is a relationship between staffing level and economic conditions, the dissemination of competition values and the dimension of the agencies. This may explain the lack of uniformity as to opinions regarding sufficiency of staff.

In general, agencies reported that they had sufficient professional staff²³, although none mentioned any method for evaluating sufficiency.

The largest number of staff – “sometimes overloaded”, in the words of the jurisdiction – is that of Russia, with 2079 people (366 in central office, 1713 in Regional Offices). The Japan Fair Trade Commission is next in number of staff with a total of 795 people. Among this, 429 of them work in the investigation sector. The number of staff has continuously increased year by year.. The US DOJ is third one in number of staff, with a total of 779 people, of which 349 are attorneys and 60 are economists.

The Korean Fair Trade Commission, with approximately 500 staff (350 are case handlers, of which only 21 are lawyers), states that it is slightly understaffed in the number of lawyers that are recruited, although it is one of the largest agencies.

DG COMP has a total of 422 case handlers, of whom 41% are lawyers, 35% are economists, and the rest have other academic backgrounds. DG-COMP obtained a moderate increase in staffing in recent years in order to mitigate the lack of personnel in some areas, based on its

²⁰ Bosnia and Herzegovina, Brazil, Bulgaria, Colombia, Czech Republic, Cyprus, El Salvador, Estonia, European Commission, France, Germany, Greece, Honduras, Hungary, Lithuania, Panama, Poland, Romania, Russia, Slovak Republic, South Korea, Spain, Switzerland, Taiwan, Turkey, Tunisia

²¹ Finland, Ireland, Japan, Kazakhstan, New Zealand, Serbia, UK OFT and USFTC. The UK OFT imposes civil sanctions whilst criminal sanctions are imposed by the courts

²² Chile, Croatia, and US DOJ.

²³ Bulgaria, Colombia, Czech Republic, Estonia, Greece, Japan, Panama, Poland, Romania, Russia, Slovak Republic, South Korea, Taiwan, Turkey, UK OFT, United States of America (DOJ and FTC).

"COMP2010" report.. The report was based on an in-depth bottom-up reflection on what the Commission's competition policy and DG COMP should be like in 2010 and assessed what resources, internal organization, and improvements in efficiency DG COMP needed until 2010 to meet its current and future challenges.

The US FTC has 361 case handlers who work on competition matters, including 195 attorneys, 49 economists; 32 non-administrative staff (including investigators, industry and merger analysts, compliance specialists, and economic research analysts); 30 staff in the regional offices (most of whom are attorneys); and 54 administrative staff, such as paralegals and secretaries.

Other agencies with a considerable number of case handlers are those from the UK OFT (156), Turkey (124), German Bundeskartellamt (118, including 42 economists, 72 lawyers and 4 other), Poland (110), Romania (71), Hungary (71)²⁴, and Finland (50 case handlers).

Other agencies have less than 100 case handlers in Bosnia (9), Colombia (16), Cyprus (14), El Salvador (14), Estonia (18), Honduras (7), Panama (19), Serbia (12), and Tunisia (9).

Insufficiency of professional personnel may be temporary and due to fluctuating reasons, such as the ebb and flow of cases, particularly in the merger context, complexity of cases, budgetary constraints and recruitment of experienced case handlers by the private sector. The Slovak agency also mentioned difficulties in recruiting new qualified employees because Slovak universities do not provide adequate instruction in competition-related disciplines. Temporary contracts with outside advisors, whether short or of long term, may be used to overcome staffing difficulties according to New Zealand.

4. The Agency Structure and Effectiveness

All agencies except Brazil, Croatia and Serbia²⁵ said that their structure was favorable to effectiveness. The Turkish Competition Authority is currently conducting a project to evaluate the effectiveness of its organizational structure. Some agencies, such as Russia's FAS, the Swiss agency, the Taiwan FTC, and US FTC, stressed the importance of their

²⁴ There are 71 case-handlers dealing with antitrust cases (35 lawyers, 19 economists, 9 both, 8 other).

²⁵ Brazil's CADE affirms that its structure is not favorable to effectiveness due to misallocation of efforts and resources within the three bodies, and judicial revision of administrative competition decisions.

internal divisions to enhance effectiveness. US DOJ stressed that dividing its legal staff into separate groups concentrating almost exclusively on either criminal or civil enforcement allows it to assemble investigation teams with expertise in civil or criminal investigations and the type of potential violation at issue. The US FTC states that its structure, through which both lawyers and economists have a separate voice in the Commission's decision-making process, is designed to bring both legal and economic thinking to bear on its decisions, and also referenced the work it conducted in 2008-2009 on agency structure and effectiveness, described below (item VII.3).

Agencies from Poland and Russia credited effectiveness, among other reasons, to their local branches, which deal with local market cases. El Salvador attributed the effectiveness of its structure to the fact that its administrative decisions are rendered by a board.

A. Monitoring and Effectiveness

As discussed in more detail later in this report, monitoring compliance with agency decisions is an extremely important issue. In Turkey, the structure is more effective in the case of decisions that do not need follow up than it is for decisions that do. Turkish Competition Authority predicted, however, that this anomaly would be resolved by anticipated amendments to their competition act. The Greek agency observed that its effectiveness would probably be increased if it were to create a separate unit with powers to monitor compliance. The responding agency from Chile highlighted the importance of establishing monitoring procedures to agency effectiveness. German Bundeskartellamt, French authority, and the US FTC also noted monitoring when asked about effectiveness. The Spanish agency recently made changes in its law on monitoring the fulfillment of obligations, resolutions and decision in order to improve the effectiveness of its Commission.

KFTC of Korea identified three bases for the effectiveness of its structure: (i) an independent collegiate body consisting of economists and lawyers; (ii) a quasi-judiciary organization that deliberates and makes decisions on suspected violations, and (iii) synergies generated by the complementarity of policy making and policy implementation competencies. It also noted that its effectiveness was ensured by rights to impose sanctions like surcharges and corrective orders against unfair trade practices and anti-competitive behavior.

B. Staff Organization and Effectiveness

DG-COMP and the UK's OFT attributed effectiveness to the organization of staff in a flexible way, optimizing the use of individual expertise. A similar procedure is used by Estonia, Finland, Ireland and Brazil. The OFT highlighted the importance of a structure that is favourable to flexibility. It combines an instrument-based structure (Mergers and Cartels), a sectoral-based structure (Goods, Services and Infrastructure Groups) and a expertise-based structure (Chief Economist's Office, Policy, General Counsel's Office, Communication) within a framework that provides direction and oversight (OFT Board, Strategy and Planning Division) to enhance its effectiveness.

The existence in some jurisdictions of part-time members of decision-making boards yielded mixed reactions. For instance, the agency in El Salvador viewed this as a positive factor, stating that "part time Board Members who do not hold full time position in other government agencies or ministries can improve effectiveness." At the Hellenic Competition Commission some members do not work exclusively for the agency as well. These comment posed a concern about the necessity of full time members working in the authority.

C. Reviewing Process and Effectiveness

Agency decisions are more likely to be perceived as legitimate and hence to be complied with if they are perceived as being reviewable by an independent body, and thus there is widespread agreement that judicial review strengthens the effectiveness of decisions. Nevertheless, some agencies expressed concern over delays related to judicial review. In Brazil, every decision of the administrative agency can be subject to judicial review, which may be seen as an obstacle to the effectiveness of its decisions if parties misuse this right to postpone enforcement. Similarly, El Salvador complained that the judicial appeal can be a slow process that delays the final decision of the *Superintendencia*. Likewise, Panama's agency also pointed out that the judicial review might delay the expected results in the market.

D. Multiple Bodies and Effectiveness

As mentioned before, only agencies from Brazil, Croatia and Serbia thought their structure was contrary to what is needed for effectiveness.²⁶ Brazil and Serbia attributed this to the number of agencies involved in the enforcement process. In particular, Brazil pointed out that the existence of different bodies in charge of investigating and rendering decisions might lead to misallocation of efforts and resources. Likewise, Serbia's agency said that having different bodies handling investigation and adjudication might result in the decision-making body failing to have full insight into the course of the procedure. Croatia, however, did not see the division of competencies as a problem.

The agency in the Czech Republic credits the current effectiveness of its structure to organizational changes carried out in 2007, which merged the two sections for protection of competition into one 'competition section.' Honduras and Spain had similar experiences with their structures.

Hungary's GVH, Japan FTC and US DOJ thought their structures were favorable to effectiveness, even though their structure is not merged into a single body.²⁷ The Colombian SIC, on the other hand, which combines investigative and adjudicative competencies in a sole single body, said that a well structured investigative group that collects and interprets the evidence and adjudicates the conduct makes its agency effective.

In view of all the aspects analyzed so far, effectiveness is the result of how each agency addresses and copes with the respective challenges and perspectives.

There will be always space for improvements in legislation, procedures, structure and work flow. Therefore, each jurisdiction must assess its own environment and be aware of the respective roles of different actors in the application of competition provisions.

In brief, this project aims at motivating agencies to continuously carry on with self-evaluations, in order to increase the effectiveness of their performance and decisions. The

²⁶ For many different reasons as it is going to be reported in the topic 2.4

²⁷ It is worth mentioning the Hungarian answer in this regard: "Since investigative and adjudicative functions are clearly divided both of the investigative sections and the Competition Council can be effective in their own activity. At the other hand the 'sides' of the authority may easily communicate and cooperate because they are integrated into one organization". Note: the Competition Council is an independent body within the Hungarian Competition Authority.

OFT noted in its response that it is committed to reviewing on an ongoing basis whether it operates effectively and whether changes, including in its organizational structure, resource allocation, its processes or its skills-base, need to be improved in order to maximise effectiveness.²⁸

V. COMPLIANCE WITH REMEDIES AND SANCTIONS

In response to questions on compliance with remedies and sanctions, a majority of the agencies responded that they have “administrative enforcement” (19 agencies²⁹) of compliance; fourteen agencies³⁰ said they have a “combination of administrative and judicial enforcement,” while five agencies³¹ enforce compliance through “judicial enforcement”.

Twenty-three agencies enforce remedies or sanctions themselves.³² In twelve cases,³³ the agencies monitor compliance and make enforcement recommendations to, or seeks enforcement action by, an independent court or other agency. Both are true in the case of Korea and the UK OFT. Estonia’s agency not only enforces remedies and sanctions but also monitors compliance and reports enforcement issues to independent court or agency. However, the Estonian agency has no role in monitoring and ensuring compliance in criminal cases, acting only as an investigative body; the imposition of sanctions, monitoring of compliance with them, and initiation of compulsory execution proceedings is handled by the public prosecutors and the court.

²⁸ At this phase, this goal is satisfactorily progressed as many jurisdictions have performed such analysis to provide answers to the questionnaires. As examples, Croatia identifies the need of employing more professionals so as to introduce new instruments, such as a leniency program. Serbia, in turn, understands that the procedural rules that govern merger and conduct analysis does not favor case handlers to have an extensive comprehension of the cases. And El Salvador believes that final decisions should be rendered more rapidly. For agencies wanting to do more in the way of self-assessment, they may want to review the US FTC’s 2009 report on the topic, available at: <http://www.ftc.gov/ftc/workshops/ftc100/docs/ftc100rpt.pdf>.

²⁹ Bosnia, Colombia (also chose “other” type of enforcement), Cyprus, Czech Republic, European Commission, Estonia, Germany, Greece, Honduras, Hungary, Panama, Poland, Romania, Russia, Slovak Republic, Spain, Switzerland, Taiwan, Turkey.

³⁰ Brazil CADE, Bulgaria, Croatia, Finland, France, Ireland, Japan, Kazakhstan, Korea, Lithuania, New Zealand, Serbia, Tunisia.

³¹ Chile, El Salvador, UK OFT, US DOJ and FTC.

³² Brazil CADE, Bosnia, Colombia, Cyprus, DG COMP, Estonia, France, Germany, Greece, Hungary, Japan (also mark the “other” option), Korea, Lithuania, Panama, Poland, Romania, Russia, Slovak Republic, Spain, Switzerland, Taiwan, Turkey UK OFT.

³³ Bulgaria, Chile, Croatia, Czech Republic, El Salvador, Kazakhstan, Korea, New Zealand, Serbia, UK OFT, US DOJ and FTC.

In the case of the Honduran and Tunisian agencies, other governmental institutions handle enforcement of sanctions. In Japan, any person who fails to comply with a cease and desist order or a decision after it has become final and binding shall be punished by imprisonment for not more than two years or by a fine by the court. Agencies from Finland and Ireland have different roles in conduct and merger cases. For instance, the Finnish Competition Authority may issue legally binding decisions to discontinue an infringement, but fines can only be imposed by the Court upon its referral. In Ireland, courts impose fines, and the police are in charge of the collecting them. The Irish Competition Authority has no role in imposing remedies and sanctions for enforcement cases, but may impose remedies on mergers.

1. Compliance and effectiveness

Nearly all³⁴ of the agencies reported that attaining compliance with agency decisions was very important to agency effectiveness³⁵. Agencies underscored that compliance is directly associated with agency credibility,³⁶ and their effect on the markets.³⁷ Thirty agencies³⁸ take into account compliance and enforceability issues when considering possible remedies or sanctions, although six do not,³⁹ and the JFTC does so only for certain types of orders.⁴⁰ Furthermore, those agencies that answered positively were also asked to identify in which way the agency considers compliance and enforceability issues in its consideration of possible remedies or sanctions. The US FTC, for example, responded that it always considers the practical enforceability of its remedies when it issues orders, because remedies that cannot be clearly understood and monitored easily, or enforced through legal actions, are ineffective and both reduce the likely competitive benefit in the case itself and also may create disincentives to businesses complying with competition laws as a general matter.

³⁴ Agencies from Bosnia and Poland did not provide any answer to this question.

³⁵ For instance, UK's OFT mentioned that its target is to deliver direct financial benefits of at least five times that of the cost to the taxpayer and to demonstrate the additional wider benefits of the OFT's work such as increasing consumer and business confidence in markets and deterring future anti-competitive behaviour. Therefore, OFT concludes, the level of compliance with OFT decisions is clearly a factor in the effectiveness of the OFT's enforcement actions.

³⁶ For example, Brazil CADE, Germany, Turkey.

³⁷ For example, DG COMP, Switzerland, UK OFT, USDOJ

³⁸ Bosnia, Brazil CADE, Bulgaria, Colombia, Croatia, DG COMP, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Japan, Korea, Panama, Poland, Romania, Russia, Panama, Serbia, Slovak Republic, Spain, Switzerland, Taiwan, Tunisia, Turkey, UK's OFT, US DOJ and US FTC.

³⁹ Chile, Cyprus, Czech Republic, El Salvador, Honduras, Lithuania.

⁴⁰ It replied positively for cease and desist orders, but negatively in relation to surcharge payment orders because the sum of surcharge is calculated with no discretion on the basis of sales amounts of products or services in question in Japan.

In general, agencies pay attention to certain criteria while imposing remedies or sanctions, including proportionality, the ability of subjects to pay fines, practical enforceability of its remedies, and the context of the specific economic sector (in order not to apply an illogical measure). As suggested by the US FTC, remedy requirements that cannot be clearly understood and monitored easily, or enforced through legal actions, are ineffective and both reduce the likely competitive benefit in the case itself and also may create disincentives to businesses complying with competition laws as a general matter. Likewise, the Spanish agency explained that when issuing a decision, it also tries to be clear so as to effectively monitor and execute compliance.

All responses distinguished between merger and conduct cases.

Several agencies acknowledged that if sanctions and remedies are too difficult to comply with, the company might have to exit the market with the undesirable result of limiting competition in the relevant market. For instance, the Hungarian agency sets fines according to the sanctioned firm's ability to pay, which makes collection more likely. Panama's agency stated that in order to ensure compliance, it agrees with parties on a plan for payment in installments

The US DOJ reported that it assesses compliance and enforceability issues most often in its consideration of civil remedies, where it seeks to achieve three goals: (1) to terminate the defendant's unlawful conduct; (2) to prevent its recurrence, and (3) to re-establish the opportunity for competition in the affected market. Furthermore, being aware of the fact that markets change over time in ways that cannot be predicted, both US agencies place time limits on all remedial civil decrees so that they do not become obsolete or, even worse, an obstacle to competition.

2. Monitoring Compliance

In order to assess compliance monitoring that is carried on by the agencies, a 5 point scale rating is relied upon in the questionnaire. This rating is in an ascending order from *totally disagree* to *totally agree*:

1	2	3	4	5
totally disagree	disagree	not sure	agree	totally agree

The majority of agencies (23 agencies⁴¹) agreed that their decisions produce the expected results on the market, while five agencies⁴² totally agreed. Six agencies⁴³ were not sure whether the decisions produce the expected results on the market. Out of these agencies, Slovak Republic said that completed cases that were not subject to court examination had positive effects on markets, but that in important cases subject to judicial review the delay in imposition of remedies meant that market effects had not yet appeared.

Of the 26 agencies that responded to the question on the difficulty in enforcing behavioral remedies, ten⁴⁴ agreed and two⁴⁵ totally agreed that this was difficult, whereas eight⁴⁶ disagreed and one⁴⁷ totally disagreed on such difficulty. Six⁴⁸ of the agencies, however, were not sure whether it is difficult to enforce behavioral remedies. The USDOJ answered that in its experience, behavioral remedies are generally more difficult to implement and to enforce than structural remedies or fines.

Of the twenty-seven agencies that responded to the question on the difficulty in enforcing structural remedies, eight⁴⁹ agreed that enforcement of structural remedies by the parties is a difficult task, four⁵⁰ totally agreed, four⁵¹ were not sure and eight⁵² of them disagreed that this was difficult. Chile's Fiscalía and the Irish agency totally disagreed. The US DOJ answered that structural remedies generally are easier to implement and easier to enforce than behavior remedies, particularly in merger cases, because structural remedies can generally be accomplished in a short time frame without the need for ongoing obligations or oversight,

41 Bosnia, Brazil, Chile, Croatia, Cyprus, Czech Republic, DG COMP, El Salvador, Estonia, Finland, Germany, Greece, Honduras, Hungary, Kazakhstan, Korea, New Zealand, Poland, Romania, Russia, Serbia, Switzerland, Taiwan.

42 Japan, Tunisia, UK's OFT (in respect of sanctions for breaches of civil or criminal competition law), USDOJ and US FTC.

43 Bulgaria, Colombia, Lithuania, Panama, Slovak Republic and Turkey

44 Colombia, Croatia, El Salvador, Honduras, Ireland, Kazakhstan, Korea, Poland, UK OFT and US FTC

45 New Zealand, Tunisia

46 Cyprus, Czech Republic, DG COMP, Estonia, Greece, Romania, Taiwan, Turkey

47 Hungary (The Hungarian authority (GVH) very rarely has to enforce behavioral or structural remedies, so it does not have real experience. Usually the parties comply with the decision, and if not, the GVH applies a so-called enforcement fine.)

48 Chile, Lithuania, Germany, Panama, Russia, Switzerland

49 Colombia, El Salvador, Honduras, Germany, Poland, Switzerland, Taiwan and Turkey

50 Czech Republic, Korea, Tunisia and FTC

51 Kazakhstan, Lithuania, Romania, Russia

52 Croatia, Cyprus, DG COMP, Estonia, Greece, Hungary, New Zealand, and UK OFT

while behavioral remedies often involve longer-term obligations that require ongoing monitoring. New Zealand had a similar view: it disagreed on it being difficult to implement structural remedies or to collect fines but noted that the enforcement of behavioral remedies is usually more difficult, particularly if circumstances change, and noted that ensuring compliance with behavioral remedies can be too resource-intensive.

Agencies were divided over the difficulty of collecting fines. Out of 28 agencies, ten⁵³ disagreed that collection of fines is a difficult process and three⁵⁴ totally disagreed, while four⁵⁵ agreed and six⁵⁶ totally agreed that collection of fines was difficult. Croatia and Poland were not sure, while Turkey could not respond since it does not have any role to track compliance with its fining decisions. US DOJ answered that the payment of criminal fines is generally a straightforward process that rarely results in implementation issues. Likewise US DOJ has very rarely experienced difficulty in obtaining compliance with jail terms imposed on convicted criminal antitrust defendants.

Only six of the 38 responding agencies had separate units with necessary powers to monitor compliance with agency decisions. The agencies with special units are Brazil, DG COMP (in the area of State aid), German Bundeskartellamt, Russia, UK OFT, and the US FTC. These agencies were then asked how they monitored compliance. In Brazil, CADE's internal regulations assign responsibility for monitoring compliance with agency decisions to a particular unit within CADE. In Russia's case, compliance is monitored periodically by the FAS Central Apparatus department or the territorial agency that makes the decision. In Germany, compliance with behavioral and structural obligations is monitored by the competent Decision Divisions of the Bundeskartellamt. In DG COMP, there is a compliance unit for state aids but not for anticompetitive conduct or mergers. Remedies and commitments are followed-up by the sector unit responsible for the decision in question. UK OFT reported that it has a remedies team that have specific responsibility for monitoring compliance. All FTC competition orders are assigned to the Compliance Division, which is housed within the FTC's Bureau of Competition.

⁵³ Cyprus, DG COMP, German Bundeskartellamt, Greece, Kazakhstan, Lithuania, New Zealand, Romania, Russia and Taiwan

⁵⁴ Chile, Hungary and Panama

⁵⁵ Colombia, Korea, Switzerland and UK OFT

⁵⁶ Czech Republic, El Salvador, Estonia, Honduras, Tunisia, and US FTC

Agencies that said that they did not have special units to monitor compliance were then asked how they handled compliance issues. In general, agencies stated that investigation divisions in charge of each case are the ones that are responsible for monitoring compliance, or that reports/market studies were prepared by the parties and handed in to the Commission/Directorate for compliance evaluation. Serbia and Slovak Republic request parties to submit compliance reports themselves, which the agency uses to monitor their compliance.

Agencies reported a variety of techniques to track compliance with fines. On one hand, many agencies⁵⁷ noted that either a specific or enforcement decision within the agency ensure the payment of fines. For instance, in Germany the payment of fines and fees is controlled by a central administrative section within the Bundeskartellamt. In Colombia, there is a special division within the agency that has jurisdictional power to coerce payment. In Taiwan in addition to the enforcement unit's continuous monitoring of the payment of fines, the complainant is notified while an issues paper is released to make it public. US FTC mentioned that when civil penalties are imposed, a regular procedure is followed to assure that the fines are paid (through payment to the FTC) by the deadline. In the UK, the finance department of the OFT is responsible for ensuring that financial penalties are met by the deadline. The finance department maintains the records of the amounts paid by undertakings and when those payments are made. On the other hand, in some of jurisdictions⁵⁸ the fines shall be paid directly to the State Treasury or other relevant department within the state. Still in some other jurisdictions, there exist other types of techniques. In this regard, payment of fines is an administrative matter which is followed elsewhere in the European Commission and non-payment is followed up with application to the appropriate courts. In Brazil, once non-compliance is verified, CADE imposes a fine to compel the party to comply with the decision. In case of non-compliance, CADE's Public Attorney Office can appeal to the judiciary to obtain the judicial enforcement. The situation is similar in the UK. The UK OFT will monitor compliance with the sanctions it imposes on undertakings. If the undertaking fails to comply with the directions imposed by the UK OFT, the OFT may apply to the Court for an order requiring compliance within a specified time period. US DOJ responded that US Attorney's offices track the payment of criminal fines, which are imposed and collected by the U.S. district court where the case is filed.

⁵⁷ Chile, Colombia, Cyprus, Germany, Hungary, Spain, Taiwan, UK's OFT, and US (FTC).

⁵⁸ Brazil, El Salvador, Finland, Greece, Romania, Turkey.

Agencies responses indicate that although there exists a variety of differences in the ways in which agencies track compliance with behavioral and structural remedies, those techniques are most of the time dealt with by the agencies' themselves⁵⁹. US FTC reports that firms under structural remedy orders are required to report on a frequent basis (usually monthly) regarding their efforts to divest as required. A firm deadline is set in the FTC's order. The assigned compliance division staff monitors closely, and is prepared to move swiftly if the firm indicates it will not meet its deadlines. Firms under behavioral orders are also required to report, although often not as frequently (bi-monthly). Again, assigned compliance division staff will monitor these reports and may, if appropriate, be in contact with others in the industry (the victims of the underlying conduct violation) to see if any prohibited conduct may be continuing. In the EU, the staff of DG Competition is the one who monitors compliance. In only certain cases (commitment decisions under article 9 of Regulation 1/2003), a trustee is appointed to oversee compliance with commitments/remedies. Yet in some cases, a decision obliges the parties to submit regular reports on the implementation of remedies and commitments. In Turkey, the Turkish agency acts accordingly with the Competition Board decision. Japanese agency may order undertakings to report to the JFTC what measures has been taken so far on the basis of the order. In some cases, a regular report can be asked for a couple of years. The German Bundeskartellamt underlines the importance of market observation in addition to the reporting requirements by the undertakings likewise in Spain. Yet in Chile, though the compliance of the remedies is followed within the agency, if the order is not obeyed, it is transmitted to the Attorney General for the initiation of a criminal investigation. Slovak Republic does not have competence to impose remedies at all. Interestingly, Swiss agency can mandate an independent external company to supervise compliance with its decisions on enforcement of remedies.

The responses given to question on the type of tools to monitor compliance with imposed sanctions and remedies are reflected in the table below. These answers provide an idea as to the various types of tools relied on in different jurisdictions. A "yes" answer indicates the presence of that specific tool in that jurisdiction while a "no" response indicates the contrary.

⁵⁹ For instance, Chile, Germany, Greece, Ireland, Japan, Korea, Lithuania, New Zealand, Romania, Turkey, US FTC

	YES	NO
Judicial monitoring (<i>e.g.</i> fine payments, service of sentence) Total number of responding agencies: 32	17 agencies (Bosnia, Colombia, Croatia, Czech Republic, DG COMP, El Salvador, Finland, Ireland, Japan, Kazakhstan, Korea, New Zealand, Panama, Russia, Taiwan, US DOJ and FTC)	15 agencies (Brazil, Bulgaria, Chile, Cyprus, Estonia, France, Germany, Honduras, Hungary, Lithuania, Poland, Romania, Switzerland, Tunisia, Turkey)
Administrative monitoring, reporting or certification requirements by those subject to remedies or penalties Total number of responding agencies: 34	31 agencies (Bosnia, Brazil, Bulgaria, Chile, Colombia, Croatia, Cyprus, DG COMP, El Salvador, Estonia, Finland, France, Germany, Greece, Honduras, Hungary, Kazakhstan, Korea, Lithuania, Panama, Poland, Romania, Spain, Russia, Slovak Republic, Switzerland, Taiwan, Turkey, New Zealand, UK OFT, US DOJ and FTC)	2 agencies (Czech Republic and Tunisia)
Ability to investigate compliance issues Total number of responding agencies: 33	29 agencies (Bosnia, Brazil, Bulgaria, Chile, Colombia, Cyprus, DG COMP, El Salvador, Ireland, Estonia, Finland, France, Germany, Greece, Honduras, Hungary, Japan, Korea, Lithuania, New Zealand, Panama, Poland, Romania, Russia, Spain, Switzerland, Tunisia, Turkey, UK OFT and, US DOJ and FTC)	3 agencies (Croatia, Czech Republic, Kazakhstan)
Ability to compel or inspect documents relevant to compliance issues Total number of responding agencies: 34	32 agencies (Bosnia, Brazil, Bulgaria, Chile, Colombia, Croatia, Cyprus, Czech Republic, DG COMP, El Salvador, Ireland, Estonia, Finland, France, Germany, Greece, Honduras, Hungary, Japan, Kazakhstan, Korea, Lithuania, New Zealand, Panama, Poland, Russia, Spain, Switzerland, Taiwan, Turkey, UK OFT and US DOJ and FTC)	1 agency (Tunisia)
Ability to conduct interviews on compliance issues Total number of responding agencies: 34	29 agencies (Bosnia, Brazil, Bulgaria, Chile, Colombia, Croatia, Cyprus, El Salvador, Ireland, Estonia, Finland, France, Germany, Greece, Honduras, Hungary, Japan, Kazakhstan, Korea, Lithuania, New Zealand, Panama, Poland, Russia, Spain, Switzerland, Taiwan, Turkey, UK OFT and US DOJ and FTC)	2 agencies (DG COMP, Tunisia)

agencies: 31	Ireland, Estonia, Finland, France, Germany, Greece, Honduras, Hungary, Japan, Kazakhstan, Korea, Lithuania, New Zealand Panama, Poland, Spain, Switzerland, Taiwan, Turkey and US DOJ and FTC)	
Ability to compel testimony on compliance issues	20 agencies (Chile, Colombia, DG COMP, Estonia, Germany, Greece, Ireland, Japan, Korea, Lithuania, New Zealand Panama, Poland, Russia, Spain, Switzerland, Turkey and US DOJ and FTC)	8 agencies (Bosnia, Croatia, Czech Republic, Finland, France, Hungary, Kazakhstan, Tunisia)
Total number of responding agencies: 29		

Twenty-seven agencies⁶⁰ said that they generally do not have recurring issues or difficulties in monitoring compliance. Six agencies⁶¹ said that they did have difficulties with this process. Several agencies that responded to this part of the questionnaire, like Spain, Chile and Korea, stated that they had recurring difficulties in some cases but not in others. Both Spain and Chile faced difficulties with respect to behavioral remedies but not with respect to collection of fines. Likewise, Brazil and Serbia reported difficulties with behavioral remedies. Similarly, Korea, found it relatively easy to monitor compliance with structural remedies (e.g. divestiture) since collection of related quantitative data is an easy task, whereas they had certain limits in monitoring compliance with behavioral remedies, which are rather qualitative (e.g. prohibition of price-setting practice). The rest of the agencies that answered having difficulties are El Salvador and Switzerland. Of these, El Salvador faced difficulties both in enforcement of fines and in enforcement of remedies due to lack of authority.

Regarding authority or tools that could improve the ability to monitor compliance with agency decisions, a small group of agencies⁶² claimed to have sufficient authority and tools to monitor compliance or did not consider necessary any suggestions. Four agencies⁶³ mentioned that this question was not applicable to them. Among agencies with more concrete suggestions were Brazil, Colombia, Croatia, Cyprus, Czech Republic, El Salvador, Finland, France, Greece, Honduras, Kazakhstan, Lithuania, Korea, Switzerland and Turkey. Five of

⁶⁰ Bosnia, Bulgaria, Chile, Croatia, Cyprus, Czech Republic, DG COMP, Estonia, Finland, Germany, Greece, Hungary, Ireland, Japan, Kazakhstan, Korea, Lithuania, New Zealand, Panama, Poland, Romania, Russia, Slovak Republic, Taiwan, Turkey, US DOJ and FTC.

⁶¹ Brazil, Chile, El Salvador, Korea, Spain, Switzerland,

⁶² DG Comp, Estonia, Hungary, New Zealand, Switzerland, Taiwan, and US DOJ.

⁶³ Bulgaria, Germany, Ireland and Japan

these agencies⁶⁴ suggested an increase in the number of staff as a tool to improve their ability to monitor compliance. El Salvador said that direct agency enforcement of fines would be an improvement over having to ask the Attorney General to do so. Other suggestions are summarized as follows additional resources (Finland and Spain), ex-post evaluation (Brazil), a new division in the agency with necessary tools (Greece, Korea), additional legislative power (Colombia, France and Turkey), additional IT tools (Croatia and Lithuania), and introduction of an independent surveillance body (Czech Republic).

3. Enforcing Compliance

Thirty-one⁶⁵ agencies responded that fines may be imposed for non-compliance with their decisions. In many countries⁶⁶ there is also the possibility of imprisonment for non-compliance. US FTC states that this power is not used under normal conditions, but in an extreme case, if a firm violates an FTC order, and then violates the court's order to comply, the court could find the firm's responsible employees guilty of contempt, and might order imprisonment until compliance is achieved.

Most of the agencies (22⁶⁷) reported that they did not have recurring difficulties in enforcing compliance. For those that have⁶⁸, the major problems are related to compliance with structural or behavioral remedies, not compliance with fines. The following are the suggestions provided by those agencies to improve agencies' ability to secure compliance: harsher sanctions (Honduras), ability to impose fines (Bosnia, Cyprus, DG COMP, Estonia, Finland, Hungary, Kazakhstan, Slovak Republic, Switzerland, Turkey), more clearly written decisions (Colombia, Switzerland, Turkey), add more qualified personnel (Colombia), improved transparency of enforcement (Czech Republic, Poland, Slovak Republic, Turkey), coherence of enforcement (Romania), regular report on compliance (DG COMP), effectiveness of decisions (Chile), and systematic monitoring (Hungary, Korea and Turkey).

⁶⁴ Brazil, Spain, Croatia, Cyprus and Greece

⁶⁵ Bosnia, Bulgaria, Chile, Colombia, Croatia, Cyprus, Czech Republic, DG COMP, Ireland, Estonia, Finland, France, Germany, Greece, Hungary, Japan, Kazakhstan, Korea, Lithuania, Panama, Poland, Romania, Slovak Republic, Spain, Switzerland, Taiwan, Tunisia, Turkey, UK OFT and US DOJ and FTC. The OFT may apply to the court for an order requiring compliance within a specified time limit. Parties who fails comply will be liable for a fine or imprisonment.

⁶⁶ Bosnia Herzegovina, Bulgaria, Ireland, Japan, Korea, Russia, Taiwan, UK OFT, and US DOJ and FTC

⁶⁷ Bosnia Herzegovina, Bulgaria, Chile, Colombia, Cyprus, Czech Republic, Estonia, Finland, Germany, Hungary, Japan, Kazakhstan, Korea, Lithuania, Panama, Romania, Russia, Slovak Republic, Switzerland, Taiwan and US DOJ and FTC.

⁶⁸ Brazil, Croatia, El Salvador, France, Greece, Honduras, Poland, Serbia, Spain.

VI. LONG TERM IMPACT OF DECISIONS

Twenty⁶⁹ agencies carry out ex-post analysis to measure the effects of their decisions, whereas thirteen⁷⁰ agencies do not. Among those who do not carry out an ex-post analysis, the Hungarian agency stated that its annual reports include analyses of market developments, which also provide the impact of its decisions, although it does not have an ex-post evaluation system. Moreover, although the Hungarian agency receives feedback via cases involving commitments and their ensuing monitoring, no systematic reporting or evaluation is done. Similarly, El Salvador has not conducted ex-post analysis because its supreme court suspended all its decisions.

Among the agencies that carry out ex-post analyses, the Turkish agency stated that despite the absence of a systematic ex-post analysis approach, impact of the decisions might be assessed via complaints by the third parties when the parties fail to comply with the decision of the agency. Moreover, the agency also learns about the effects of its decisions from feedback requirements imposed on the parties. Similarly, the Colombian agency stated that the only ex-post analysis it carries out concerns compliance with the remedies. Although the Chilean agency does not systematically analyze the effects of its decisions, it conducts market surveys to see whether its previous decisions were necessary and useful and the results may provide grounds for initiating ex-officio investigations. Russian agency mentions its regular monitoring of prices in major markets to measure the effects of its decisions.

The US FTC has at times attempted to measure the effects of its decisions. Some recent studies have been conducted on consummated mergers that were not challenged, and challenged mergers that were halted, to try to determine how competition may have been affected. A related study of the Commission's divestiture process had a much more limited goal, namely, to see if certain remedial provisions were effective in the ability to restore or maintain competition after a merger.⁷¹

The UK OFT commissions and makes publicly available comprehensive ex-post evaluations mainly concerning market studies and to a more limited extent its infringement decisions. For

⁶⁹ Chile, Colombia, Croatia, Estonia, France, Greece, DG COMP, Finland, Germany, Honduras, Japan, Korea, Poland, Romania, Russia, Switzerland, Turkey, UK OFT, US DOJ and FTC (USDOJ reported that it sometimes engages in retrospective studies as part of its continuing efforts to improve its performance and effectiveness).

⁷⁰ Brazil, Cyprus, Czech Republic, Hungary, El Salvador, Ireland, Lithuania, Serbia, Slovak Republic, Spain, Taiwan, Tunisia, New Zealand.

⁷¹ The Study is available at <http://www.ftc.gov/os/1999/08/divestiture.pdf>.

instance, it aims to carry out ex-post evaluation for at least one market study every year. The ex-post evaluations of the UK OFT include quantitative impact estimates in terms of consumer savings following its relevant intervention. Furthermore, it includes suggestions on how to improve its organization to obtain maximum impact. Apart from direct impact on consumers, research is also done to analyze deterrent impact of agency's competition enforcement. For instance, according to an independent research commissioned by the UK OFT, deterrent effect of the agency's enforcement is greater than its direct effect regarding merger control and competition rules against both anti-competitive agreements and conduct.

Agencies conducting ex-post analysis employ their own personnel⁷², outside experts⁷³ or both.⁷⁴ For instance, the UK's OFT commissioned independent experts to assess the impact of some of OFT's actions such as its recommendations in its 2003 market study of the taxi industry. Similarly, the Korean agency engaged outside experts in 2007 to evaluate the economic impact of its interventions against anti-competitive conduct. Moreover, the UK OFT trains its personnel on how to conduct impact estimation and evaluation.

Some agencies⁷⁵ that do not currently conduct ex-post analyses report that they intend to do so in the future. For instance, the Czech agency plans to implement ex-post analysis as early as 2009. The Irish agency has plans to study the impacts of its merger decisions. New Zealand has not yet developed any specific tools to carry out ex-post analysis, partly because of resource limitations and partly due to perceived difficulties in determining what outcomes can be related to the Commission's decision. The New Zealand Commerce Commission also notes that it can be a problem to obtain the relevant data to measure the counterfactual, given the dynamic nature of many markets. The Spanish agency has included ex post evaluations, identification of likely indicators to monitor performance, techniques and methodologies to measure success among the objectives of its strategic plans for 2008-2009.

Among the agencies that carry out ex-post analysis, some agencies considered that these analyses lead to improvements either in evaluation of internal processes, or compliance with or impact of enforcement activities, or both. For instance, DG COMP, and agencies of

⁷² Croatia, Estonia, DG COMP, Germany, Greece, Japan. Honduras intends to employ its personnel when conducting ex post analysis in the future.

⁷³ Korea.

⁷⁴ Chile, Finland, Russia, and the UKOFT.

⁷⁵ Brazil, Czech Republic, El Salvador, Ireland, New Zealand, Spain.

Honduras and Poland have plans to make self assessment a regular mechanism.⁷⁶ The US FTC conducted an in-depth study to determine criteria for self-assessment, with the idea of creating a norm of regular self-assessment.⁷⁷ French agency established in 2007 a new horizontal department like the office of Chief Economist to contribute ex-post assessment of its decisions. Moreover, ex-post analysis is intended to be a priority for the French Competition Authority. The Japanese agency wants to develop the methodology of analysis to improve merger reviews via continuous ex-post assessments. Moreover, the Romanian agency has intentions to conduct ex-post evaluations in a more systematic manner in the future. The Korean agency aims to improve its methodology and data collection and analyze its performance on a regular basis every one to two years by developing a more stable methodology. Finally, the Finnish agency is of the opinion that its new structure based on industry will add to its capabilities to carry out in-depth assessments of the markets and gather the latest information on effectiveness of its decisions.

Agencies mentioned various tools in ex-post analysis of their enforcement activities, which include market analysis/studies/surveys/monitoring (Chile, Croatia, Estonia, Japan, Korea, Russia, UK's OFT, USDOJ and US FTC), review of internal case files, market investigations with questionnaires, telephone interviews with operators in the market such as competitors, customers, associations etc., assessment of quantitative data (DG COMP), stakeholder surveys (Finland), press reviews (Hungary, Germany), enquiries from the public (Germany), experiences by case handlers (Hungary), public opinion polls, indirect contact with the entrepreneurs and consumers (Poland), impact estimation plans outlining the intended impact of the projects, key indicators for success and ways of monitoring of the indicators, and independent evaluation research (UK OFT).

Some agencies have units that can be used for ex-post analysis such as the team of lawyers and economists in El Salvador, the Evaluation Team of DG COMP (composed of 5 people) and UK's OFT, and the Decision Divisions in Germany. The German Bundeskartellamt said that the strength of the Decision Divisions is due at least in part to its familiarity with specific markets. The UK OFT conducts ex ante impact estimations, ex post impact evaluations and

⁷⁶ DG COMP intends to carry out regular evaluations on internal processes, compliance with and impact of its decisions whereas Polish agency implies regular self-assessment mechanisms for internal processes and impact of its enforcement activities. Honduras agency aims to have regular assessment of the impact of its decisions.

⁷⁷ For more information about the project, see item VII.2 below, and also <http://www.ftc.gov/ftc/workshops/ftc100/index.shtm>.

monitors the impact of ongoing and completed projects. Conducting an impact estimation and impact evaluation is embedded in each case's project plan. In addition, the UK OFT conducts wider research that goes beyond estimating the direct impact on consumers (for example it has evaluated the deterrent effect of its competition enforcement). The evaluation team of DG COMP, which conducts ex-post as well as ex-ante evaluation of DG COMP's decisions and advocates competition by indicating the impacts of the decisions in the markets and on consumers, cooperates with economists from the Chief Economist Team, the Consumer Unit, and the Strategy Unit. A comprehensive set of operational indicators and impact indicators for the performance assessment of DG COMP has been developed. Ex post reviews at US FTC are normally carried out by its Bureau of Economics. New Zealand's agency intends to carry out ex-post reviews via its Economic Services Branch.

Several limitations on agencies' ability to measure the impact of the decisions were identified. These included human resources constraints (Croatia), resource limitations (New Zealand), the continuous evolution of market conditions or dynamic nature of the markets (Finland, New Zealand), budgetary constraints (Honduras), lack of powers to require the relevant parties to submit information and documents (USDOJ), and difficulty in separating the impact of the decision from other market developments (New Zealand, USDOJ). Croatia tries to overcome its human resources constraints by concentrating on markets in which it has gained experience through handling several cases. US FTC notes that a major weakness in all studies of the effectiveness of individual agency decisions is that there are innumerable variables regarding how firms compete, and it can be difficult, if not impossible, to filter them out (especially after a significant time has passed) to determine what effect the agency's enforcement decision may have had. The Russian agency faces no great limitations on measuring the impact of its decisions and it thinks that the real impact of its decisions matches intended effects mostly in cases in which dominant undertaking charge excessively high prices.

Some agencies undertake to measure the benefits of their decisions in monetary terms. For instance, Hungarian agency estimates that consumers saved 0,2 to 0,5 billion Euros between 2002 and 2007 as a result of its anti-cartel activities. According to the Korean agency's conservative estimates, monetary benefit of about 5 trillion won were achieved through its efforts between January 2005 and June 2007. UK's OFT estimates the overall annual consumer savings arising out of the work of OFT for the period 2005-2008 to be at least £ 122

million of which relates to work of OFT.⁷⁸ US FTC estimates that it has saved consumers \$360 million through its merger enforcement and \$28 million through its non-merger enforcement work in 2008. The Russian agency sees value of such analyses in their ability to produce information used for monitoring compliance as well as prioritizing and planning further actions. According to DG COMP, the estimated customer savings resulting from the application of its anticompetitive practices enforcement and merger control was approximately 11 billion euros in 2008. Agencies used various methodologies to make these calculations. As this project made no effort to standardize that methodology, this data should not be considered a valid basis onto make cross-comparisons among agencies.

VII. SELF-ASSESSMENT OF THE AGENCIES ON EFFECTIVENESS

1. Determinative Factors on the Effectiveness of Agency Decisions

Based on the agencies' questionnaire responses, the section below endeavors to assess the effectiveness of agency decisions based on the following criteria:

A. Quality, proper implementation and monitoring of the decisions

Almost all of the responding agencies indicated that the effectiveness of the agency decisions depends on the quality, proper implementation and monitoring of decisions. In particular, all agree on the importance of appropriate and well-suited decisions in each case, consistency of decisions, proper remedies or fines or a mixture of these factors and the appropriate application of remedies. With respect to timely payment of fines, however, the agency responses differ. Agencies from Czech Republic, Germany⁷⁹, Ireland, New Zealand and

⁷⁸ The UK OFT states that its evaluation program meets two needs: (i) external accountability- is the OFT delivering on its objectives in a cost effective way? And (ii) internal management- learning lessons to help the OFT derive maximum impact from its interventions. In addition, this work allows the OFT to: estimate the direct financial benefits and some of the wider benefits of its interventions in the market; identify research that will help the OFT to better understand in the future the benefits to consumers as a result of OFT intervention

⁷⁹ German Bundeskartellamt underscores that it does view this as an issue because in the case of delayed payment, interest is charged on the outstanding amount, and it is the interest that is charged on the outstanding amount of a fine that ensures the effectiveness of its agency decisions.

Switzerland do not view this is an issue that impacts the effectiveness of agency decisions, although most of the remaining responding agencies did.⁸⁰

B. Decisions’ adequacy and deterrence to achieve the intended effects on the market

Similarly, with the exception of Colombia, all agreed that effectiveness of decisions depends on the decisions’ adequacy and deterrence effects to achieve the intended effects on the markets. DG COMP and the UK OFT point out that adequate powers to impose high fines, or other sanctions, are essential for decisions to have deterrent effect. According to Hungarian agency, this directly relates to the main purpose of the competition authority and is a very important measure of effectiveness although it is extremely hard to measure. The US FTC notes that civil fines should be sufficiently high to deter violations (and deny any gain to the violator), but not so high as to drive the firm out of business. Its orders of enforcement are designed to achieve the purposes of the original order, and not to punish the firm. Despite their importance, the decisions might not always generate the intended effects that are aimed at in some other jurisdictions like Korea. The French Competition Authority argues that “anticompetitive practices should be sanctioned at a level that is consistent with their qualitative impact on consumer welfare and which guarantees deterrence”.

C. Compliance level of market players, adequacy of powers to ensure compliance, and quality of the professional staff

All agencies agree that the compliance level of the market players, the adequacy of powers to ensure compliance with the decisions, and the quality of professional staff are important factors in agency decision effectiveness. DG COMP considers that the compliance level of market participants “is less important if the competition agency has adequate power to compel compliance.” The Korean agency adds that the compliance level serves as an indicator reflecting reasonableness of agency decisions. The French agency considers this matter as an essential issue, and further states that an important condition about the adequacy of powers to ensure compliance with the decisions is a robust fining policy. Croatia stresses the importance of harmony between the agencies and courts to ensure compliance. Responses indicate that

⁸⁰ Serbia did not provide any answers on this matter. Japan also did not provide any answers on this matter because the sum of surcharge payment is calculated with no discretion on the basis of sales amounts of products or services in question in Japan.

agencies pay attention to recruit the best people with diverse backgrounds to ensure the link between the quality of staff and the agency effectiveness.⁸¹

D. Managerial processes

All agencies stated that an agency's managerial processes should seek to ensure that priorities should be aligned with its strategic planning in order to achieve good outcomes in cases. DG COMP explains that staff resources from DG COMP are a scarce asset and internal managerial processes must ensure that this scarce resource is used to the best effect in conformity with the organization's strategic objectives. Croatia also notes the importance of planning when dealing with cases.

E. Independence of decision making body

With the exception of Chile, all agency responses indicate that the independence of the decision making body affects the effectiveness of agency decisions. Many agencies⁸² cited this as one of the most important factors in reaching effective agency decisions. Several responses⁸³ stated that agency independence is important in order to avoid pressures on the agency that could weaken its legitimacy and the soundness of its decision making and enforcement policy.

F. Additional factors

The Spanish agency mentions the level of fines and publicity of decisions as important to achieving deterrence, while Romanian agency points out that transparency in decision-making triggers the accountability of the agency.

⁸¹ See for example DG COMP, France, Korea answers.

⁸² Bosnia, Colombia, Korea, Lithuania, New Zealand, Poland, Romania, and Serbia.

⁸³ See the answers from Croatia, France, Korea and Romania.

2. The Most Important Determinative Factors on Agency Effectiveness

Of the factors that were identified on the questionnaire, ten agencies⁸⁴ declined to identify any as the single most important, indicating that they were all important. Of the remainder, agency independence was most often listed among their top priorities. Some⁸⁵ indicated that quality, proper implementation and monitoring of the decisions was most important. For others,⁸⁶ adequate powers to ensure compliance with the decisions were the most important factor. Six⁸⁷ agencies considered the quality of professional staff as the most important factor.

The response to these questions from the U.S. Federal Trade Commission drew on a year-long in-depth self-assessment exercise in 2008, carried out to encourage the acceptance of periodic self-assessment, to create a template for the agency to engage regularly in an analysis of its performance, and to identify approaches for improvement over both the short and long term. The assessment, called the “FTC at 100”, involved a mix of internal deliberations and external consultations, including more than 30 international consultations with overseas agencies, consumer groups, business groups, academics and the private bar. The principal focus of the assessment was to determine criteria that should be used in assessing the FTC’s work, as well as the techniques to measure the agency’s success in meeting these normative criteria. A significant portion of the final report discusses how the agency can measure directly the impact of its actions as well as the possibilities of accounting for impacts that may be less direct but equally important, such as the deterrent and precedential effects of agency litigation. In addition, the exercise addressed questions such as whether the agency was making appropriate use of existing remedial powers, whether these powers should be expanded, what is the appropriate role of settlements, compliance review and enforcement, etc.⁸⁸

3. Affect of Absence or Shortage of Any Factors on Agency Effectiveness

The questionnaire also asked whether the absence or shortage of any factors has prevented or hindered the effectiveness of and compliance with agency decisions. Fifteen agencies answered affirmatively and gave examples of such shortcomings while sixteen of them did not consider absence or shortage of any factors as a prevention or hindrance. CADE of Brazil

⁸⁴ Cyprus, DG COMP, Ireland, Japan, Kazakhstan, Russia, Switzerland Turkey US DOJ and US FTC.

⁸⁵ Brazil, Korea, Lithuania, Romania, Spain.

⁸⁶ Brazil, Colombia, Romania.

⁸⁷ Bosnia, Colombia, Lithuania, New Zealand, Poland and Slovak Republic

⁸⁸ The final report is available at: <http://www.ftc.gov/ftc/workshops/ftc100/docs/ftc100rpt.pdf>; transcripts of the public consultations are available at: <http://www.ftc.gov/ftc/workshops/ftc100/index.shtml>.

currently works on the improvement of the parties' compliance with decisions. Agency from Spain tells that if the remedies are not clear enough, this might lead to non-compliance. Croatia elaborates on the insufficient fines. The Spanish agency reported that in some of its previous cases where the remedies or commitments were open to various interpretations, effectiveness was hindered.

4. Effects on Other Parts of the Economy

Most⁸⁹ (24 agencies) of the agencies stated that decisions in particular cases have a wider effect on behavior in other parts of the economy. For instance, especially regarding conduct violations, the US FTC's decisions about what constitutes a violation directly affects how other firms compete. When the FTC finds a certain conduct to be anticompetitive, it is also indicating to the business community that it will likely take enforcement action against others who engage in the same conduct. In merger matters, the FTC's decisions regarding how it analyzes mergers (market definition, entry, competitive effects, efficiencies) provide guidance to other firms about how the FTC is likely to view mergers in their markets. US DOJ reported that criminal cases play a critical role in the deterrence of cartel conduct across all sectors of the economy, as well as in destabilizing ongoing cartels. Romanian Competition Council stated its investigation consisting severe sanctions in the cement market had immediate and positive effects in the overall construction materials sector. Parallel to the effects on specific sectors, as put forward by the Hungarian agency, the agency decisions can be used as a tool to transmit certain messages to the markets. Similarly, New Zealand's Commerce Commission mentioned that the Commission's decisions are generally regarded as influencing its future approach to mergers. The Czech agency stressed the active role it played during the privatization and restructuring processes of its economy and how the objectives of its economic policy were modified.

⁸⁹ Chile, Croatia, Cyprus, Czech Republic, El Salvador, Estonia, Finland, Greece, Germany, Honduras, Hungary, Japan, Ireland, Korea, Lithuania, New Zealand, Poland, Romania, Russia, Slovak Republic, Switzerland, Taiwan, Spain, US DOJ.

VIII. ANNEX 1**Table on Fines and Remedies****FINES AND REMEDIES**

(This table is a comparison of the fines imposed and collected so far in individual jurisdictions, and thus it is not intended to make comparisons across jurisdictions)

Jurisdiction	Total Fines Imposed	Total Fines Collected	How Often Remedies Are Complied With	Comments
Bosnia – Herzegovina				The Bosnian agency imposed and collected 16 fines.
Brazil				No statistics available.
Bulgaria	€ 4,377,743.58	Approx. €1,100,884.2 2		Fines in the years 2006-2007.
Chile	\$ 20,682,013	\$ 20,682,013		Fines imposed by the Chilean agency since 2004. It is important to mention that the total amount of fines imposed may differ from that shown in the left. This is due to the fact that the Supreme Court of Justice, as the appellate body, may, and actually has reduced or ruled out the fines formerly imposed by the Chilean agency.
Colombia				No answer provided.

Croatia	€ 140.291			Although the Competition Act provides high fines for its breach (up to ten percent of the total annual turnover of the undertaking), there have been only few fines imposed by the Minor Offence Courts. In one cartel case, the Croatian agency considered the fine to be too low and thus, submitted the claim to the Higher Court of Minor Offences.
Cyprus	Approx. 50 million €		Always so far.	Some fines are still to be upheld by the Supreme Court.
Czech Republic	approx. € 115,779,720	approx. €115,779,720		The figures are the same for fines imposed and those collected as the Czech agency has no experience with non-compliance in terms of non-payment of the fine imposed.
Estonia	795,000 EEK			645,000 EEK in misdemeanor proceedings and 150,000 EEK in criminal proceedings. The amounts are imposed within the last five years.
DG COMP	14.9 billion €	2.9 billion €	According to the 2005 merger remedies studies, the remedies were effective in 57% of cases, ineffective in 7% of cases, partially effective in 24% of cases, and the effectiveness was unclear in 12% of cases.	2005 merger remedies studies involve a sample of 85 merger decisions imposing remedies in the period 1996-2000. Fines imposed and collected since 1998. Although appeals do not suspend collection of fines, the DG COMP does not enforce the collection of fines awaiting the judgement and accepts bank guarantees. Because most of DG COMP's decisions are appealed, the time between the decision and collection of the fine is often 4-5 years or longer. There still are decisions rendered in 2002 pending before the court. It should also be underlined that the amount of fines imposed during the last years have increased significantly, the amount of imposed fines since 2006 until now accounts for 8.8 billion euro i.e. approximately 60% of the relevant amount and the final cashing of these amounts can not be

				expected for another 4-5 years or longer.
Finland	9.329 million €	9.329 million €		As of October 2008. The amount includes fines that are legally binding and excludes those that are under appeal.
France	1.9 million €	More than 90%		Total amount of fines imposed since 2003.
Germany				A fine imposed by the German agency must be paid as soon as the relevant decision has become final. If the party concerned files an appeal against the decision, the fine will not be payable immediately. Those German agency orders imposing fines which have become final have in general been paid without delay. If necessary, payment in instalments can be permitted.
Greece	Approx. 120 million €	Not available		Due to the fact that these fines have been mainly imposed during the period between 2004 and 2008, the cases are still pending before the courts. For the admissibility of the hearing of the appeals filed against the decisions of the Greek agency that imposed fines, a deposit is necessary, equal to 20% of the imposed fine, which cannot exceed the amount of € 100,000. As the Greek agency is not competent for collection of fines, information on the exact sum of fines collected so far is not available.
El Salvador	\$ 6,100,967.37	\$ 62,537.39	Only 1.03% of the total amount of fines has been paid indicating that remedies are not usually followed and complied with by market players.	The fines that have been collected (the minority) have been voluntarily paid by the economic agents ((all fines in the TV sector, one in the stock market for agricultural products and three in the pharmaceutical sector)..
Honduras	approx. \$ 220,000	approx. \$ 110,000	%100	The Honduras agency has been operating since the last two years.
Hungary	HUF 28.643 million	HUF 21.216 milion	Out of 18 merger decisions with an undertaking (1999-2007), there was one where	Fines as of November 3. 74% of fines levied under the 1996 Competition Act have been collected until November 2008. Fines not yet collected are usually fines that were

			the original remedy was not followed and needed to be adjusted (Raffinerie Tirlementoise, Case 127/2001).	temporarily suspended by a court injunction, on the basis that they would endanger the survival of the undertaking fined.
Ireland	--	--	--	Irish Competition Authority does not impose fines. Judge imposes fines, to date the figures are: €442,000 for convictions including 15 companies and 11 individuals.
Japan	131.9 billion yen	Not published.		Fines for the last 10 years (FY1998 – FY2007).
Kazakhstan	approx. 4 billion tenge (KZT)			
Korea	KRW 390.51 billion	KRW 300.689 billion		Fines in 2007. Those collected represent 77.1% of those imposed. Of the remaining KRW 89.362 billion, KRW 63.304 billion of surcharge has yet to fall on the date of payment and as for KRW 3.850 billion of surcharge, suspension of execution has been issued. This leaves the actual uncollected surcharge at just KRW 22.208 billion, making the effective collection rate roughly 94.3%.
Lithuania	€ 11,921,653		Almost always the market players comply with the remedies imposed upon them. In such a case, the sum of collected fines is equal to the sum of imposed fines. If not, they have a right to appeal to the Vilnius Regional Administrative Court against the resolutions of the Lithuanian agency. In such a case, if the Court	The Lithuanian agency does not compile the statistical data on how much imposed fines were collected.

			decides to revoke or amend the resolution on application of fines, the sum of collected fines differs from the sum of imposed ones.	
New Zealand	NZ \$ 18.3 million	All but NZ\$ 525,000		Total fines of NZ\$ 18.3 million have been imposed since 1990. The first major penalties were imposed in 1998 on a cartel of meat processing companies for fixing prices of livestock. The fines totaled NZ\$ 5.510 million. Between 2006 and 2008, in the Koppers Arch wood chemical cartel investigation, fines exceeding NZ\$7.5 million were imposed. To date these are the highest penalties imposed in New Zealand for anti-competitive conduct.
Poland	PLN 170.8 million in 2007. The Register of Fines displays State Treasury receivables resulting from final and binding decisions in the amount of PLN 42 million.	PLN 395 thousand in 2007. In 2007, PLN 14.8 million fines imposed in the preceding years were paid.		The difference between the sum of imposed fines and the amount of money paid in 2007 was PLN 170.4 million. Of which: <ul style="list-style-type: none"> • fines due (excl. fines reduced by the Polish agency on its own initiative) – PLN 32.6 thousand • ongoing cases or cases pending in appeal proceedings – PLN 170 million.
Romania	€ 107,935,816		In most cases, the remedies were followed and complied with by market players.	Fines in 1997-2008.
Russia	RUR 4,265,821,059	RUR 112,631,740		Fines imposed according to injunctions amount to RUR 2,175,311,000 whereas fines charged on violators amount

				to RUR 2,090,510,059.
Serbia				Serbian agency is not empowered to impose fines, while the courts which are competent to impose fines have not issued any decision in that regard so far.
Slovak Republic	€ 100,439,831			Fines in 2000-2007.
Spain	€ 311,007,374.33	€ 80,856,811.46		The difference between the two data respond to: <ul style="list-style-type: none"> • Declared insolvency of infringers. • Annulments or reductions of the fines imposed by the Courts in charge of revisions of decisions. • Decisions that have been challenged before these Courts and still pending.
Switzerland	CHF 336,016,685	CHF 151,000		Competence of the Swiss agency to impose direct fines was introduced in 2004. Some decisions of the Swiss agency are appealed and the collection of the fine is suspended until the decision is <i>res judicata</i> . For that reason, the time between the decision and collection of the fine can take many years
Taiwan	approx. \$ 72.54 million	\$ 49.881 million		As of end of October 2008.
Tunisia				No answer provided.
Turkey	\$ 152,125,707			As of years 2000-2008. Despite the fact that the Turkish agency imposes fine, it is collected by the relevant regional units of the Ministry of Finance. The Ministry does not periodically inform the Turkish agency about the amount of collected fines unless the the Turkish agency has a request for a particular case. If the parties do not take the case to the court in 60 days following the declaration of reasoned decision, then they have to pay the fine. In case of initiation of an appeal

				<p>proceeding, then they have to pay the fine unless the court takes a suspension decision.</p> <p>Remedies imposed in exemption and mergers cases can easily be followed up by the Turkish agency as the parties concerned have to provide feedback about whether and how they observed and respected the remedy. In the same vein, some remedies (deleting certain clauses in the agreements etc.) imposed as a result of an investigation, can be followed up as the parties are expected to report back to the Turkish agency with sufficient evidence to prove that they have complied with the decisions. However, remedies in general nature like termination of a certain practice/behaviour/conduct may not be easy to follow up.</p>
UK		<p>£33.478m (2006/2007) £37,000 (2007/2008)</p>		<p>These fines may relate to penalties imposed in previous years as fines are not collected until any ongoing appeals process is completed</p>
USDOJ	<p>\$ 4.2 billion in criminal fines. Individuals served or still serving sentences totaling more than 107,000 days.</p>		<p>With respect to remedies imposed in civil actions, parties have complied with the vast majority of the USDOJ's civil enforcement decisions without the need for any enforcement action.</p>	<p>Fines and sentences in the last ten years. In a small minority of cases, the USDOJ has initiated enforcement action to secure compliance with civil enforcement judgments. In the past 10 years (fiscal year 1999 through fiscal year 2008), the USDOJ has initiated 12 contempt actions for noncompliance. In all of these cases, the USDOJ obtained compliance with the imposed judgments through its enforcement action.</p>
US FTC			<p>Remedies are almost always complied with.</p>	<p>Fines are not currently a major FTC enforcement tool and they are only used in cases of order violations. In 2009, a</p>

				<p>\$2.1 million civil penalty was imposed for failure to provide complete information regarding “reverse patent settlement” agreement, as required under FTC order and separate reporting statute. The case also involved additional \$1 million criminal fine for two counts of perjury before the FTC.</p>
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