

GLOBAL COMPETITION REVIEW's annual survey of the world's leading competition regimes: **RATING ENFORCEMENT**

## **EMBARGOED UNTIL 22:00 GMT on Sunday 10 June**

Compiled by the staff of GLOBAL COMPETITION REVIEW, Rating Enforcement assesses the performance of the world's leading competition authorities in 2006. It is based on information each authority provides and, crucially, the views of stakeholders – the lawyers, in-house counsel, economists and academics who deal with the authorities on a daily basis. The star ranking represents their views, and is relative, not absolute.

This year's edition, published on 11 June, is the most comprehensive yet. It rates 38 competition authorities from the following 32 jurisdictions: Argentina, Australia, Austria, Belgium, Brazil, Canada, Denmark, European Union, Finland, France, Germany, Greece, Ireland, Israel, Italy, Japan, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Russia, South Africa, Spain, Sweden, Switzerland, United Kingdom and United States. The authorities of the Czech Republic, Hungary and Slovakia are rated for the first time.

## **NOTE TO EDITORS: SURVEY METHODOLOGY**

Our research comprised two parts:

- 1** We sent a questionnaire to every authority featured in the survey. It asked for information about the authority's composition, budget, priorities and achievements in three areas of competition regulation in 2006: merger control, cartel enforcement and investigation of anti-competitive activity such as abuse of dominance.
- 2** We sent a questionnaire to the competition authorities' stakeholders – academics, economists, corporate counsel, public affairs specialists and the private bar. It asked them to choose the competition authority with which they were most familiar and to rate (out of seven) the following aspects of its enforcement efforts in 2006:
  - merger control
  - cartel prevention and investigation
  - abuse of dominance prevention and investigation
  - policy work and advocacy
  - quality of management
  - quality of case-handlers
  - quality of leadership compared with five years ago

We also asked stakeholders to give their particular authority an overall rating (out of 10) and to give a comparable rating to either the US Department of Justice, Antitrust Division or the European Commission's Directorate-General for Competition. Finally we interviewed by telephone stakeholders in every country whose competition authority we featured this year.

GCR's Rating Enforcement survey represents the views of more than 300 respondents, who completed questionnaires, gave interviews and contributed comments.

The full survey results are available for £300 or €450 from: [WWW.GLOBALCOMPETITIONREVIEW.COM](http://WWW.GLOBALCOMPETITIONREVIEW.COM)

GLOBAL COMPETITION REVIEW is the leading journal of competition policy and regulation, and is published 10 times a year by an independent London-based publishing group, which provides research, analysis and reporting on international business law and the business of international law.

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PRESS RELEASE

# RATING ENFORCEMENT

Each year, *Global Competition Review* evaluates the world's most important competition regimes. JAMES CLASPER, JULIUS CAVENDISH and DAVID VASCOTT introduce this year's results

Rating Enforcement is our seventh annual survey of the world's top competition authorities. The growing importance of competition regulation means the need for a concise, unequivocal guide to the leading authorities has never been greater. Compiled by the staff of *Global Competition Review*, and delivering specialist intelligence and research, Rating Enforcement is an indispensable research tool for general counsel, government agencies and private practice lawyers. This year's edition is the most comprehensive yet. It features 38 authorities from 32 countries, including three that feature for the first time, all from former Eastern Bloc countries – the Czech Republic, Hungary and Slovakia. Please note that Rating Enforcement cannot objectively assess the impact that each agency has had on the jurisdiction it operates in. That we leave to governments, consumers and consumer organisations. What we present here is an assessment of each authority's performance in 2006 based upon information provided by the authorities themselves and upon the opinions of stakeholders – namely the lawyers, in-house counsel, economists and academics who deal with the world's competition enforcers each day.

## HOW WE DO IT

Our research begins in March, when we send a detailed questionnaire to more than 40 competition authorities. (We excluded those with no enforcement powers, such as the UK's Competition Appeals Tribunal and Canada's Competition Tribunal. Spain and Belgium have since created single agencies to replace their previously bifurcated models. Taiwan's Fair Trade Commission failed to respond.) With over 50 questions about key areas such as resources, management, caseload and media profile, the questionnaire enabled us to analyse each authority's enforcement activity in 2006.

We sent a second questionnaire to 'the great and the good' of the competition world: academics, economists, corporate counsel, consumer groups, public affairs specialists and members of the private bar. The questionnaire asked them to choose the competition authority with which they were most familiar and to rate each aspect of its enforcement efforts last year, from merger control and cartel prevention to leadership and transparency. We received over 200 responses.

We then reviewed hundreds of news stories from our website. Thanks to the growing visibility of the world's antitrust authorities – many of whom have helpful press offices – as well as our own endeavours, we are increasingly aware of their activities. Our monthly country surveys took us around the world in 2006 – to Denmark, Finland, Greece, Hungary, New Zealand, South Africa, Sweden and the UK, and we interviewed the heads of the competition agencies in each jurisdiction. This year we have already visited Argentina, Austria, Germany, India, Ireland and Mexico. In the months ahead, we hope to survey the antitrust scene in Australia, Brazil, Chile, Estonia, Hong Kong, Italy, Latvia, Lithuania, the Netherlands, Portugal, Singapore and Switzerland. Put simply, no other publication provides such definitive analysis of the world's leading competition regimes.

Our analysis starts on page 3. We begin by looking beneath the surface of the authorities and comparing them across a number of fac-

tors, including size, average age, staff attrition rates and budget. We then look at what the authorities did in 2006. How many mergers did each agency block? How many dawn raids did it do? And what was the average fine it meted out? We also examine the most active areas for sectoral inquiries last year. Finally, we present commentaries on each authority, including star ratings of their performance in 2006.

## TREND-SPOTTING

We drew four main conclusions from this year's survey. The first is that the playing field is being levelled. There is now little substantial difference between the analytical skills of the leading authorities. True, the US Federal Trade Commission and the UK's Competition Commission remain the world's elite antitrust authorities. But the European Commission joins them once again, closely followed by a string of national authorities in Europe and Asia-Pacific.

Second, the formalistic approach to competition enforcement is waning. Jurisdictions such as Germany, whose Federal Cartel Office was once perhaps the world's most influential antitrust authority, now finds itself adrift from the mainstream, clinging stubbornly to the per se rule of anti-competitive behaviour. "It used to be a luminary, but it has gradually become more isolated and out of touch", one source told us.

The playing field is being levelled. There is little difference now between the leading authorities

Third, the question of whether countries should have one competition authority or two is still on the table. Spain is combining its two authorities. Similarly, Belgium moved its policy-setting body of *auditeurs* from its Competition Service to its Competition Council last year, creating a Belgian Competition Authority (for Belgium and Spain, we provide facts and figures for their two bodies, but combine their commentary and star ranking). Advocates of the single-agency model say it is more efficient. Their opponents question the independence of single agencies, particularly when there is no external appeals process.

Finally, it seems a little unfair to compare authorities too closely. One expects countries with more developed economies to boast authorities with a high number of staff, a large budget and a particular approach to merger control and anti-competitive behaviour. Yet what works in one country may not work in another, once local factors are taken into account. And, as one source explains, "a country with a small authority could be doing an absolutely great job, but it may be a mere pygmy on the world stage." Here, then, is this year's survey of the world's leading antitrust authorities – giants and pygmies alike.

AGENCY	GCR'S STAR RATING	VERSUS LAST YEAR
<b>ELITE</b>		
European Commission's DG Competition	★★★★★	Climbing
UK's Competition Commission	★★★★★	Climbing
US Federal Trade Commission	★★★★★	Climbing
<b>VERY GOOD</b>		
US Department of Justice, Antitrust Division	★★★★★	Same
Australian Competition and Consumer Commission	★★★★★	Same
France's Competition Council	★★★★★	Same
Germany's Federal Cartel Office	★★★★★	Same
UK's Office of Fair Trading	★★★★★	Same
<b>GOOD</b>		
Italy's Competition Authority	★★★★☆	Same
South Korea's Fair Trade Commission	★★★★☆	Same
New Zealand's Commerce Commission	★★★★☆	Same
Canada's Competition Bureau	★★★★☆	Same
Finland's Competition Authority	★★★★☆	Falling
France's DGCCRF	★★★★☆	Same
Ireland's Competition Authority	★★★★☆	Falling
Japan's Fair Trade Commission	★★★★☆	Climbing
The Netherlands' Competition Authority	★★★★☆	Falling
Denmark's Competition Authority	★★★★☆	Falling
Portugal's Competition Authority	★★★★☆	Climbing
Austria's Federal Competition Authority	★★★★	Same
Czech Republic's Office for the Protection of Competition	★★★★	New entry
Norway's Competition Authority	★★★★	Same
Spain's Competition Authority	★★★★	Same
Sweden's Competition Authority	★★★★	Falling
Switzerland's Competition Commission	★★★★	Same
Hungary's Competition Authority	★★★★	New entry
Poland's Office of Competition and Consumer Protection	★★★★	Climbing
Brazil's CADE	★★★★	Climbing
Brazil's SDE	★★★★	Climbing
Brazil's SEAE	★★★★	Climbing
<b>FAIR</b>		
Belgium's Competition Authority	★★★☆☆	Same
Israel's Antitrust Authority	★★★☆☆	Falling
Slovakia's Anti-monopoly Office	★★★☆☆	New entry
South Africa's Competition Commission	★★★☆☆	Climbing
Mexico's Federal Competition Commission	★★★☆☆	Same
Greece's Competition Commission	★★★	Falling
Argentina's Competition Commission	★★★	Same
Russia's Federal Anti-monopoly Service	★★★	Climbing

# THE NETHERLANDS' COMPETITION AUTHORITY



Head of agency: Pieter Kalbfleisch

Previous employment: Director general of the authority

Mandate expires: 2011

Total staff: 378

Staff working on competition enforcement: 295

Percentage focused on competition: 78%

Non-administrative staff: 243

Percentage who are lawyers: 50%

Percentage who are economists: 25%

Percentage of others: 25%

Other areas of focus: Energy and transport regulation and consumer protection

Stand-alone bureau of economics: Yes

No. with PhDs in economics: 10

Name of chief economist: Jarig van Sinderen

Average age of staff: 37

Average tenure: 4 years

Budget: €22 million

Amount spent on salary: €16.5 million

Percentage of budget spent on salary: 74%

No. of staff who left: 50

No. of staff who retired: 0

No. of staff who remained in civil service: 11

No. of staff who joined from civil service: 10

No. of staff who joined in 2006: 100

Number who have spent at least 5 years in private practice: 72

Percentage of staff who left: 26%

Percentage who retired: 0%

Percentage who remained in civil service: 22%

Percentage who joined from civil service: 10%

Percentage who joined in 2006: 52%

Percentage who have spent at least 5 years in private practice: 30%

## PRIORITIES

No. of staff working on mergers: 25

No. of staff working on anti-cartel: 84

No. of staff working on other matters: 134

Percentage of staff working on mergers: 10%

Percentage of staff working on anti-cartel: 35%

Percentage of staff working on other matters: 55%

Sectoral priorities in 2006: Health care sector, media and communications markets, construction industry, financial sector and liberal professions

Sector-specific: Energy and transport markets

Sectoral priorities in 2007: Media and communications markets, financial sector and health care sector

Sector-specific: Energy and transport markets

## MERGERS

No. of mergers filed: 135

No. of mergers that led to in-depth review: 8

No. of mergers challenged: 3

No. of challenged mergers blocked: 0

No. of challenged mergers resolved with remedies: 3

Percentage that led to in-depth review: 6%

Percentage challenged: 2%

Percentage of challenged mergers blocked: 0%\*

Percentage of challenged mergers resolved with remedies: 100%

\* three mergers were abandoned before being challenged, following an interim decision

## ANTI-CARTEL

No. of leniency applications: 11

No. of dawn raids: 19

No. of cartel decisions: 19

Total fines in 2006: €114 million

Average fine per company: €12.4 million

Average length of cartel investigation: 23

## ABUSE OF DOMINANCE

No. of abuse of dominance investigations launched in 2006: 1

Number rolled over: 3

No. of files closed: 2

Average length of investigation: 18 months

At what stage are cases first reviewed by management? Before issuing a statement of objections

Longest-running investigation: 36 months

Explanation for its duration: Complex case that has been postponed to give priority to other cases

## POLICY WORK AND ADVOCACY

What policy-review committees does the authority chair? Organises the cartel workshop of the International Competition Network and chairs the European Competition Authorities' working group on financial services

How many times was head of agency interviewed in mass media? 12

Priorities in 2006: Health care sector, media and communications markets, construction industry, financial sector and liberal professions

Sector-specific: Energy and transport markets

Notable results: Performed the following market scans:

- pricing of school books
- financial sector
- energy sector (wholesale and consumers)
- railway sector
- gasoline tank stations sector

Others include:

- Publishing the energy vision document, which sets out the relationship between energy and competition policy, on the authority's website
- A report to the minister of economic affairs regarding the issuance of mobile phone frequency permissions
- An investigation of the financial service sector, in particular regarding the system used by banks to manage the electronic payment system used by retailers
- A statement regarding the risks on competition that could be caused by the introduction of the planned chip-card paying system for all public transport in the Netherlands

Priorities in 2007: Media and communications markets, financial sector, health care sector

Sector-specific: Energy and transport markets

## ORGANISATIONAL CHANGE

Structural change in 2006: The office of the chief economist was established

Leadership change: No

New powers: The Offices of Energy and Transport Regulation received new powers to set tariffs and policies

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### COMMENTARY

The Netherlands' Competition Authority is well known for its cartel work. Its crackdown on the country's construction sector, in particular, has consumed much of its time and resources. By year's end, it had prosecuted almost 1,400 companies and issued €239 million in fines.

But the authority is keen to shed its image of being a construction-cartel-buster, and in 2006 it launched several investigations of other sectors, including health care, energy, finance and media. Whether they will yield the same results as the construction sector remains to be seen.

Overall, the authority conducted 19 dawn raids. It came sixth for cartel fines – at €114.1 million – and sixth for leniency applications (11). The figures are particularly notable given the size of the Dutch population, which is only 16.5 million. Even so, the authority is large, with 378 employees. Seventy-eight per cent of these focus on competition. It has a sizeable budget of €22.4 million, too.

In general, Dutch competition lawyers are positive about the authority, and say it compares well with its international peers. But it may have lost some of the momentum that it had a few years back. "The authority started out as an ambitious organisation that was willing to go out and get its hands dirty," says one observer. "Unfortunately it has become more bureaucratic, with a lot of people keeping each other busy and too little output."

For the second year running, abuse of dominance investigations appear to have taken a back seat. Only one case was opened in 2006, and two were closed. Yet, despite the paucity of cases, it still takes the authority 18 months to close a case.

Merger work, however, has increased from 80 merger filings to 135 since 2005. Eight mergers (five of which were in the health care sector) went to a phase II investigation. Although none were officially 'blocked', three were withdrawn by the merging parties.

Users report that the authority has had a poor track record in court in recent years and that this has slowed procedures down somewhat.

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