

**DRAFT – April 2013**

Human Resources Management

in

Competition Agencies

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# 1) Introduction

The Agency Effectiveness Working Group (“AEWG”) has the mandate to examine a variety of factors that affect how competition agencies achieve their objectives in an efficient and effective way and to distill best practices, when possible.

Since 2009, the AEWG started developing the “Competition Agency Practice Manual” (“the Manual”) that has the objective of providing competition agencies with tools, procedures and best practices that can help them enhance their effectiveness. The topic of Human Resources Management (“HR management”) will be addressed in this chapter, “Human Resources Management in Competition Agencies”, of the Manual.

As its name suggests, HR management is concerned with employee resources within the workplace. Its main objective is to meet the organizational needs of the agency it represents, and the needs of the people employed by that agency. HR management is responsible for attracting/recruiting , selecting, training, assessing, and rewarding of employees, while also overseeing organizational leadership and culture, and ensuring compliance with employment and labour laws of the specific jurisdiction.

To determine the extent of HR management’s role in competition agencies’ performance, the AEWG devised a survey on “Human Resources Management in Competition Agencies”. This survey was sent to all ICN members in January 2012 and the "Draft Results of the Survey on Human Resources Management" were presented and discussed during the 11th ICN Annual Conference, which was held in Rio de Janeiro, Brazil.

The two key points on which the survey tried to obtain information were: (i) the identification of possible impediments faced by competition agencies - in hiring and retaining staff, and (ii) the tools that competition agencies employ in ensuring the

effectiveness of its staff.<sup>1</sup> An overview and analysis of the answers received in response to the survey will be included in the different sections of this chapter.

What is good HR management? One way to formulate the normative basis for this discussion can, for instance, be HR management that succeeds in recruiting, building and retaining competences well aligned with the strategic goals of the competition agency in accordance with its jurisdiction's laws and regulation.

The second section of this chapter looks at this issue more closely, and starts by looking at HR management generally, before proceeding to discuss if there are some normative guidelines that can be used for discussing what constitute "good HR management". The section also discusses to what extent there are limitations on HR management in the public sector, related to the private sector.

The third section of this chapter examines how HR management typically is organized in competition agencies, to what extent dedicated resources work in this area, and at what level of the organization.

The fourth section of this chapter focuses more closely on how HR policy and goals are developed and reviewed, to what extent they are tailored to the overall strategic goals, and how the success/failure of HR policy is measured, for example, job satisfaction and work environment surveys.

Acquiring and not the least retaining human capital are crucial for an effective agency. The fifth section of this chapter presents experiences in this regard, for instance recruitment processes, how competition agencies recruit, and from where they recruit from. Other topics covered are the use of incentive and reward mechanisms, how to ensure necessary skills and motivation, succession planning, interaction with academia, exit interviews and how they are used in practice and so on. Of particular interest is competition agencies' experiences with innovative approaches, and the advantages and disadvantages of having employees leave the competition agency to work in the private sector only to return after the enchantment of working in the private sector had diminished.

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<sup>1</sup> In total, 39 competition agencies responded to the questionnaire.

The sixth section of this chapter deals with career development in competition agencies. It focuses on investing in building and retaining knowledge through conscious career plans consistent with competition agency priorities, inside and outside training, active HR management, and clear and accurate information analysis. This section also presents interesting experiences from different competition agencies.

## 2) HR management in general

All organizations, regardless if they are public or private sectors, are simply a collection of people working together towards common objectives. However, getting people to work for common objectives is becoming considerably more difficult. Developing a people strategy was once a straightforward matter of figuring out how to create the best work force to execute a defined business strategy, but it now involves much tougher choices and trade-offs.

Several developments—including shifts in core business, diversity, and increased competition for senior managers—are challenging the traditional view of people strategy as a translation or implementation of business strategy.

The drivers for organizational success have shifted from the usual metrics of costs and quality of service provided towards a focus on the skills, knowledge, experience, and attitude of people working in the organization. These trends have fundamentally raised the importance of a “people” strategy and good HR management, changed its relationship to business strategy, and increased the difficulty of implementation.

How do organizations attract the talent they need and once they have it? How do organizations manage talent so that it does not leave?

This question has become one of increasing research and analysis. The Boston Consulting Group and the World Federation of People Management Associations mention that “companies that are highly skilled in core HR practices experience up to 3.5 times the revenue growth and as much as 2.1 times the profit margins of less capable companies.”<sup>2</sup> Their research found six areas to be of importance:

- recruiting,
- on-boarding of new hires and employee retention,

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<sup>2</sup> The Boston Consulting Group, available at <http://www.bcg.com/media/pressreleasedetails.aspx?id=tcm:12-110525>

- talent management,
- employer branding,
- performance management and rewards, and
- leadership development.

None of these can be viewed at in isolation from one another and good organizations must learn to handle these challenges in parallel.

For public sector organizations, talent is also becoming a critical issue, and perhaps more so for government agencies, having a specialized focus and require a particular skillset. Competition agencies fall into this definition as the ability to investigate and adjudicate are skills that are not common in general public service. Most public sector organizations also face challenges pertaining to smaller budgets, increasing demand for quality services, and the ability to retain skills and knowledge for organizational continuity.

**a) *Does Good HR management and Good HR principles exist?***

There are two aspects to good HR management. The first aspect is that HR departments within organizations, just as the organizations themselves, do not exist in isolation. Events outside of work environments can have far-reaching effects on HR management practices and from an external context, good HR management necessitates ensuring compliance with federal, state, and local laws that regulate workplace behaviour. For example, in many countries, anti-discrimination laws play a role in hiring practices. Prior to the enforcement of these laws, many organizations hired people based on criteria that were not job-related. Today, such practices could result in charges of discrimination. To protect themselves from such charges, employers must conduct their selection practices to satisfy objective standards established by legislation and fine-tuned by the courts. This means that they should carefully determine the essential job qualifications and choose selection methods that accurately measure those qualifications. There could be many other legal provisions that organizations may have to adhere to and HR departments must ensure that none of these are violated.

From an *internal* perspective, an on-going question in HR management research is whether or not there is a single set of policies or practices that represents a ‘good’ or ‘superior’ approach to managing people. Experiences from different countries suggest that generally, certain HR management practices, either separately or in combination are associated with improved organizational performance. Other general findings also say that well-paid, well-motivated employees, working in an atmosphere of trust and recognition, generate higher productivity gains and lower unit costs. The definition of good management, thus, will vary and will depend on the context.

Nonetheless, several attempts have been made from time to time by different researchers to identify a common set of best HR management practices. Jeffrey Pfeffer initially identified 16 best HR practices, which were later refined to the following seven:<sup>3</sup>

- Employment security,
- Selective hiring,
- Self-managed teams/team working,
- High compensation contingent on organizational performance,
- Extensive training,
- Reduction in status difference, and
- Sharing information.

The length and breadth of areas on this list bring forth an important point: Good HR management is everybody’s business. While most firms have a HR or personnel department that develop and implement HR management practices, the ultimate responsibility lies with *both* HR professionals and line managers. The interaction and communication between managers and HR professionals lead to effective HR management practices. Take the example of performance appraisals. The success of any performance appraisal system depends on the ability of both parties to do their jobs correctly. HR professionals develop the system, while managers provide the actual performance evaluations. So, line managers, while not directly dealing with HR

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<sup>3</sup> Pfeffer, J, “Competitive Advantage through People” , Harvard Business School Press, Boston, MA, 1994



issues should have enough understanding of the subject to know the difference between a good practice and a bad one.

While the HR departments may have priority in matters pertaining to hiring, compensation, and training, the other areas require managers who are sensitive to the needs of their subordinates and have the ability to create work environments that bring out the best in people.

Lynda Gratton, in her book, *Hot Spots*, defines the effects of a positive work environment succinctly:

*“You always know when you are in a Hot Spot. You feel energized and vibrantly alive. Your brain is buzzing with ideas, and the people around you share your joy and excitement. The energy is palpable, bright, shining. These are times when what you and others have always known becomes clearer, when adding value becomes more possible. Times when the ideas and insights from others miraculously combine with your own in a process of synthesis from which spring novelty, new ideas, and innovation. Times when you explore together what previously seemed opaque and distant. We can all remember being in Hot Spots, when working with other people was never more exciting and exhilarating and when you knew deep in your heart that what you were jointly achieving was important and purposeful. On such occasions, time seems to rush by as you and those around you are in the flow. Time even seems to stand still. We enjoy being part of a Hot Spot, and we are healthier, happier people as a result.”<sup>4</sup>*

Effective HR management must shift the focus from trying to get more out of people, to investing more in them by addressing their four core needs – physical, emotional, mental and spiritual – so that they are inspired to bring the best of themselves to work every day.

Social, economic, and technological changes are also factors that affect HR management practices. There is cultural diversity in the work place, emerging issues of work-life balance, growing use of part time employees, downsizing and layoffs, rapid changes in technology, and the skill levels of employees. Effective HR management must take steps to address these factors carefully and strategically, e.g.,

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<sup>4</sup> Gratton, L, “Hot Spots: Why Some Teams, Workplaces, and Organisations Buzz with Energy - and Others Don't”, Berrett-Koehler Publishers, 2007; <http://www.lyndagrattton.com/books/44/59/Hot-Spots.html>

ensure sensitivity to diversity, and encouraging flexible working conditions to accommodate employees' personal circumstances, where appropriate.

In recent years, the global recession has placed many more challenges on organizations resulting in downsizing, reduction in benefits, and “presenteeism” – not taking leave even when necessary, resulting in issues of health, motivation, and stress. HR management has had to adapt these difficult working conditions.<sup>5</sup>

A general, albeit important point is that all agency activities must be aligned toward achieving defined agency strategic goals, HR management is no exception. HR alignment means integrating decisions about people with decisions about the results an organization is trying to obtain. In the September 1999, U.S. Office of Personnel Management, Strategic Human Resources Management , it emphasized that by "integrating HR management into the agency planning process, emphasizing human resources (HR) activities that support broad agency mission goals, and building a strong relationship between HR and management, competition agencies are able to ensure that the management of human resources contributes to mission accomplishment and that managers are held accountable for their HR management decisions." <sup>6</sup> Thus, HR management must be fully integrated into the planning process so that it will become a fundamental, contributing factor to agency planning and success.

***b) Limitations of HR management in public sector in relation to private sector***

Like their private sector counterparts, public sector organizations need to hire, develop and train employees, and establish payment systems, set conditions of employment and develop a coherent set of employment policies.

However, the uniqueness of the public sector with a focus on public interest outcomes rather than private interests may add a layer of complexity that does not easily fit with

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<sup>5</sup> More details can be seen in the “The Quality of Working Life Report”, released by the Chartered Management Institute in July 2012; <http://www.managers.org.uk/workinglife2012>. A caveat is that this is focused on working conditions in the UK, but the findings may be applicable to many other countries.

<sup>6</sup> <http://www.opm.gov/studies/alignnet.pdf>

HR management, as a strategic partner in achieving organizational competitiveness and business outcomes in the private sector.

The private sector is primarily focused on being profit driven and is free from many of the bureaucratic restrictions in the public sector. Private sector employees' main objectives are focused around financial performance and productivity. The private sector tends to be faster moving than the public sector. Consequently, employee challenges and HR management practices will to some extent be different too.

In the past, the main difference between the public and private sectors was the perks that the public sector offered to compensate for lower salaries. Generally, what distinguished public sector employment from the private sector was (perhaps) the various forms of protection granted to employees. Examples include (i) protection against arbitrary dismissal, (ii) protection against punishment without enquiry, and (iii) the ability to be promoted internally without facing competition from external talent. But this historical model of employment is seeing changes that fall within three broad trends.

First, there is a growing hybridization of HR management in the public sector now. Public service employment has either provided a *career-based* system or a *position-based* system. In career-based systems, employees have been recruited at the start of their careers and are expected to remain in public service employment until they retire. Initial entry into the system is based on a civil service entry exam and once recruited, employees are deployed depending on the needs of the organization.

Position-based systems recruit for specific skills and competencies required for a particular position or area of work. Recruitment can be done either internally or externally and generally is not linked to any promotion. There is more openness in this method and perhaps more choice as candidates can be from a wide group.

Second, there is a reduction in the protection, immunities, and privileges that are provided to public sector employees. The difference between public and private sector employment is decreasing. In many countries, lifetime employment is no longer the norm and legislation has been passed to allow the issuance of fixed term contracts. While this may have reduced payroll and pension pressures on governments, other challenges have taken their place. Would public sector employees be able to resist

political pressure in the discharge of their duties? And more importantly, removing the incentive of lifetime employment may make it more difficult for a government to compete with the private sector for a limited pool of talent.

Third, there is a growing need to demonstrate results. Individuals' performance is being linked to the unit's – and the organization's – goals more than ever and HR systems have been (or are being) developed to differentiate good performers from the poor ones. The incentives for good performance and sanctions in the case of low performance vary but pay related to performance is something that has been the influence of the private sector. This has, however, not been without its share of implementation problems and simply focusing on pay for performance could reduce the role of non-financial benefits such as satisfying work, the possibility of promotion, training opportunities, or more flexible working conditions.

It is ironic that under the rubric of reforms, the public sector is reducing protection, perks, and privileges and the private sector is considering adding them to address the competition. Let's take a look at a well-known private sector company, Google, which celebrated its 14<sup>th</sup> birthday in 2012. In a Forbes article, "Here's What Happens to Google Employees When They Die,"<sup>7</sup> we learn that should a Google employee die in service, their surviving spouse or domestic partner will receive a check for 50% of their salary every year for the next decade. In addition to the 10-year pay package, surviving spouses will see all stocks vested immediately and any children will receive a \$1,000 monthly payment from the company until they reach the age of 19 (or 23 if the child is a full-time student). With 34,000 employees, this could be a substantial financial burden on the company, but perhaps Google feels obligated to provide a sense of security to its people in an effort to retain valuable talent. Apple is another company that is carefully reviewing its HR policies to provide employees with a sense of security.<sup>8</sup>

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<sup>7</sup> <http://www.forbes.com/sites/meghancassery/2012/08/08/heres-what-happens-to-google-employees-when-they-die/>

<sup>8</sup> Apple Gives In to Employee Perks, Wall Street Journal, <http://online.wsj.com/article/SB10001424127887324073504578115071154910456.html>

Private sector companies that have the funds and have realized that their ability to remain competitive depends on the people they attract and retain may have the flexibility to adapt their HR management practices and allocate sufficient budgets for employee retention measures. Public sector organizations have neither. Rules are generally framed by the central government and annual budget allocations are made on the basis of specific justifications. Discretionary perks and allowances can be subject to audit objections and corrective measures that public sector managers would prefer avoiding.

### 3) HR management in competition agencies

The main objective of HR management is to meet the organizational needs of the agency and the needs of the people employed by that agency. In short, it is the hub of the organization, serving as an important liaison between all concerned.

Some managers believe that HR management is simply common sense. However, effective HR management is one of the most difficult and complex task that managers face, not the least because it involves human behaviour and relationships that are inherently complex and potentially filled with conflicts along many dimensions. Even though, it is an area that has resulted in substantial theoretical literature, in addition to numerous more practically oriented HR management books, it must be acknowledged that HR management policy-making is a relatively young area. HR management policy is neither very well developed intellectually nor heavily permeated by rigorous professional standards. The fact that there are quite a few different HR management instruments out there and they are difficult to evaluate.

Depending on the size of the agency, the HR department might simply be called Personnel, implying a manageable workforce that can be handled by a personnel manager and a small group of staff. For larger, more complex organizations with hundreds of departments and divisions, the task is much more demanding, especially if there are offices in different geographic locations.

However, HR management differs from personnel management both in scope and orientation. Personnel management typically refers to activities relating to the workforce, such as: (i) staffing, (ii) payroll, (iii) contractual obligations and (iv) other administrative tasks. HR management takes a more holistic approach to managing the resources of an organization, and has traditionally consisted of some key activities, namely, acquiring, developing, and retaining human capital. An important part of this is HR management policies<sup>9</sup> with regard to compensation, but not the least of which is individual professional development. It also follows that HR management must have a

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<sup>9</sup> Human resource policies (HR policies) can be defined as the system of codified decisions implemented to support HR management. See e.g.

[http://en.wikipedia.org/wiki/Human\\_resource\\_policies](http://en.wikipedia.org/wiki/Human_resource_policies).

responsibility for maintaining good human relations in the organization, i.e. the relationship of management to employees and employees to employees. In addition to the development of the individual employee, HR management also has a responsibility for interactions of the separate groups of employees within the organization. Last, but not least, HR management also has a responsibility for achieving integration of the goals of the organization and those of the individuals, and thus to motivate the employees to work to achieve the organization's goals.

Each competition agency will operate under different set of circumstances. However, competition agencies generally have the ability and flexibility to develop HR policies that are more tailored to their requirements. As pointed out in the next section, among the competition agencies, 62% responded that HR policy was established by the competition agency itself. An important challenge in this case, however, is to align HR policies with the overall strategic planning of the competition agency. Strategic planning allows competition agencies to map out where they are, where they want to go, and how they plan to get there. In addition to strategic planning and the existing HR planning, it is also important for competition agencies to measure progress toward those goals, often for the purpose of reporting results achieved to stakeholders.

***a) HR management resources/staff***

The number of employees dedicated to HR activities is generally proportional to the size of the agency. In general, large competition agencies (200+ employees) have more staff dedicated to HR. Of the 11 large-sized competition agencies that responded to the survey, seven competition agencies (64%) have more than ten dedicated HR staff, with one agency having 25 dedicated HR staff. Most of the 19 medium-sized competition agencies that responded to the survey have between two and four dedicated HR staff (63%) whereas 21% of competition agencies that responded to the survey have more than 5 dedicated HR staff. Only one competition agency that responded to the survey has 1 dedicated HR person. Of the nine small-sized competition agencies that responded to the survey, 56% had no dedicated HR staff while the remaining 10% of the competition agencies that responded to the survey had an average of 1-2 dedicated HR staff.

In view of the above, the possible inference is that larger competition agencies, with increased financial resources and higher demands connected with organizational issues, have a greater necessity to hire more HR staff.

Smaller competition agencies have less opportunity, and perhaps less incentive because of their size, to invest in HR staff than the larger competition agencies. In fact, in many competition agencies, they have either part-time HR staff, or HR staff who work on HR responsibilities in addition to their primary set of responsibilities. Some competition agencies do not have any HR employees at all.

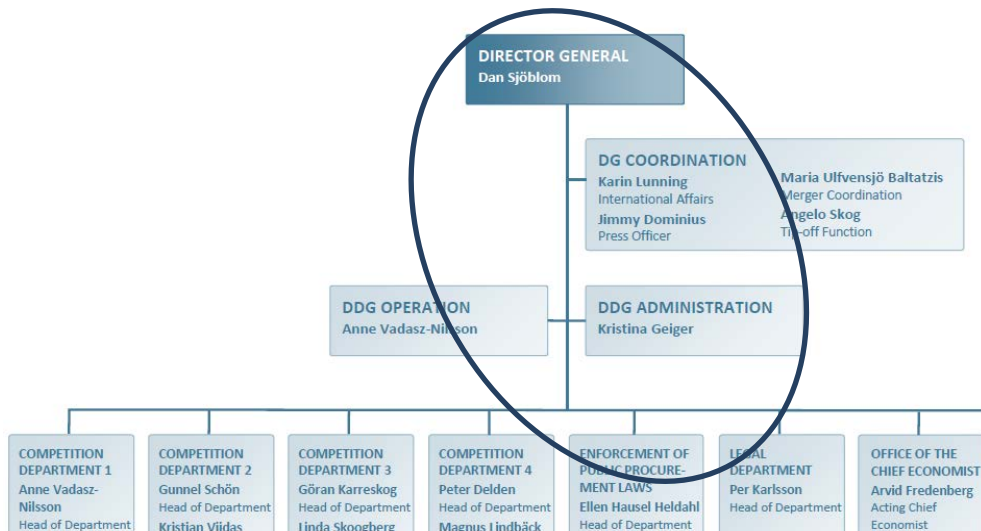
However, it is important to clarify that the fact that larger competition agencies have a greater HR staff does not necessarily mean that the management of HR is seen as an integral and vital focus of these competition agencies.

***b) HR management organizational approaches***

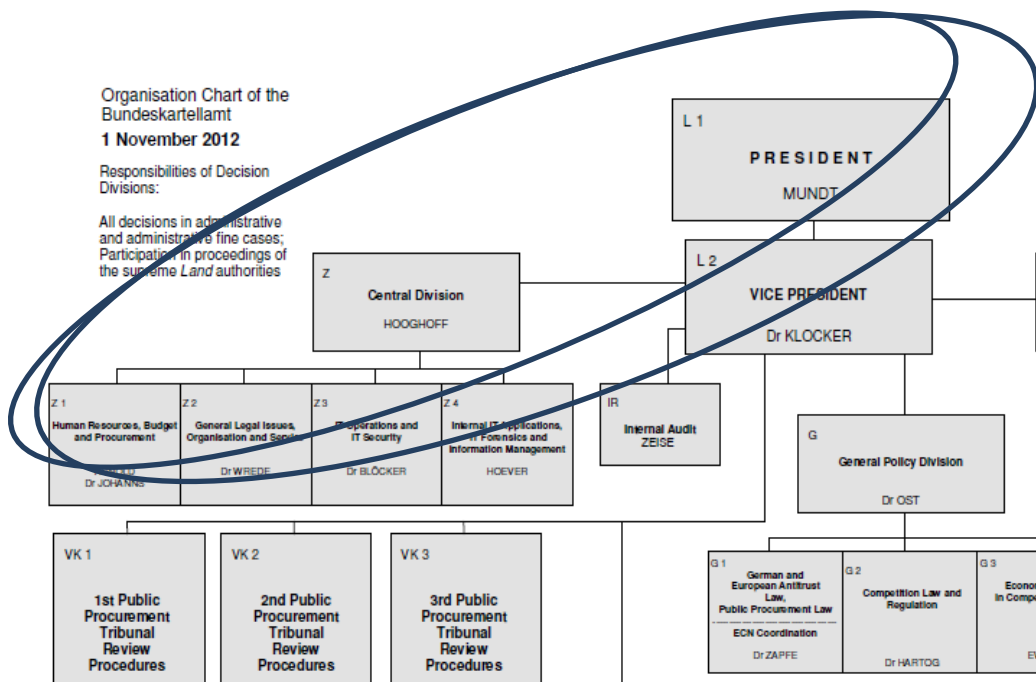
Regardless of the size of their HR departments, approximately half of the competition agencies indicated in response to the survey that the senior most HR official is at the second level of their organization, beneath the head of the competition agency. The remaining 40% of the competition agencies responded that their senior most HR official(s) is at the third level of their organization, beneath the head of the competition agency. Only two competition agencies, both categorized as large-sized agencies, noted that their senior most HR official is at the fourth level of their organization, beneath the head of the competition agency.

An example of a competition agency where the senior most HR official is placed at the second level of the organization, beneath the head of the competition agency is the Swedish Competition Authority (“SCA”). The SCA’s organizational chart is presented below:



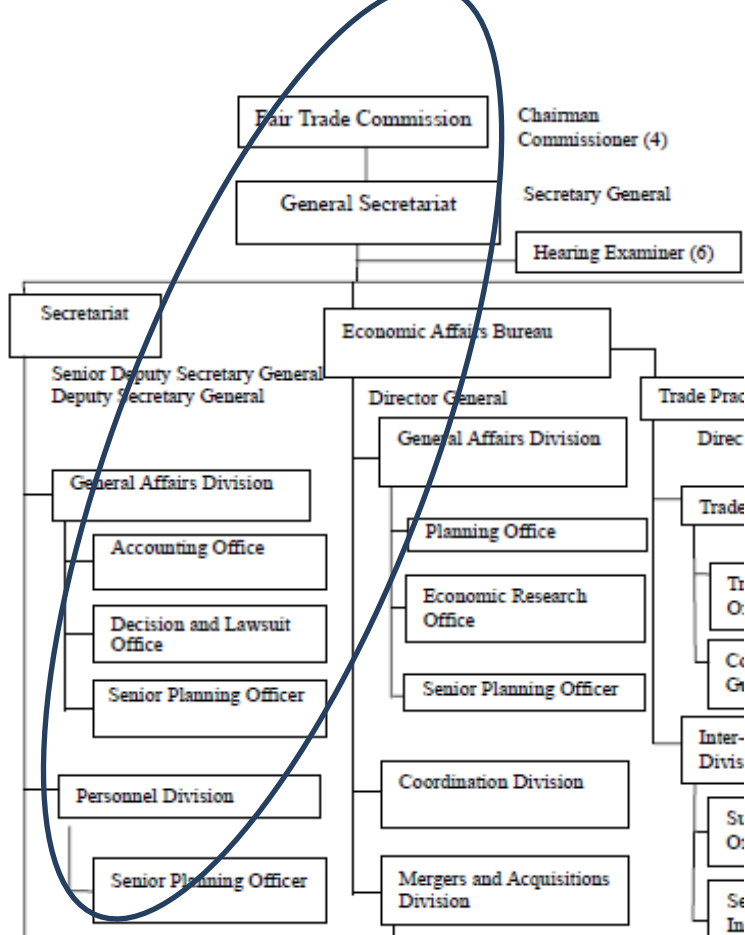


Germany’s Bundeskartellamt (“BKa”) is an example of a competition agency, where the senior most HR official is placed at the third level of the organization, beneath the head of the agency. The BKa’s organizational chart is presented below:



At the Japan Fair Trade Commission (“JFTC”), the senior most HR official is placed at the fourth level of their organization, beneath the head of the agency. The JFTC’s organizational chart is presented below:

JFTC - Organizational Chart (as of April, 2010)



**c) HR management responsibilities and role in determining HR policy**

In response to the question, who sets the HR policy for the competition agencies, 62% of competition agencies responded that HR policy was established by the competition agency itself, 12% of competition agencies stated that HR policy was set by a central government administrator and the remaining competition agencies, who responded to the survey either did not respond to this question or stated that the HR policy was a combination of the guidelines of the competition agency and their government.

As alluded to above approximately half of the competition agencies that responded to the survey indicated that the senior most HR official was placed at the second level of their organization, beneath the head of the agency. However, although a majority of

competition agencies have senior HR officials close to the top of the organizational chart, they may not really play a role as a true strategic adviser to the head of the agency, and would generally not be involved in the decision-making process. Quite possibly, the senior most HR official may play an integral role to implement decisions that have already been made.

Nevertheless, the recognition that the most important asset of a competition agency is its' employees, i.e. its HR, is reflected in a strengthened role of HR management in the organization. In general, it has become more and more common for the senior most HR official to have a voice in the competition agency's operational and strategic decisions, and the HR strategy is integrated and aligned with the competition agency's overall strategic goals.

## 4) Agency values and HR management;

In a simple manner of speaking, values are the core of what your organization is and what your organization cherishes.

Values are traits or qualities that are considered worthwhile; they represent an individual's highest priorities and deeply held driving forces and beliefs. Values help attract people to an organization and then help them shape their actions and guide their decisions.

Organizational values help each person establish priorities in their daily work life. Employees must demonstrate and model these values in to action in their personal work behaviours, decision making, contribution, and interpersonal interaction.

It is the rare organization that takes the time to then define HOW they will do their work. A Values Statement is an important tool which the HR department utilizes to accomplish just that. Rewards and recognition within the organization should be structured to recognize those people whose work embodies the values and the Value Statements that the organization has identified and embraced. Furthermore, people hire and promote individuals whose outlook and actions are consistent with the organization's values. Finally, the adoption of the organization's values and the behaviours that result should be recognized in regular performance feedback.

### ***a) Developing and implementing HR policy and goals***

Competition agencies generally have the ability and flexibility to develop HR policies that are more tailored to their requirements. In response to the question of who sets HR policy for the competition agencies, 62% responded that it was established by the competition agency itself, 12% stated that it was set by a central government administrator, and the remaining competition agencies either did not respond or stated that the policy was a combination of agency and government guidelines.

This section will focus more closely: (i) how HR policy and goals are developed and carried out within competition agencies; (ii) to what extent HR policy is tailored to the overall strategic goals of competition agencies; and (iii) how success/failure of HR

policy is measured in competition agencies through e.g., job satisfaction and work environment surveys.<sup>10</sup>

The role of HR departments has changed in recent years. Previously, the focus was primarily to ensure compliance with labour market laws, rules and regulations.

Nowadays in most competition agencies, HR is more responsive to mission-related needs and has the resources to expend more efforts on instilling broader organizational values and, where necessary, changes to ensure that HR and staff focus their efforts, knowledge, skills and experience towards the competition agency in accomplishing its mission.

For example, the recruitment process at the SCA is initiated by the Head of the HR Department, with a request to the Deputy Director-General (“DDG”). The DDG suggests a recruitment process to the Director General, who makes a decision based on the budget, and current and future needs of the SCA. The HR department publishes an advertisement, receives and reviews the applications and determines a shortlist of the most competitive candidates. The Heads of departments and the Head of Personnel jointly decide from the list which candidates should be interviewed. Then, the head of the department that requires personnel and a HR staff member conduct interviews. The successful candidates undergo an aptitude test and a reference check before they are offered employment with the SCA and receive a written contract. Candidates interviewed but not offered employment will be advised that they were unsuccessful. All new employees go through an introduction competence program.

#### ***b) Link between HR management and overall strategic goals***

HR alignment means integrating decisions relating to staff with decisions about the results which an organization is trying to obtain. By integrating HR management into the competition agency planning process, emphasizing HR activities that support broad competition agency goals, and building a strong relationship between HR and management, competition agencies are able to ensure that HR management contributes

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<sup>10</sup> The Office of Fair Trading, UK, routinely undertakes staff surveys and makes the findings available to the public: <http://www.of.t.gov.uk/about-the-of.t/working-for-us/why-work-for-us/survey/>

to the accomplishment of its goals. This will also imply that managers can be held accountable for their HR decisions.

How deep the link is between HR management and overall strategic goals vary between competition agencies. As previously noted, there is a wide variation in terms of where the most senior HR officer sits within the competition agencies' organizational structures. The higher up this person is in the competition agency, the higher the probability of a correlation between HR management and the overall strategic goals of the competition agency. It is crucial that the HR department understands the different needs of the competition agency to be able to recruit and train the most suitable people for the defined positions.

For example, the Norwegian Competition Authority ("NCA") has developed a HR strategy where this link is explicit, i.e. the HR strategy is considered an important mean to achieve the overall strategy. The HR strategy contains 4 focal areas:

- Values, leadership and participation,
- Promotions, pay and working conditions,
- Resource and skills management, and
- Working environment and Health, Environment and Safety.

Regarding the first focus area, it is stated that management at the NCA shall be exercised in accordance with the principles for management in Norway's civil service ("NCS"). These principles are presented in a document intended for leaders who have managerial responsibility in a central government body. This document sets out the basis, framework and principles of leadership in the NCS. This document also establishes that the leadership policy must be based on the distinctive nature, value base and overall objectives of the NCS. The Norwegian Government has decided that this document is to be used for developing leadership within the NCS.<sup>11</sup>

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<sup>11</sup> See [http://www.regjeringen.no/upload/FAD/Vedlegg/Lønns-%20og%20personalpolitikk/Ledelsesplattform\\_eng.pdf](http://www.regjeringen.no/upload/FAD/Vedlegg/Lønns-%20og%20personalpolitikk/Ledelsesplattform_eng.pdf)

Regarding the second focus area, the strategy states that NCA shall try to achieve a remuneration policy that is competitive in the market, and that helps to recruit and retain skilled employees, and helps to reduce unwanted turnover for employees with critical skills.

Regarding the third focus area, the goal of the NCA is to recruit, develop and apply appropriate expertise to fulfill the tasks the competition agency is obliged by the competition law to undertake, and to enhance the competition agency's reputation and abilities through systematic and goal oriented planning, evaluation, learning and improvement.

The fourth focus area, the stated goal of the NCA is to have a work environment that is healthy and characterized by confidence, openness and respect. It is stated that through a good working environment, which includes participation and delegating authority to employees, the NCA wishes to create passionate, enterprising and creative employees who thrive on the job.

For each of these four focus areas, specific performance requirements, and measures to achieve these, are specified.

In terms of staff engagement and satisfaction, the European Commission's Directorate General for Competition ("EC DG Comp") is implementing a set of measures which follow an in-depth quality survey among the personnel. This includes specific actions related to: career management and alternatives to the managerial career tracks; better coordination in internal mobility, improved training, coaching and mentoring, etc. An important area concerns the internal communication (communicating the organizational goals but also ensuring a better understanding between the instruments and lines of business (Antitrust, Mergers, Cartels, State Aid, Chief Economist).

Overall, personnel issues such as engagement, motivation, and workload are discussed at the highest level (DG, DDGs) and HR plays the advisory role of a business partner. A very good understanding of the business in the HR team, as well as HR professionalization brings credibility and raises the strategic level of the conversation. A charter of best practices in people management is envisaged to be issued later this year to support the line management with HRM related behaviours.

*Other experiences on aligning HR management strategy with overall strategy?*

**c) *The use of job satisfaction and work environment surveys and interviews***

There's an intuitive notion that if employees at competition agencies are more satisfied, employee performance increases and there is a greater tendency to stay longer at the competition agency.

Most competition agencies conduct job satisfaction and working environment surveys and interviews. Job satisfaction is measured in the form of internally or externally conducted surveys, planned meetings with superiors, staff meetings and/or exit interviews. The results of these surveys are normally taken on board by management to improve working conditions and job satisfaction.

The experiences from these types of surveys are generally beneficial to measuring job satisfaction. If several competition agency employees have the same complaints, measures are usually taken to rectify them.

There is no obvious best practice for measuring job satisfaction, but accurate measurement is crucial.

As a tool in its HR strategy, the NCA periodically reviews job satisfaction as well as other psychological factors at work. The web-based questionnaire - The General Nordic Questionnaire - is designed for the assessment of psychological, social, and organizational working conditions at the NCA<sup>12</sup>:

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<sup>12</sup> The background for the General Nordic Questionnaire goes back to 1994, when the Nordic Council of Ministers launched a project to improve the scientific quality and comparability of data collected during interventions on the conditions of the psychological, social, and organizational work environment. The project group was given the task of developing and testing a General Nordic Questionnaire (QPSNordic) encompassing the most fundamental psychological and social factors at work, a questionnaire which should be applicable for interventions at various workplaces, as well as for research purposes. The project group comprised researchers from the four Nordic countries. See [http://www.norden.org/en/publications/publikationer/2000-603/at\\_download/publicationfile](http://www.norden.org/en/publications/publikationer/2000-603/at_download/publicationfile)



- to provide a basis for implementing organizational development and interventions,
- to document changes in working conditions, and
- to research the associations between work and health.

The purpose of the questionnaire from the NCA's point of view is to collect the information needed to develop the work and the work environment. The General Nordic Questionnaire consists of a comprehensive set of multiple choice questions relating to psychological and social factors at work, such as:

- job demands and control,
- role expectations,
- predictability and mastery of work,
- social interaction with coworkers and clients,
- leadership,
- organizational climate,
- interaction between work and private life,
- work centrality,
- organizational commitment, and
- work motives.

The scores on the different questions are presented compared for the organization as a whole, for the different departments with the NCA, as well as compared to the scores of a reference group of comparable institutions.<sup>13</sup>

*More examples of HR job satisfaction questionnaires, how they are used and follow up*

#### **d) Performance review and development**

A performance review is a systematic and periodic process that assesses an individual employee's job performance and productivity in relation to certain pre-established

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<sup>13</sup> Examples of the questions in the questionnaire can be found at: [https://www.qps-nordic.org/en/doc/QPSNordic\\_questionnaire.pdf](https://www.qps-nordic.org/en/doc/QPSNordic_questionnaire.pdf)

criteria and organizational objectives.<sup>14</sup> Most competition agencies indicate that they have a sense that these reviews have a positive effect on agency productivity, as they increase the staff's understanding of what they should do and why.

Thus, conducting performance reviews at competition agencies may also be a way of measuring staff performance against the outcomes and productivity of the competition agency.

In addition, the performance review process can establish better communication on tangible objectives between supervisors and employees at competition agencies, helping in decisions such as promotions, compensation, training needs, or perhaps even disciplinary action.

To collect HR data, there are three main methods: objective production, personnel, and judgmental evaluation. Judgmental evaluations are the most commonly used, with a large variety of evaluation methods. A performance review is typically conducted annually. The interview usually functions as a means of providing feedback to employees, counselling and developing employees, and conveying and discussing compensation, job status, or disciplinary decisions. HR staff is often included in performance management systems. Performance management systems are employed "to manage and align" all of an organization's resources to achieve the highest possible performance.

Some applications of performance reviews and development are: (i) performance improvement, (ii) promotion, (iii) termination, and (iv) test validation etc. While there are many potential benefits of performance reviews, there are also some potential drawbacks. For example, performance reviews can help facilitate management-employee communication; however, they may result in negative dialogue if not executed appropriately, as some employees tend to be unsatisfied with the process.

To complete the common annual performance review coordinated centrally by the European Commission, DG Comp is examining the possibility of introducing a 180° feedback for middle managers (Heads of Units). It is meant to provide middle

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<sup>14</sup> See e.g. [http://en.wikipedia.org/wiki/Performance\\_appraisal](http://en.wikipedia.org/wiki/Performance_appraisal)

managers with feedback from their teams, it will be disconnected from the corporate performance review exercise and it will provide developmental consequences (coaching, where appropriate). A few other DGs engaged already in similar exercises and the results are in general constructive.

The Competition Bureau Canada (“the Bureau”) has a Reward and Recognition Program, independent of the programs provided for by the core administration, that recognizes exceptional contributions to enforcement, as well as policy initiatives in furtherance of the Bureau’s mandate and program objectives, it includes recognition for activities that support employment equity and diversity as well as linguistic duality.

*Examples of performance reviews?*

**e) Experiences with performance reviews in relation to agency productivity**

Most competition agencies indicated that they have a sense that these performance reviews have a positive effect on agency productivity, as they increase their staff’s understanding of what they should do and why.

For example, at the Barbados Fair Trading Commission (“BFTC”), a performance review is conducted at the end of an established probationary period. Following confirmation of appointment, a review is undertaken annually towards the end of the financial year which is March 31st for all employees. Some of the categories include quality of work, productivity, job knowledge, reliability initiative, interpersonal relations, judgement and capacity to develop. These categories are assessed as part of the achievement of the overall objective of creating an environment in which employees understand their individual jobs, the standards expected and how these standards fit with the organisational goals. The utilization of individual objectives, which are aligned specifically to those of the division and ultimately to those set by the BFTC, assists in the management and improvement of individual as well as organisational performance. The self-assessment and discussion components of the performance management system facilitate feedback and clarification of essential job functions in relation to individual, as well as organisational goals.

*More examples of performance reviews used in relation to agency productivity?*

## **f) *Assessing HR policy and goals achievement***

HR management plays a major role in helping the competition agency to perform to its maximum capability. Working individually and collectively, staff contribute to the achievement of the objectives of the competition agency. HR management is aimed at employing people, developing their resources, and utilizing, maintaining and compensating their services in relation to organizational requirements.

A competition agency's objectives will be based on political, economic, and social circumstances. Some competition agencies will have independence in setting their objectives, while others may be set up to support an overall policy implemented by their government.

Typically, competition agency objectives will require multiple years (not less than 3-5 years) for outcomes to be achieved, based on annual operations which coincide with a calendar year and the organization's operating cycle. Operational objectives are achieved by business units, departments, functional areas, teams, individuals etc.

The link between organizational systems and structures is necessary to understand impact, effectiveness and efficiency. By setting objectives for all levels of the organization it is possible to achieve maximum returns on resources and operations. The objectives presented must be clear, measurable, specific and consistent.<sup>15</sup>

The positive attitudes of employees contribute to competition agencies' productivity in the achievement of organizational goals. HR Management is more innovative within the workplace than traditional approaches. It expresses goals uniquely with specificity and provides the resources needed to accomplish tasks. Activities which communicate objectives and targets are prioritized, wherein guidelines play an important role.

DG Comp invests a lot of energy (the HR Unit in cooperation with the "Strategy and Delivery Unit") in putting in place a comprehensive system of workload indicators. This allows DG Comp to better align workload and resources throughout the organization and find synergies for a leaner organization of work. Ultimately this will

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<sup>15</sup> The acronym SMART – specific, measurable, attainable, realistic, time-bound – is a simple way to define a good objective. Is the objective SMART?

allow the design of more meaningful HR strategy / planning. Participatory leadership is more and more a concern at DG Comp: leadership based on respect, engagement, empowerment that foster cooperation and shared responsibility help bringing change - from an organization whose management is based on inputs towards management based on outputs and trust. The constraints of an organization require tradeoffs and evaluation methods to determine the capability required to achieve specified outcomes. The ability of an organization to achieve its objectives depends on its core competencies, comparative advantages, current and projected influence on the commercial sector in different environments, current and future constraints on resources and operations, opportunities, capabilities and probabilities, and the needs of an organization.

To develop an organization, its objectives should be supported by a clear understanding of the organization's capabilities and its growth, as well as a focus on processes, people, infrastructure, changes of environment, and other economic factors.

The BFTC has established five main goals which are designed to provide a framework for the achievement of its' mission. Specific goals relate to each aspect of the BFTC's mandate inclusive of the promoting and encouraging fair competition. The overarching goal relates to identifying HR and operational initiatives to strengthen the organisational and productive capabilities of the BFTC.

The above framework supports the achievement of organisational goals through the process of continuous assessment of SMART objectives, with a comprehensive review and analysis of the status of stated objectives on an annual basis. This review and analysis provides an opportunity to establish how related factors have influenced the organisation's ability to achieve its stated objectives. These factors may include as indicated earlier, the availability and efficient utilization of the necessary resources, opportunities for relevant training and development, the ability to form and maintain strategic alliances, as well as the state of the political and economic and social environment.

*Examples of competition agencies assessing HR policy and goals achievement?*

## 5) Recruitment and turnover

We have all heard the following mantra “employees are a company’s greatest asset.” To achieve this goal, it is crucial for competition agencies to recruit and retain the right people in the development of a successful and effective competition agency and the accomplishment of its mission. This is not an easy task.<sup>16</sup>

Forty percent (40%) of the competition agencies participating in the survey attempt to retain good staff by promoting the valuable and interesting tasks employees experience by working for them. Having interesting work is achieved by hiring staff that are interested in this field. As such, most of the competition agencies that responded indicated that they hire employees with a legal or economic background. Salary does not appear to be the predominant strategy for retaining staff as only 16% of the competition agencies responding indicated that salary is their most successful recruiting strategy. In most jurisdictions, salaries for public sector employees have been pre-determined by the government, and employees are aware of the salary.

Generally, low salary levels serve as a barrier to the recruitment and retention of high quality staff at competition agencies. This is a recurring issue regardless of the size of the competition agency or its reputation. Large established competition agencies reported the same problem as small and newly-established competition agencies. All competition agencies have problems attracting and retaining the right people given their limited budget and non-competitive salaries compared to the private sector.

Another challenge to the retention of experienced staff at competition agencies is providing sufficient mid- to long-term career development opportunities. At the Bureau, employees can apply for an assignment or a secondment, which is a temporary move of an employee to another federal department or agency in the core public administration. Employees can also apply for a temporary assignment to other

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<sup>16</sup> See Don't Hire the Perfect Candidate by Lance Haun,  
[http://blogs.hbr.org/cs/2013/01/dont\\_hire\\_the\\_perfect\\_candidat.html?](http://blogs.hbr.org/cs/2013/01/dont_hire_the_perfect_candidat.html?)

public, not-for-profit, or private sectors, through the Interchange Canada Program.

These opportunities have the objective of:

- supporting the acquisition and/or transfer of knowledge and expertise to assist participating organizations in meeting their business and HR objectives;
- contributing to an enriched understanding of how the core public administration functions and a better understanding of the business of other sectors; and
- fostering the professional and leadership development of participants.

Other examples of competition agencies providing career development opportunities occurs at both United States competition agencies (U.S. Department of Justice, Antitrust Division (“US DOJ”) and the Federal Trade Commission (“US FTC”). At both competition agencies, employees have opportunities to go on “a detail”. The detail can be an internal detail to another section within the US DOJ or the US FTC that allows employees to gain experience on a different subject matter, type of case, or policy. The detail can also be an external detail that can provide employees with the opportunity to work in different law enforcement or legal policy settings. For instance, employees may be detailed to a U.S. Attorney’s Office for several months to prosecute federal cases and gain valuable litigation skills and experience. The employees of the some members, e.g. the BKa, have the possibility to be seconded to other authorities such as the European Commission.

Finally, the lack of qualification is generally a barrier for recruiting already qualified staff for newly-established competition agencies in countries where competition agencies have been recently established.

#### **a) *Effective Recruitment Approaches and Experiences***

**Recruitment process.** Regarding the recruitment process, the majority of competition agencies (77%) stated that they usually advertise their positions, while 15% of the competition agencies that responded recruit from universities. In terms of the use of recommendations, 33% of competition agencies responded that they make use of internal recommendations, 18% of competition agencies accept external recommendations and only 10% of competition agencies use “headhunters”. 31% of

competition agencies that responded indicated that admission demands entrance exams. Further, 8% of competition agencies responded that the selection of employees is made from internship programs.

The majority of the personnel recruited by the HR departments at competition agencies are graduate (67%) and undergraduate students (28%), including former interns, as stated by 21% of the competition agencies responding to the survey. 54% of competition agency HR departments also recruit from law firms and Ministries. Furthermore, 33% of competition agencies stated that they recruit staff using consulting agencies. Recruitment is much lower from academic circles, as only 21% of competition agencies responded that they recruit professors, and 8% responded that they recruit teaching assistants.

Expert consultants and temporary hires are utilized by 92% of competition agencies. Some competition agencies affirmed that they require authorization from Ministries for such admissions. Of those competition agencies which hire competition law or economic experts as non-permanent employees, 49% stated that this represents between 0-10% of their professional staff. Only 13% of competition agencies responded that temporary staff represents more than 10% percent of the professional staff.

DG Comp is recruiting considerably from the external reserve lists (around 70 to 80% of all recruitments) and the leavers go principally to other services of the European Commission, which makes a good base of DG Comp alumni out there. To keep in touch with that base and/or identify specific skills on the EC internal market, to eventually attract them, became very important; the newly introduced eCV (internal electronic CV database for the population of about 30,000 people at the Commission) will surely help this approach.

**Assessing Needs.** To determine what the recruitment needs are in terms of professional and educational background in relation to a competition agency's request for extra personnel, 71% of competition agencies react directly to an internal department's request for personnel and base their requirements in the specific type of person needed, 43% of competition agencies hire by the type of tasks demanded, while



28% of competition agencies mention that they have flexible standards regarding the selection of staff.

**Experiences with different sources for recruitment.** 28% of competition agencies indicated that they hire after periodic evaluation and 8% of competition agencies mentioned that they have fixed quotas per department. One competition agency commented that personnel allocation is determined by the government, independent of the title or profession. In general, however, the central government only plays a small role in the hiring of staff as only 8% of competition agencies responding stated that hiring is decided by central government allocation. 70% of competition agencies mentioned that the hiring of staff is done in conjunction with central government policies. Of competition agency that is hired, competition agencies indicated that 67% of employees possess graduate degrees, while 28% of employees hold undergraduates degrees.

The allocation of competition agency staff into units, divisions or departments is generally determined by the request of Heads of Divisions as reported by 54% and the strategic plan of the competition agency as reported by 51%. In contrast, only one competition agency stated that the allocation is made randomly. Alternatively, 36% responded by stating that competition agency staff allocation is determined according to the number of investigations or the types of the cases per unit, (i.e. conduct or mergers). Only 15% of competition agencies responded that staff is allocated according to fixed quotas per area.

**Requirements and how recruits are assessed.** A large majority of competition agencies (84%) stated that they administer written exams and/or interviews regarding competition law to potential hires. 13% of the competition agencies that responded to the survey do not apply exams. Many competition agencies commented that knowledge of competition law and English are necessary. Other competition agencies stated that they have demanding recruitment processes, with several phases including both oral and written tests.

59% of competition agencies provide feedback to the unsuccessful internal applicants, while 18% of competition agencies do not provide feedback.

**Experiences with Interns.** The National Internship Programme of the Botswana Ministry of Labour & Home Affairs provides skills transfer to Botswana graduates with degree qualifications. As such, the Botswana Competition Authority will utilize this program to test prospective employees' suitability before hiring them.

Similarly, at the EC DG Comp, trainees have an opportunity to acquire "hands-on" experience and gain expertise in the day-to-day work of the EC DG Comp. This internship program builds a pool of young people with knowledge of EC DG Comp's procedures, who will be able to collaborate and cooperate, or become future employees at this agency.

Also the NCA has good experiences with trainees and summer interns. Students are typically recruited from the University of Bergen ("UiB") or the Norwegian School of Economics and Business Administration ("NHH") in Bergen. Applicants to be considered must be law or economics students and have studied for at least three years for a position. The summer interns works with competition cases in the market departments, under the surveillance of experienced case handlers. After the period of working with the NCA, the student receives an assessment and a reference. The purpose of this program is to recruit new employees, and quite a few of the students receive job offers from the NCA upon completion of their studies. In addition, the NCA tries to stimulate law and economics students to write master and doctoral thesis in areas of relevance. This is done through a pecuniary award for best thesis in competition law and in competition economics, and assisting students in finding suitable and relevant topics.

As part of the Bureau's University Recruitment campaigns, the Bureau conducts targeted visits of universities to promote and explain the nature of its work, and the opportunities for career development within the agency.

*More experiences with innovative recruitment approaches?*

#### **b) Turnover and mechanisms to retain and develop personnel**

Internal movement of employees is accepted by most of the competition agencies that responded (92%). The reallocation of personnel is made by formal procedures in most competition agencies, by simple request in 28% of competition agencies and by

priority vis-à-vis external candidates in 13% of competition agencies. Temporary or permanent reallocation is evenly split across respondents. At the Bureau, a rotation program is generally scheduled every three years to provide employees with the opportunity to move within the competition agency, renew their skills and take on new challenges. The rotation program balances an employee's need for career development and job satisfaction, the Branch's need for a certain mix of skills and capabilities, and the Bureau's need for a versatile, flexible, well-rounded work force that enables the Bureau to respond quickly to cases and other operational requirements. As previously noted, both the US DOJ and the US FTC provide opportunities for "details" to their employees for purposes of career development and employee retention. At DG Comp, retention of talent is seen as the next big HR issue as it competes both internally with other DGs but also with the private sector. DG Comp recognizes a need to focus more and more on corporate branding and on enforcing the flexible working arrangements.

The survey also focused on the turnover of the competition agencies' staff. According to the survey responses, most competition agencies (46%) allow movement within the agency after one year. 28% of competition agencies reported that they allow movement only after two or three years. Only one competition agency reported that it does not allow movement at all. The internal movement of personnel at competition agencies (87%) occurs mostly horizontally (i.e. from one division to another), although 72% of competition agencies said that it also happens vertically (i.e. through promotion or demotion). The reallocation from one physical office to another is also possible in 13% of competition agencies that responded to the survey.

77% of competition agencies stated that they do not have a specific strategy for personnel retention. Those competition agencies which indicated that they have a strategy, evaluated their personnel retention programs with an average of five out of ten. On an annual basis, 67% of competition agencies stated that there is usually no termination. 18% of competition agencies stated that the termination rate is less than 1% percent annually. In a five-year period, termination rates of less than 1% of employees occur in 21% of competition agencies that responded to the survey, whereas termination rates between 1-10% occur in 8% of competition agencies that reported to the survey. In none of the surveyed competition agencies is there a termination level of more than 10 % in a five-year period.

Only 31% of competition agencies may provide incentives for employees to leave. Some kinds of incentives given to the employees are early retirement, recognition bonus and outplacement. Naturally this may need to change in times of economic downturn.

*Experiences with reward policy, career paths, internal rotation and other mechanisms to develop and retain key personnel?*

**Succession Planning.** A little over half of the competition agencies that responded to the survey do not use succession planning (59%). Of those competition agencies that do use succession plans, some also use active training of professionals to encourage mobility within the agency.

For example, the NCA uses succession planning to some extent, i.e. for the second in command for the director of the market departments.

**Exit interviews.** As to employees who leave a competition agency, a majority of competition agencies (62%) surveyed stated that they conduct exit interviews. However, a large minority of competition agencies (38%) indicated that they do not. The exit interviews are mostly carried out by HR staff.

After the exit interviews, the information is verbally reported in 36% of competition agencies that responded to the survey, written in 13% of competition agencies, and collected by way of questionnaire in 15% of competition agencies. The addressees of the interview results are split between: (i) the HR staff (15%), (ii) the Head of the competition agency (15%), and (iii) senior staff of the agency in two competition agencies. It is interesting to note that 41% of the competition agencies that responded to the survey indicated that they do not analyze the results of the exit interviews. 69% of competition agencies confirmed that job offers outside the competition agency are the main reason for an employee to leave. Other reasons for employees leaving competition agencies are low salaries, and the ending of the position tenure. Even though, only one competition agency identified bad performance as a main reason for employee's exit, 92% of competition agencies stated that employee termination is possible. Despite termination being possible, the majority of competition agencies (59%) affirmed that, in practice, it is not done. Only 33% of competition agencies stated that termination is practiced.

**Relations with the academic community.** Effective enforcement relies heavily on access to expert knowledge. Both with regard to developing this expert knowledge internally and having access to it externally, close ties with the academic community is crucial. As an example, it can be mentioned that the NCA benefits from good working relations to the law faculty and the economics department at the UiB, in addition to the NHH, all of which does research in, and teach courses in competition law or competition economics.

Relations with the academic community can also be a mechanism to retain personnel. This was one of the reasons why the NCA contributed to establishment of the Bergen Center for Competition Law and Economics (“BECCLE”). BECCLE was established in 2011, and it is a center jointly owned by the NHH, and the UiB, Faculty of Law and Faculty of Social Sciences. In the same year, the NCA signed an agreement with BECCLE to cooperate on research, as well as measures to exchange personnel. The agreement intends to facilitate that employees from the NCA can work on specific relevant research projects in the academic environment of the BECCLE, and vice versa; that professors in law or economics can work at the NCA for a period of time.

**Revolving Doors.** As noted by the Global Competition Review, the US FTC is renowned for its “revolving door” tradition. At the US FTC, after several years, it is very common for senior members to return to private sector jobs. Experiences with revolving doors at the US FTC will be described in more detail below.

The image of the revolving door traditionally refers to the mobility of individuals between jobs in a governmental agency and the private sector<sup>17</sup>. When professionals leave the private sector to work at a competition agency, and vice versa, both sides can benefit from such movements. However, there also can be downsides.

Government agencies can benefit from specialized knowledge and expertise developed in the private sector. In this sense, new staff member coming from the private sector might bring “fresh blood” in the arteries of the agency. Specific to competition agencies, an attorney coming from a law firm or an economist coming from a consulting firm brings an outside perspective of the constraints and challenges faced by companies trying to comply with agency rules and regulations, such as merger

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<sup>17</sup> Albert A. Foer, *The Adversary Way to the Truth and Its Adversaries*, American Antitrust Institute, 2009, p. 1, available at [http://www.antitrustinstitute.org/files/aai-%20Rome,%20LEAR%206-25-09\\_062520091204.pdf](http://www.antitrustinstitute.org/files/aai-%20Rome,%20LEAR%206-25-09_062520091204.pdf).

notification requirements, and competition laws in general. This kind of knowledge can be valuable, as a competition agency reviews its policies and practices and seeks to improve its procedures. It also can help keep the competition agency in contact with the realities of the economy.

And when competition agency staff leaves, they are more likely to understand the internal constraints the competition agency is facing. Former competition agency staff will be able to better navigate the processes and help their client comply with competition agency's requests. Altogether, this might increase the quality and precision of filings and, ultimately, assist the competition agency's work. In addition, personal contacts, personal trust, and a mutual understanding also may help build relationships between the parties and the competition agency that can benefit effective enforcement.<sup>18</sup>

A downside of staff leaving the competition agency to work in the private sector is the risk of conflicts of interest and the fear that this person will be able to use confidential information gathered while at the competition agency to the benefit of a private firm or its clients.<sup>19</sup> Enforcers that have previous private sector experience – and those in senior positions that plan to return to the private sector – may be perceived as being “too soft” on companies or sectors.<sup>20</sup> Some might also fear that such established professionals might bring too much of a “pro-defense attitude” in competition law enforcement.<sup>21</sup>

These potential downsides can generally be avoided by the enactment of proper safeguards that address potential conflicts of interest and ethical concerns.

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<sup>18</sup> Derek Bedlow, EU and Competition: Revolution and revolving doors, Legalweek.com, 2007, available at <http://www.legalweek.com/legal-week/analysis/1177570/eu-competition-revolution-revolving-doors>.

<sup>19</sup> Cross reference Knowledge Management Chapter on importance of not losing tacit knowledge when staff leaves the agency.

<sup>20</sup> Yeon-Koo Che, Revolving doors and the optimal tolerance for agency collusion, RAND Journal of Economics, Vol. 26, No.3, 1995, p. 379, available at: <http://www.columbia.edu/~yc2271/files/papers/Revolve.pdf>; Albert A. Foer, The Adversary Way to the Truth and Its Adversaries, American Antitrust Institute, 2009, p. 4, available at [http://www.antitrustinstitute.org/files/aai-%20Rome,%20LEAR%206-25-09\\_062520091204.pdf](http://www.antitrustinstitute.org/files/aai-%20Rome,%20LEAR%206-25-09_062520091204.pdf).

<sup>21</sup> Albert A. Foer, The Adversary Way to the Truth and Its Adversaries, American Antitrust Institute, 2009, p. 3, available at [http://www.antitrustinstitute.org/files/aai-%20Rome,%20LEAR%206-25-09\\_062520091204.pdf](http://www.antitrustinstitute.org/files/aai-%20Rome,%20LEAR%206-25-09_062520091204.pdf).

Revolving doors at the US FTC. As mentioned above, revolving doors are a concrete and common phenomenon at the US FTC, in both directions. For all the good reasons mentioned above, the US FTC considers that it benefits from such staff movements.

In the United States, a combination of administrative and criminal provisions, not necessarily specific to competition agencies, address the risks of conflicts of interest and the use of confidential information gained while working at the competition agency. In the United States, both a criminal statute and the US FTC's conflict of interest and ethical rules require a staff that is contemplating/negotiating for a new job in a private firm to immediately stop working and recuse him/herself on all matters that will have a direct and predictable effect on the financial interests of the prospective employer.<sup>22</sup> Once s/he has left the US FTC, s/he is essentially prohibited from working (even behind the scenes) on matters on which s/he was personally and substantially involved while there, that were pending under his or her official responsibility, or pertaining to which s/he had or might have had access to non-public documents.<sup>23</sup> In addition, s/he is required to seek and receive clearance before participating in any proceeding or investigation that was pending before the US FTC when s/he was an employee, or resulted from such proceeding or investigation, or if s/he had access or could have had access to non-public documents pertaining to such proceeding or investigation.<sup>24</sup>

Finally, in the case of a new staff joining the US FTC from a private firm and to avoid the appearance of impropriety as well as conflict of interest, a United States statute requires that s/he break all financial ties with her previous employer (including, for example, stock divestiture).<sup>25</sup>

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<sup>22</sup> Federal Trade Commission Standard of Conducts, 5 C.F.R. Part 2635. Violation of this rule is also a violation of the above mentioned Federal criminal statute, Title 18, United States Code § 208).

<sup>23</sup> Title 18, United States Code. § 207(a)(1) and (c); Federal Trade Commission Rule 4.1 (b)(1).

<sup>24</sup> Federal Trade Commission Rule 4.1(b)(2); Besides, Title 18, United States Code § 207(c) imposes a one-year "cooling-off period" during which a former "senior employee" is prohibited from "knowingly making, with the intent to influence, any communication to or appearance before a Commission employee in order to seek official action on behalf of another".

<sup>25</sup> In the United States, a Federal criminal statute (Title 18, United States Code § 208) prohibits executive branch employees from participating personally and substantially in a particular matter that will affect certain financial interests (including the financial interests of the spouse, minor child or any organization in which the employee serves).

*Examples of succession planning*

*Examples of exit interviews analysis and follow up*

*Other innovative approaches?*



## 6) Career development

Career development for competition agencies focus on the relevance of investing in building and retaining knowledge through conscious career plans consistent with agency priorities, inside and outside training, active HR management and clear and accurate information analysis.

Career development is an important area of focus for competition agencies and provides their employees with opportunities to enhance their careers during their career progression. However, among the competition agencies surveyed, 82% stated that an agency specific promotion policy is the exception rather than the rule.

Encompassed in career development, individual career plans are a key issue because it combines many factors to analyze how individuals manage their careers within or between organizations. In this spectrum, the survey detected that most of the competition agency's staff does not prepare individual career plans, despite the fact that they are aware of the importance of doing so.

The majority of competition agencies conduct an annual performance review of its staff and a relevant number of competition agencies use the semi-annual calendar. Other timelines such as bi-annual, monthly reviews or on an ad-hoc basis are also used. Some competition agencies hold an annual training plan that considers not only the employee appraisal of training sessions, but also his/her development needs. That conduct persuades staff to analyze and/or initiate individual career plans linked to the interest of the competition agency.

As indicated by the survey, staff and management performance review in most competition agencies is done by supervisors. In some competition agencies the review process is mixed in such manner that other types of employees conduct performance reviews, i.e., management could be reviewed by the Chairman, colleagues or subordinates. One competition agency indicated that it has designated a commission to work on such revisions.

With respect to performance assessment, most competition agencies have an internal system to verify cross-divisional consistency in assessing performance. Such system is important to seek more clear, consistent and accurate HR information.

### **a) Approaches to building knowledge**

**Incentives and sanctions.** As indicated by the survey, the most common staff incentive at competition agencies is the direct financial incentive, but promotions are also a very common way to reward employees for good performance. Other options regarding direct financial incentives may also be used such as, reimbursement of academic fees and time-off awards.

The reward for good performance by non-monetary means is diverse across competition agencies. Some competition agencies use public recognition as incentives, such as new job titles, employee of the month, or non-monetary awards. Most competition agencies use alternative options, such as study trips, positive feedback seminars. Also, short-term leave is used by most competition agencies as non-monetary incentives. Finally, in most competition agencies, as a result of positive outcome of specific cases handled by employees may receive positive financial and non-financial incentives.

Sanctions, other than firing, are very frequent in competition agencies for staff underperformance. Examples include, but are not limited to: probation; demotion; reduction of or no annual salary increase; and personal improvement plans to closely monitor performance. Additionally, the majority of competition agencies have established some form of an annual needs assessment for training.

Knowledge retention at DG Comp includes a Wiki-based intranet, coordinated by a multidisciplinary knowledge management team has gained a lot of momentum and now more and more people rely on this to quickly issue specific, sometimes highly technical information. It is also an aspect of the succession planning as sometimes retaining a very specific knowledge was at stake. Best practices in HR policy and processes are also being collected and listed on the DG Comp Wiki.

**Internal training (in-house, buddy/mentor, ICN curriculum).** Most competition agencies provide classroom trainings, but little of this formal method of training occurs inside the competition agencies. In-house training sessions are relevant to provide employees the opportunity to gather new information and also to share their experiences with colleagues.

One competition agency has an interesting type of experience, in which both employee self-development activities and rotational assignments within the agency are used in training. Alternative options for training, such as attending workshops offered by international fora, such as ICN, OECD, and UNCTAD, are also a valuable asset to competition agencies.

As indicated in the survey responses, examples of training for new investigators, attorneys, economists, and managers include but are not limited to, the following: a “Buddy System”, whereby the “buddy” provides the new employee with relevant work-related materials and the “buddy,” as are all other co-workers, is available to answer questions. Another competition agency stated that new employees use the four modules of the ICN Curriculum project to learn the various elements of competition law. Training courses, seminars and internal lectures enable proper knowledge about the work carried on by the Spain’s National Competition Commission and promote exchanges of opinions with experts in this field. DG Comp’s learning and development strategy is essential in order to align operational goals with the pool of skills and knowledge of our people. Up to 70% of the trainings are organized locally (i.e. not centrally at the Commission) and are designed in close cooperation with the Heads of Units to tackle their operational, specific needs.

**External training (ICN, Kings, Fordham, etc.).** In-house training sessions are more relevant because through them a competition agency is able to link the training to its goals. A small number of competition agencies, however, utilize subcontracted training sessions to universities or to other institutions. Competition agencies responding to the survey also reported other options for conducting external training sessions, including, but not limited to, the ICN Curriculum project, external conferences, and external presentations by consultants.

The majority of competition agencies have standardized practices and templates on training sessions.

**Self-initiated training.** In addition to the traditional approaches to building knowledge, the BFTC offers the opportunity for employees to benefit from self-initiated training. In this situation, the employee, having identified a course of training which is relevant to his/her substantive post, is able to seek approval and financial

assistance for the participation in a programme which offers a post-graduate or post-professional qualification. Partial-funding for self-initiated training is provided on the basis that a period of bonding is completed following successful completion of the programme. This approach allows for growth and development at both the employee, as well as the competition agency level.

Webinars and on-line training programmes are also gaining popularity. These methods provide opportunities for acquisition of knowledge, but do not require a physical presence, hence absence from the office is not a factor. Additionally, on-line training programmes generally allow for some level of flexibility in terms of the pace at which an individual completes a course of training.

**Funding.** Almost all competition agencies have a training policy, for example, employees obtaining training to further their education or learning a foreign language. Total funding is a reality in many competition agencies, but out of the competition agencies that provide such training, the most common is for total funding to be offered. However partial funding and a combination of total and partial funding are offered less often among competition agencies.

*More and innovative examples to building knowledge?*

## **b) Career plans**

**Developing and links to overall strategic goals.** Almost all competition agencies have employee training linked to agency objectives and personal development and most of them survey employees on an annual basis to assess individual needs for training initiatives and career development.

**Career development.** As mentioned in the introduction, among the competition agencies surveyed, a clear majority (82 %) state that an agency specific promotion policy is the exception rather than the rule. An example of a competition which represents an exception is Canada. The Bureau has developed various specific competency profiles that outline the expected behaviours for employees and various levels. As part of the core administration's performance management framework, which development of annual performance objectives, and learning and career plans, these competencies can assist staff and managers to identify skill gaps to assist

employees to define and obtain the experience and/or training necessary to achieve their career objectives. These competency profiles also form the basis for development programs. For example, the Bureau implemented a development program for enforcement officers (the largest employee population in the Bureau) in 2006. All new officers are automatically entered into the program, and have up to two years to attain the working level based on an evaluation of observed behaviours against established competencies. It also assists managers to determine whether new recruits are the right fit for the organization, and allows new recruits to advance, provided they meet the requirements, without the need for a competitive process. This program is currently being revised, and the Bureau is presently implementing a similar program for paralegal and enforcement support officers (another key personnel group).

The program addresses recruitment from outside the Canadian federal public service, as well as development for internal Bureau employees. It seeks to recruit individuals who have the qualifications needed to fill entry-level positions and to develop over time to a level of competency that permits them to be autonomous in performing the full range of their working level duties.

**Follow up.** It is important that HR information is accurate. In this regard, all competition agencies have a system for staff to express their disagreement on staff performance. Such a revision takes place in different manners, the least common reported by competition agencies were for reviews to be done by committees, or through mediation and/or anonymous complaints. The majority of competition agencies had alternative methods for employees to express their discontent, including but not limited to grievance or appeals process.

*Examples of a wage policy directed toward dealing with specific challenges?*

*Examples of career plans?*

## **7) Summary and concluding remarks**

TBD