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Annual Report on Competition Policy Developments in Portugal

-- 2022 --

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Portugal

Executive Summary¹

1. In August 2022, the Parliament approved changes to the Portuguese Competition Act and the Statutes of the AdC, in order to transpose Directive (EU) 2019/1 (the so-called ECN+ Directive), which aims at empowering the competition authorities of the EU Member States to be more effective enforcers and to ensure the proper functioning of the EU internal market. It is expected that this will result in an increased capacity for the AdC to detect, investigate and sanction anti-competitive practices, either ex officio, or through leniency applications and third-party complaints.

2. Regarding its antitrust enforcement powers, the AdC issued eleven sanctioning decisions concerning anticompetitive practices covering different types of behaviors and sectors, totaling €487.6 million in fines. This amount was significantly driven by fines in two cases. First, one total fine of €191 million imposed on eight healthcare companies and their respective association, for a concerted behavior which resulted in a restriction of competition in the contracting of hospital services by the public health system ADSE. Second, a total fine of €132 million imposed on four food retail chains and a supplier of food, home care and personal care products for price collusion in a hub-and-spoke practice.

3. Furthermore, the AdC issued five Statements of Objections, including in retail distribution (potential hub-and-spoke arrangements), in the payments sector (potential abuse of dominant position), in the energy sector (potential price fixing and market sharing agreements in public procurement procedures), as well as in the health sector (one for a potential cartel in public tenders, and another for potential price fixing and no-poach agreements). The AdC also carried out 5 dawn raids in 14 premises of 24 entities, one of which was undertaken jointly with the Spanish competition authority (*Comisión Nacional de los Mercados y la Competencia*, CNMC) following a cooperation request by the AdC.

4. In the area of merger control, the AdC maintained its intense and effective activity, issuing 62 merger decisions. Furthermore, the AdC continued to focus on the detection of non-notified mergers (gun-jumping), issuing one sanctioning decision and launching five investigations. In particular, the AdC imposed a fine of €2.5 million to a company in the health sector for gun-jumping.

5. With respect to judicial review, in 2022 the AdC was the addressee of 68 judicial decisions, most of them issued in the context of administrative offences and concerning interlocutory and final decisions. The AdC continued to have a high success rate in judicial litigation, showing the technical robustness of its decision-making practice, to which the internal control system of checks and balances has contributed.

6. In the context of its advocacy powers, the AdC issued 21 opinions, studies and recommendations on draft and existing legislation and regulation in a wide range of sectors, such as banking, energy, agriculture, telecoms, digital economy, labor, transports or water and waste management, seeking to promote a more competitive legal and regulatory framework in Portugal.

¹ This report covers the activities of the Autoridade da Concorrência (AdC) - Portuguese Competition Authority from 1 January 2022 to 31 December 2022.

7. In particular, the AdC published the Issues Paper “Competition and Purchasing Power in Times of Inflation”, where it highlighted the role competition can play in the context of inflation.

8. Moreover, the AdC issued the Policy Brief “Defense of Competition in the Digital Sector in Portugal”, highlighting several initiatives and developments regarding its enforcement activity in digital markets, which remained a priority for the AdC in 2022. In particular, the AdC emphasized the activity pursued by its digital team, established in 2020, following the publication of its 2019 Issues Paper “Digital Ecosystems, Big Data and Algorithms”.

9. Furthermore, the AdC published a “Best Practices Guide on Gun-jumping”. The Guide is of interest to merging parties and their legal advisers and intends to contribute to a better understanding of gun-jumping behavior, in order to ensure compliance and contribute to a more robust competition culture.

10. In 2022, the AdC continued to pursue relevant outreach initiatives, including concerning its “Combating Bid-Rigging in Public Procurement” campaign, its “Best Practices Guide on anticompetitive agreements in the labor market”, as well as its “Guide for Business Associations”.

11. The AdC also awarded the 5th edition of its Competition Policy Award, which encourages research in competition economics and law, to an economics paper entitled “Product Differentiation and Oligopoly: a Network Approach”.

12. In 2022, the AdC launched a new whistleblower tool through which any person or company may report an anticompetitive practice detected during their professional activity. The tool guarantees the protection of the identity of the whistleblower and offers the possibility to opt for completely anonymous and encrypted communication with the AdC.

13. Finally, the AdC had a particularly vigorous year concerning its international activity in 2022. The President of the AdC was elected Vice Chair of the International Competition Network, and the AdC hosted the ICN workshop on “Competition, Growth and Recovery” where the role of competition in the context of economic recovery and inflation was discussed. Moreover, the AdC represented Portugal in meetings of the Working Party on Competition of the Council of the European Union, where the Digital Markets Act (DMA) was negotiated. The AdC also continued to pursue an active bilateral cooperation, having signed a Cooperation Agreement with the competition authority from Mozambique.

1. Changes to competition law and policies

14. In 2022, the Law No. 17/2022, of 17 August, was published, transposing the Directive (EU) 2019/1, which aims at empowering the competition authorities of the EU Member States to be more effective enforcers and to ensure the proper functioning of the EU internal market.

15. The new Law amended the Portuguese Competition Act, approved by Law n. ° 19/2012, of 8 May, and the Statutes of the AdC, approved by Decree-Law No. 125/2014, of 18 August.

16. Among the main amendments introduced by this transposition, it is worth highlighting the expansion of digital evidence, the reinforcement of the AdC’s independence and autonomy, and the consolidation of a minimum set of decision-making and investigation powers of the AdC.

17. It is expected that the new legal framework will result in an increased capacity for the AdC to detect, investigate and sanction anticompetitive practices, either *ex officio*, or through leniency applications and third-party complaints.

2. Enforcement of competition law and policies

2.1. Action against anticompetitive behavior, including agreements and abuses of dominant positions

2.1.1. Summary of activities

18. In 2022, the AdC adopted a total of eleven sanctioning decisions regarding anticompetitive behavior, which led to the imposition of €487.6 million in fines. The AdC's sanctioning decisions included an array of types of behavior, such as hub-and-spoke arrangements or retail price maintenance practices in large retail distribution, a concerted behavior practice in the health sector, a bid-rigging cartel active in the market for the provision of surveillance and security services, a no-poach agreement in the labor market in the professional football sector, a cartel related to the trade of a business information database, or a cartel in the supply of teleradiology services to public hospitals and other public health centers.

19. Besides these eleven sanctioning decisions, the AdC issued five statements of objections, including in the retail sector (potential hub-and-spoke arrangements), in the payments sector (potential abuse of dominant position), in the energy sector (potential price fixing and market sharing agreements in public procurement procedures), as well as in the health sector (one for a potential cartel in public tenders, and another for potential price fixing and no-poach agreements).

20. By the end of the year, the AdC was investigating 11 cases of anticompetitive behavior concerning alleged prohibited agreements - both vertical and horizontal ones -, concerted behavior and decisions by associations of undertakings.

21. **Fines.** The AdC fined undertakings in the total amount of €487.6 million in eleven sanctioning decisions concerning anticompetitive behavior.

22. **Inspections.** The AdC carried out inspections in 14 premises of 24 undertakings in six proceedings one of which pursuant to a cooperation request addressed by the AdC to the CNMC.

Table 1. Summary of antitrust cases in 2022

	No. of cases
Sanctioning decisions	11
Commitment decisions	0
Investigations filed	3
Investigations launched	7
Ongoing investigations (31.12.2022)	11

2.1.2. Sanctioning decisions

Cases No. PRC/2017/4, PRC/2017/11, PRC/2017/3, and PRC/2017/6 – concerted practices in the food retail sector

23. During 2022, the AdC imposed fines amounting to more than €237 million, in four sanctioning decisions, on five large food retail chains (three of them sanctioned in each decision), one soft drinks supplier, a supplier of food, home care and personal care products, a supplier of cosmetics and personal care products, an alcoholic beverages supplier and four individuals, for indirectly concerting the sale prices of specific products, to the detriment of consumers, through hub-and-spoke arrangements, in a scheme of price fixing on retail prices.

24. The first sanctioning decision adopted by the AdC concerned large food retail chains Auchan Portugal Hipermercados, S.A. (Auchan), Lidl & Companhia (Lidl), Modelo Continente Hipermercados, S.A. (Modelo Continente), Pingo Doce – Distribuição Alimentar, S.A. (Pingo Doce), the supplier of soft drinks Sumol + Compal Marcas, S.A. (Sumol Compal) and two of its individual managers.

25. In the second decision, the AdC fined three of the same large food retail chains (Auchan, Modelo Continente, and Pingo Doce), as well as the common supplier of food, home care and personal care products Unilever Firma, Lda (Unilever).

26. In the third decision, the AdC sanctioned Auchan, Modelo Continente, Pingo Doce, the common supplier of cosmetics and personal care products Beiersdorf Portuguesa, Lda (Beiersdorf) and one of its individual managers.

27. In the fourth decision, the AdC fined the same large food retail chains, as well as their common supplier of alcoholic beverages Active Brans/Gestvinus, and a manager of this company.

28. This was the third set of sanctioning decisions issued by the AdC for indirect price fixing between large retail food distribution undertakings, coordinated through common suppliers. In these hub-and-spoke arrangements, through a common supplier, companies ensured the alignment of sales prices to the public, thus restricting price competition between supermarkets and depriving consumers from the benefits of price differentiation.

29. The investigations were initiated by the AdC in 2017 and targeted groups that represent a large part of the large retail food distribution market, thus affecting the majority of the Portuguese population.

30. In the cases decided in 2022, the AdC's investigations determined that the behaviors lasted at least between 7 and 14 years, at least between 2002 and 2017, the year in which the AdC carried out dawn raids in the sector.

31. In 2022, the strengthening of investigations concerning anticompetitive behavior remained a priority for the AdC. In particular, behaviors with the greatest impact on consumers, such as those sanctioned in these decisions.

Case No. PRC/2019/2 – Concerted behavior by health companies, in the contracting of hospital health services by the public health sub-system ADSE

32. In July 2022, the AdC adopted a sanctioning decision against the Portuguese Private Hospitals Association (APHP), as an association of undertakings, as well as against the health companies G.T.S - Grupo Trofa Saúde, SGPS, S.A. and Hospital Privado da Trofa, S.A. (jointly, the Trofa Group), Hospital Particular do Algarve, S.A. (HPA), José de Mello Capital, S.A. and CUF, S.A. (jointly, Mello Group), Lusíadas SGPS, S.A. and Lusíadas, S.A. (jointly, Lusíadas Group), and Luz Saúde, S.A. (Luz), for a concerted behavior which resulted in a restriction of competition in the contracting of hospital health services by the public health sub-system ADSE.

33. The AdC's investigation revealed that, between 2014 and 2019, the abovementioned healthcare companies and groups coordinated among themselves the strategy and negotiating position to be adopted in the context of the negotiations with ADSE. A practice which was carried out through and with the joint participation of APHP.

34. The agreement and concerted behavior were aimed at fixing the level of prices and other commercial conditions, within the scope of negotiations with ADSE. It also aimed at coordinating the suspension and threat of termination of the agreement concluded with ADSE to prevent the settlement of the invoicing by ADSE for 2015 and 2016.

35. The collective action of these companies and groups, through and with the participation of the APHP, allowed them to put pressure on ADSE to accept prices and other commercial conditions that were more favorable for those companies and groups than those that would result from individual negotiations within the scope of the normal functioning of the market. By acting together, they substantially reduced the negotiating power of ADSE.

36. Indeed, in what concerns the suspension and threat of termination of the agreement entered into with ADSE, this would only exert sufficient pressure on ADSE's health subsystem if adopted jointly by the majority of these health companies and groups, as only then would it be possible to significantly limit the access of beneficiaries to health care provision through the ADSE network (contracted regime), forcing beneficiaries to resort to the free regime of the subsystem (more penalizing for beneficiaries and more advantageous for those hospitals).

37. The AdC's sanctioning decision resulted in a total fine of approximately €191 million.

Case No. PRC/2019/4 – Bid-rigging cartel in the security sector

38. In July 2022, the AdC sanctioned a bid-rigging cartel active in the provision of surveillance and security services in public tenders. The services provided by these companies were purchased under public procurement procedures by hospitals, universities, government, public agencies and municipalities. The AdC also imposed an ancillary sanction excluding companies from participating in public procurement procedures relating to the provision of these services.

39. The AdC concluded that the companies coordinated the participation in public procurement procedures by sharing clients and fixing the price levels of the services to be provided, from 2009 until at least 2020.

40. In this cartel, companies maintained a secret agreement according to which they submitted fictitious bids, suppressed bids, or even excluded themselves from participating in public procurement procedures. This was done with the aim of ensuring the contract award to the company chosen among them. This led to less favorable conditions for public purchasers than what would result from a situation of effective competition, which translated, in turn, into higher prices, lower quality or less innovation.

41. The case was opened by the AdC following several complaints submitted by public entities within the scope of the Fighting Bid-rigging in Public Procurement outreach initiative, which the AdC has been carrying out since 2016. Dawn raids were carried out at the companies' premises in 2019, after which a leniency request for a reduction of fine was submitted to the AdC.

42. The AdC's sanctioning decision resulted in a total fine of approximately €41.2 million.

Case No. PRC/2020/1 – anticompetitive agreement in the labor market, in the professional football sector

43. In April 2022, in a case opened *ex officio* in 2020, the AdC sanctioned for the first time in Portugal an anticompetitive practice in the labor market. In this case, the 31 sports companies participating in the 2019/2020 edition of the First and Second Leagues and the Portuguese Professional Football League (LPFP) were sanctioned for having entered into an agreement preventing the recruitment by First and Second League clubs of players who unilaterally terminated their employment contract invoking issues caused by the Covid-19 pandemic.

44. This practice, known as a “no-poach” agreement, is prohibited by competition law since it limits the autonomy of companies to define strategic commercial conditions, in this case, the companies' human resources hiring policy, and may occur in any economic sector. The practice is also likely to affect workers by reducing their bargaining power and wage levels, as well as depriving them of labor mobility.

45. The AdC concluded that the agreement could reduce competitive pressure between the sports companies concerned, being capable of changing the result which would be obtained through competition, by replacing it with a result which is influenced, or even determined, by the coordination of conduct aimed at restricting demand on the market for hiring professional players. The agreement was also capable of reducing the quality of football matches and thereby harming consumers by reducing the competitive environment between clubs, preventing the recruitment of players who could fill gaps in football teams and forcing talented players to leave the country to pursue their professional activity.

46. The AdC's sanctioning decision resulted in a total fine of approximately €11.3 million.

2.2. Judicial review of AdC decisions

47. Judicial review has been a consistently positive indicator of the robustness of the AdC's decisions in recent years. In the context of AdC's sanctioning decisions, the court of first instance, Competition, Regulation and Supervision Court (TCRS) concluded the hearings in the cases of EDP-CMEC and MEO-NOWO, issued a decision on the matter of fact in the Banks case, and began hearings in the security companies' case, as well as in three cases concerning large retail distribution (Super Bock, Primedrinks and Sociedade Central de Cervejas). The TCRS also concluded two hearings in cases concerning mergers, including in a gun-jumping case (Fidelidade).

48. In 2022, the AdC was the addressee of 68 judicial decisions, most of them issued in the context of administrative offences concerning final and interlocutory decisions.

49. Of those 68 decisions, only 51 should be considered for determining the success rate, as the other 17 concern: (i) cases in which the AdC was not directly an interested party in the proceedings; (ii) cases that do not concern the enforcement of competition law; or (iii) decisions with a neutral decision-making content that do not translate into a win or a loss. As such, considering those 51 decisions, 43 of these were completely favorable to the AdC, three were partially favorable and five were unfavorable, which determines a success rate of roughly 84%, or 90% when considering partially favorable decisions as well. Regarding these favorable percentages, it is worth highlighting that the decisions handed out by the TCRS concerning three final sanctioning decisions by the AdC have confirmed the infringements that determined the imposition of a fine by the AdC, confirming also in two of these cases the amount of the fines imposed.

50. Regarding interlocutory proceedings, most of the appeals concerned dawn raids, as well as the procedure for classifying and treating confidential information. As to dawn raids, TCRS and the Lisbon Court of Appeal (TRL) have consistently confirmed the legality of the AdC's activity in this type of investigative measure. As to the procedure for classifying and treating confidential information, the AdC's decision-making criteria are stabilized, and the court's decisions have contributed to a predictable methodology of treatment and classification of information.

2.3. Mergers and acquisitions

2.3.1. Statistics on number, size and type of mergers notified and/or controlled under competition laws

Table 2. Merger decisions adopted in 2022

Notified mergers	65
Total decisions	62
Pending	11

Table 3. Merger decisions adopted in 2022

Phase I	Cases
Non-Notifiable transaction	4
Clearance	53
Clearance with commitments	1
Withdrawn cases	3
Non clearance	
To initiate an in-depth investigation	1
Referral to European Commission	
Tacit approval	
Abandonment	1
Phase II	
Clearance	
Non clearance	
Withdrawn cases	
Tacit approval	
Total final decisions adopted (does not include Phase I decisions to proceed into Phase II)	62

Table 4. Relationship between undertakings' activities (Final Decisions)

	Cases	%
Horizontal	26	42%
Vertical	6	10%
Conglomerate	30	48%
Total	62	100%

Table 5. Breakdown by geographic scope of operation (Final Decisions)

	Cases	%
Multi-jurisdictional filings (within EU)	8	13%
Multi-jurisdictional filings (outside EU)	5	8%
National with involvement of undertakings from other EU member states	25	40%
National with involvement of undertakings from countries outside EU	3	5%
Completely national	21	34%
TOTAL	62	100%

Table 6. Breakdown by type of operation (Final Decisions)

	Cases	%
Sole control	55	88.7%
Joint control	3	4.9%
Acquisition of assets	1	1.6%
Concession	2	3.2%
Other	1	1.6%
TOTAL	62	100%

2.3.2. Summary of significant cases

JCDecaux

51. In April 2022, the AdC decided not to oppose the operation by JCDecaux of the outdoor advertising concession in Lisbon, after the company undertook commitments to prevent competition concerns that would result from the operation by a single operator.

52. The concession involved the installation and operation of advertising on urban furniture, namely on Mupis in the streets and at bus stops, for 15 years. It was promoted by the Municipality of Lisbon following the end of the previous outdoor advertising concessions, which were operated by JCDecaux and Cemark.

53. By concentrating the operation of urban furniture advertising in a single operator, unlike the previous concessions, the current concession would result in less diversity of alternative operators in Lisbon and, consequently, in possible barriers to competition in the outdoor advertising market, which would translate into potential price increases for advertisers and, ultimately, to consumers.

54. These competition concerns were of particular importance, not only because a 15-year concession was at stake, but also because any nationwide street advertising campaign would necessarily involve advertising communication on the streets of Lisbon.

55. The commitments undertaken by JCDecaux included the sub-concession to a competitor of 40% of Lot 1 of the Lisbon outdoor advertising concession. By including a divestment involving the sale, under a sub-concession regime, of a very considerable part of the concession, the commitments contributed towards maintaining a diversity of operators and a supply structure roughly similar to the current one, with two alternative operators exploring outdoor advertising in Lisbon.

Santa Casa da Misericórdia de Lisboa (gun-jumping)

56. In September 2022, the AdC sanctioned Santa Casa da Misericórdia de Lisboa (SCML) with a fine in the amount of €2.5 million for gun-jumping, specifically for implementing a merger before the notification to the AdC.

57. The merger in question consisted of the acquisition by SCML of sole control over CVP – Sociedade de Gestão Hospitalar, S.A., the managing firm of the Portuguese Red Cross Hospital. The acquisition had already been implemented since December 14, 2020, and was notified to the AdC only on May 28, 2021.

58. SCML demonstrated adequate cooperation with the AdC, both during the merger review procedure and during the gun-jumping investigation. In determining the amount of the fine, the AdC took into account the fact that the parties, even though *a posteriori*, voluntarily notified the merger, as well as the fact that SCML suspended the exercise of

the voting rights resulting from the merger and presented a derogation request with the notification, under the terms established in Article 40 of the Portuguese Competition Act.

3. The role of competition authorities in the formulation and implementation of other policies

3.1. Promoting a pro-competitive legislative and regulatory environment

59. In 2022, the AdC issued 21 opinions, studies and recommendations on draft and existing legislation and regulation across many sectors, including banking, energy, agriculture, telecoms, digital economy, labor, transports or water and waste management.

60. The AdC also continued to advocate for the implementation of the pro-competitive recommendations issued in 2018 regarding the legal and regulatory frameworks of 13 liberal professions and the transportation sector (road and maritime transport), in the context of the AdC-OECD Competition Impact Assessment Project.

61. In addition, the AdC submitted to Parliament an Opinion following a new proposal of transposition of Directive (EU) 2019/1 (ECN+ Directive).

3.1.1. AdC's opinions, studies and recommendations across various sectors

62. During 2022, the AdC issued 21 opinions, studies and recommendations on draft and existing legislation and regulation, covering a wide range of economic sectors. These opinions, studies and recommendations included, among others:

- Comments to the Energy Regulator's Public Consultation 107 on extraordinary measures in the context of the National Gas System. The AdC considered that those measures were likely to foster competition in the natural gas market, increase the stability of natural gas supply to final consumers and, consequently, hinder the insolvency risk of market agents operating at the National Gas System. It also considered that some of the measures were in line with the AdC's recommendations for the natural gas supply to industrial consumers, in its 2017 Sector Enquiry.
- Comments on the Draft Law that transposes the Directives (EU) 2019/878 (CRD V) and 2019/879 (BRRD II), concerning the banking sector, by amending, among others, the Legal Framework of Credit Institutions and Financial Companies (RGICSF). The AdC has recommended the elimination of some articles of the RGICSF which focus on competition policy, as it considers them to be in contradiction with competition rules, namely the Portuguese Competition Act and Article 101 of the TFEU.
- Recommendation for the elimination of the quota regime in the Legal Framework for ride-sharing transportation (TVDE) in the Autonomous Region of Madeira (Madeira). The AdC considered that the adaptation of the national TVDE Law in Madeira introduced unnecessary and disproportionate quantitative legal restrictions, by setting an overall quota of 40 vehicles for TVDE services, with a maximum of 3 vehicles per TVDE operator (per operator quota). As such, the AdC recommended the elimination of the quotas.
- AdC's Comments and Recommendation on the proposal of the Portuguese Bar Association to promote the amendment of the academic training requirement for enrolment on the legal practice traineeship. The AdC considered that the proposed amendment may constitute the imposition of a legal barrier to access to traineeship,

with direct impact on access to the profession and to the self-regulated liberal activity of lawyer, which appears to be excessive, unnecessary, and disproportionate.

- AdC's Recommendations on Competition neutrality in the choice of the means of payment accepted by the State. These recommendations aim to promote competition and innovation in payment services markets and efficiency in the use of public funds. They are addressed to (i) the State, as consumer of financial goods and services, (ii) the legislator, as author of normative acts that indicate a means of payment associated with specific service providers, and (iii) public entities, as contracting entities of payment services.

63. **Competition Impact Assessment of Public Policies.** In 2022, the AdC continued its work regarding the competition impact assessment of public policies, issuing five opinions and recommendations. These opinions concerned various sectors, such as transport, agriculture, and water and waste management. In this respect, the AdC's work serves as a tool for modernization and capacity building, so that the public intervention may be more efficient and effective in promoting the economic and social development.

64. **AdC/OECD Cooperation Project.** In the context of the AdC/OECD Impact Project (2016-2018), the AdC prepared, in cooperation with the OECD, a competitive assessment in two sectors of the Portuguese economy: transports and self-regulated professions. In 2022, the AdC continued to implement and promote the conclusions of the AdC/OECD Impact Project. The AdC issued recommendations concerning two legislative initiatives, aimed at the public decision-maker, namely: (i) regarding the maritime cabotage regime, included in the Decree-Law no. 7/2006; and (ii) regarding the "Draft Laws aimed at amending Law No. 2/2013 (public professional associations) and Law No. 53/2015 (professional entities subject to public professional associations)", with a cross-sectoral impact on the various self-regulated professions.

3.2. Reaching out to stakeholders on the benefits and rules of competition

65. **Cooperation with Sector Regulators.** During 2022, the AdC sent 26 requests for an opinion to sector regulators, in the context of 21 merger control proceedings affecting markets subject to sectorial regulation. These regulators include the Regulatory Authority for Communications (ANACOM), the Authority for Mobility and Transports (AMT), the Regulatory Authority for Energy (ERSE), the Regulatory Authority for the Media (ERC), the Portuguese Civil Aviation Authority (ANAC), the Regulatory Authority for Health (ERS), the Water and Waste Services Regulation Authority (ERSAR), among others.

66. **AdC's Strategy for Public Procurement and Labor Markets.** In 2022, the AdC continued its "Fighting Bid-Rigging in Public Procurement" campaign. With these sessions, the AdC has reached over 3,500 participants in the campaign since 2016. The AdC also promoted, during 2022, the advocacy initiative regarding the AdC's Best Practices in preventing Anticompetitive Agreements in Labor Markets, as well as its Guide for Business Associations.

67. **AdC's Webinars and Podcast *CompCast* – *Competition Talks* Series.** To promote dialogue and debate on issues of competition policy, the AdC held six public seminars/webinars on competition law and economics. Speakers included Chiara Fumagalli (Bocconi University, Italy), Oles Andriychuk (University of Strathclyde, Glasgow), Martin Peitz (Mannheim University, Germany), Hans Zenger (DG Competition, European Commission), Pablo Ibáñez Colomo (London School of Economics and Political Sciences, England) and Iacumba Ali Aiuba (Mozambique Competition Authority).

68. **5th Edition of the AdC Competition Policy Award.** The AdC held the 5th edition of the Competition Policy Award, which encourages research in competition economics and law. The award was given to an economics paper entitled “Product Differentiation and Oligopoly: a Network Approach” by Bruno Pellegrino.

4. International Cooperation

4.1. European Cooperation

4.1.1. ECN – European Competition Network.

69. The AdC participated in 45 meetings in the European Competition Network context, as well as in 13 Oral Hearings and Advisory Committee meetings regarding anticompetitive behavior, mergers, and sector enquiries. Furthermore, in 2022, the AdC and the Spanish CNMC carried out joint dawn raids pursuant to the formal cooperation foreseen in Regulation (EC) No. 1/2003 and concerning investigations into possible market sharing agreements and exchange of sensitive commercial information in the wood chip market.

70. In March 2022, the ECN issued a Joint Statement on the application of competition law in the context of the war in Ukraine. In this Statement, the ECN declared that it would not hesitate in acting against the companies who would take advantage of the circumstances through cartelization or abuse of market power.

4.1.2. Council of the European Union

71. During 2022, the AdC represented Portugal in meetings of the Working Party on Competition of the Council of the European Union, in which the Digital Markets Act (DMA) was negotiated. The DMA, which entered into force in November 2022, establishes rules applicable to so-called digital “gatekeepers”, to ensure fair and open digital markets.

4.2. Bilateral cooperation

72. **Norway.** In May 2022, a bilateral meeting took place between the AdC and the Norwegian Competition Authority (Konkurransetilsynet), in Bergen, Norway. The meeting had the purpose of exchanging experiences on topics of common interest, such as hub-and-spoke agreements in the food retail sector, collusion in public procurement, digital markets, anticompetitive agreements in the labor market, as well as banking and pharmaceutical markets.

73. **Spain.** In October 2022, the 9th bilateral meeting between the AdC and the CNMC took place in Madrid, with the purpose of strengthening the strategic cooperation between the two authorities. The AdC and the CNMC shared their recent experience on cartels, mergers, labor and digital markets, as well as recent advocacy initiatives.

74. **Mozambique.** In November 2022, the AdC and the Mozambique Competition Authority (ARC) signed a Cooperation Agreement, in Lisbon, with the purpose of establishing a bilateral cooperation framework between the two authorities. In parallel, the AdC and the ARC carried out a set of working session on competition enforcement and advocacy.

4.3. Multilateral cooperation

75. **ICN - International Cooperation Network.** In 2022, the AdC kept its active participation at the ICN, as member of the ICN Steering Group, ICN/OECD Liaison and at working group level.

76. In March 2022, the President of the AdC was elected ICN Vice Chair for Growth and Recovery. In this context, in October 2022, the AdC organized the ICN Workshop “Competition, Growth and Recovery”, with a panel on “Competition and economic policy-making – building a resilient and inclusive recovery”, and a panel on “Competition in times of inflation”. The event welcomed the participation of 540 representatives of competition authorities, international organizations, governmental members, academics, lawyers, and other stakeholders.

77. In parallel, the ICN Steering Group issued a Statement on “The Role of Competition & Competition Policy in Times of Economic Crisis”, endorsed by the AdC, where it reaffirmed the importance of integrating competition principles in policymaking, when responding to economic crises.

78. The President of the AdC continued acting as ICN/OECD Liaison in the ICN Steering Group, ensuring cooperation regarding competition policy between the two international organizations. In this context, the AdC continued to be an active member of the ICN International Enforcement Cooperation Group.

79. The AdC also continued acting as Co-Chair of the ICN Promotion & Implementation initiative, which is responsible for promoting the implementation of ICN recommendations and the use of ICN work products by competition authorities around the world.

80. In May 2022, in the ICN Annual Conference, hosted by the German competition authority (Bundeskartellamt), the AdC participated as a speaker in the plenary session of the Cartel Working Group "Anti-Cartel enforcement in the next decade: priorities and new trends looking beyond the pandemic", in the Heads of Agency session, in the breakout session of the Unilateral Conduct Working Group "Theories of harm in digital markets" and in the session on “Digital platforms: thinking about theories of harm through incentives and business models”.

81. **OECD – Organization for Economic Cooperation and Development.** During 2022, the AdC took part in the meetings of the Competition Committee and its Working Parties No. 2 - Competition and Regulation and No. 3 - Enforcement and Cooperation, which were held in Paris, from 20 to 24 June 2022, and from 28 to 30 November 2022.

82. In 2022, the President of the AdC continued to act as member of the OECD Competition Committee Bureau, as well as ICN/OECD liaison.

83. The AdC also participated in the 21st Global Forum on Competition (GFC), which took place in Paris, from 1 to 2 December 2022. It also participated in the 20th annual meeting of the Latin American and Caribbean Competition Forum, which took place in Brazil, in September 2022 – an event co-organized by the OECD and the Inter-American Development Bank (IDB).

84. The AdC also participated and held speaking positions in different OECD initiatives, such as the workshops/webinars: “Market studies” (organized by the OECD Korean Policy Centre), “Hub-and-Spoke Cartels” (organized by the OECD and the Competition Council of Latvia), “Advocacy and Competition Assessment” (organized by the OECD-GVH Regional Centre for Competition), and the “GVH Staff Training” (also organized by the OECD-GVH Regional Centre for Competition).

85. **Lusophone Competition Network.** As a founding member of the Lusophone Competition Network, cooperation with Portuguese-speaking countries is a priority for the AdC in the context of its international activity. In this context, the AdC participated, in December 2022, in the 8th Meeting of the Lusophone Competition Network, hosted by the *Autoridade Reguladora da Concorrência* (ARC) of Angola, in a virtual format. Besides the AdC, representatives from the competition authorities of Brazil, Cape Verde, Guinea-Bissau, Mozambique, São Tomé and Príncipe, and East Timor participated in the meeting.

86. **United Nations Conference on Trade and Development (UNCTAD).** In October 2022, the AdC participated with a speaker at a webinar on “Competition and Consumer Protection Policies”, organized by UNCTAD for Portuguese-speaking countries, on the topic “The importance of regional cooperation in the areas of competition and consumer protection”.

87. **Ibero-American Competition Forum.** In parallel to the OECD-IDB Latin American and Caribbean Competition Forum (LACCF), the Ibero-American Competition Forum was held in Brazil, in a hybrid format, in September 2022. The Forum was co-organized by the AdC, the CNMC (Spain) and hosts CADE (Brazil). The Ibero-American Competition Forum includes the co-organizers and competition authorities from Latin America, the Caribbean and the United States of America. The 2022 Ibero-American Competition Forum comprised two panels: “Competition issues in labor markets: advocacy and enforcement”, organized and moderated by the AdC, and “Preventing collusion and improving competition in public bidding”, organized and moderated by the CNMC. The President of the AdC intervened in the Closing Session.

5. Resources of Competition Authorities

5.1. Resources overall

5.1.1. Annual budget

88. The AdC’s 2022 annual budget was € 9 333 530.

5.1.2. Number of employees

Table 7. Number of employees (in 31.12.2022)

Specialization	No. of Staff*
Competition Economists	28
Competition Lawyers	34
Other NAC** staff (Forensic IT, Communications)	4
Other professionals and support staff	24
Total*	90

Note: *Includes management, does not include the Board

** Non-administrative competition staff

5.2. Human resources applied to competition

Table 8. Human resources applied to competition (in 31.12.2022)

Area of activity	No. of Staff*
Enforcement against anticompetitive behavior**	28
Mergers	13
Legal Service	10
Advocacy	8

Note: *Includes management, does not include the Board

**Includes forensic IT team

6. Summaries of references to new reports and studies on competition policy issues

6.1. Issues Paper on Competition and Purchasing Power in Times of Inflation²

89. In August 2022, the AdC published a paper emphasizing the role competition can play in protecting purchasing power in times of inflation.

90. Even if competition policy is not intended to address surging inflation in the short run, it can contribute to achieving a more sustainable economic recovery at a lower cost. In order to promote competition in price, quality, and innovation, the AdC advocates the elimination of unnecessary barriers to entry and expansion, as well as the reduction of switching and search costs. At the same time, the enforcement of the rules by the AdC, through merger control and the investigation of anticompetitive practices, contributes to keeping markets open and competitive. The importance of fighting cartels in public tenders is also highlighted, in order to avoid waste of public funds and overspending in times of inflation. This ultimately saves resources that can be channelled to better purposes, such as public measures to promote economic recovery.

91. In times of inflation, there is a greater propensity for governments to implement administrative price controls. In this regard, the AdC warned against the risks that such measures may bring to competition, as price controls distort price signals in the market and may unintentionally lead to supply shortages and disruptions in the value chain.

92. In the Issues Paper, the AdC reiterated:

- Each firm should set its prices and strategies in the market autonomously (in relation to its competitors in the market);
- The potential risks of imposing price caps in terms of impact on competition should be assessed, as well as the existence of alternative policies that may achieve the same objective;
- Temporary disruption of supply chains or any form of public announcement of prices should not be used to disguise a concerted practice.

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<https://www.concorrenca.pt/sites/default/files/Competition%20and%20purchasing%20power%20in%20times%20of%20inflation.pdf>.

6.2. Best Practices Guide on Gun-Jumping³

93. In December 2022, the AdC published a Best Practices Guide on Gun-Jumping, following a public consultation. In order to safeguard competition in the market, mergers that meet the criteria set out in the Portuguese Competition Act must be notified to the AdC prior to their implementation. Gun-jumping takes place when a transaction is implemented before notification or before the AdC issues a non-opposition decision.

94. Under the Portuguese Competition Act, gun-jumping is subject to be punished with a fine of up to 10% of the turnover of the companies involved. In the last six years (2017-2022), the AdC sanctioned six cases of gun-jumping, imposing a total amount of fines exceeding three million euros.

95. The Guide is of interest to merging parties and their legal advisers, and intends to contribute to a better understanding of gun-jumping behavior, in order to ensure compliance and contribute to a more robust competition culture.

6.3. Policy Brief “Defence of Competition in the Digital Sector in Portugal”⁴

96. In December 2022, the AdC published a policy brief highlighting the initiatives and developments regarding its enforcement activity in digital markets, which remained a priority for the AdC during this year.

97. In particular, the AdC emphasized the activity pursued by its digital task force, established in 2020 following the publication of the AdC’s Issues Paper on “Digital Ecosystems, Big Data and Algorithms”⁵. Two key lines of action were emphasized: first, the assessment of complaints and investigation; and second, proactive initiatives to interact with stakeholders, in order to map competition issues and monitor developments in the sector.

98. Furthermore, the policy brief covers the developments that took place in various areas, such as entry and expansion barriers in the digital sector in Portugal, vertical restraints in the digital sector, the interplay between algorithms and competition, as well as the use of digital investigation tools to strengthen enforcement.

³ <https://www.concorrenca.pt/sites/default/files/Best%20Practices%20Guide%20on%20Gun-jumping.pdf>.

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<https://www.concorrenca.pt/sites/default/files/documentos/estudosrelatorios/Defence%20of%20Competition%20in%20the%20Digital%20Sector%20in%20Portugal.pdf>.

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<https://www.concorrenca.pt/sites/default/files/processos/epr/Digital%20Ecosystems%2C%20Big%20Data%20and%20Algorithms%20-%20Issues%20Paper.pdf>.