

Plugging Gaps in Antitrust Enforcement
Conference on Antitrust, Regulation & the Political Economy

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Thank you, Andrea and Cristina, for the invitation to be here today. It is really my pleasure.

Where has the AdC expanded the agenda and where has it plugged gaps over the last few years?

To this question I would start by saying that the biggest gap we needed to plug was on enforcement *tout court*. We wanted to do more for consumers, more for companies that abide by the rules. And we were successful.

Can or should agencies do more? Absolutely.

I think all of us can agree that there is no overenforcement in our jurisdictions. Even when we are operating at full scale and full speed, the infringements we detect and sanction are only a fraction of what goes on.

Even so, I think we can acknowledge that we plugged some gaps.

First and foremost on the **enforcement gap** through a very strong focus on antitrust enforcement. We did not deviate from this focus throughout the past six years.

While prioritizing consumers and citizens at large, we did not shy away from labor markets, or hub-and-spoke arrangements, as well as on digital and crisis cartels.

Let me state as well that strong enforcement is self-reinforcing.

Last year alone, the **AdC had an all-time high for leniency requests**, a total of 9, of which 1 is a summary request, fueled by the strong enforcement record the AdC has built.

Secondly, in other areas, such as digital and labor markets, it was important for us to identify the main risks of collusion or abuse in those areas, to identify the main benefits of our actions in such fields, and to communicate on both. This prior work made it clearer for us where we should set our priorities (a risk/benefit analysis) and it opened the way to citizens' tip-offs and leniency requests that created a great pipeline for the AdC.

For example, on the **digital** front, we opened proceedings against Google; we opened proceeding in the payments sector, all with a **focus on contestability**. In doing so, we widened the operational toolbox for detection, e.g. through web-scraping.

With **labor markets**, it was clear for us that such markets should not be forgotten. The risks were there, because there was scarce past enforcement activity, and the benefits to consumers and citizens at large were there also.

Allow me to expand on this.

No-poach agreements and barriers to professional mobility are a few examples where the interplay between competition and labor markets arises.

Workers should not be limited in their ability to switch jobs;

Or redirect their careers, if they want to.

This is only fair - and a strong motive to prioritize labor markets.

But there are even stronger reasons now, in the current context. And why?

We emerged from the disruptions of the pandemic with a **scarcity of labor in many areas**.

Open and flexible labor markets **allow for new opportunities**.

They support a resilient, innovative, and inclusive economy.

This is why labor markets are a priority for the AdC since 2021, when we also published a Best Practices Guide on anticompetitive agreements in the labor market, emphasizing the negative effects of no-poach and wage fixing agreements.

Our goal is to ensure that **employers adopt an independent and competitive behavior in labor markets**.

This will in turn contribute to more opportunities for workers and foster innovation.

On enforcement: in 2022, the AdC issued its **first sanctioning decision in the labor market regarding a no-poach agreement**.

And more investigations are currently underway (though at this stage we are not able to share more details).

AdC work on hub-and-spoke agreements

Now turning to **hub-and-spoke investigations**.

In recent years, the AdC issued nine hub-and-spoke decisions with fines over €675mn in large retail distribution for fast moving consumer goods.

These cases revolve around how several supermarket chains used their vertical relationships with common suppliers to promote horizontal price fixing of their own retail prices.

In our cases, both suppliers and retailers played their part willingly and successfully, hampering competition and harming consumers.

This is an example of how, within the boundaries of the current legal framework, we reinforced our enforcement.

Crisis cartels

Let me also say a few words on crisis cartels, which we know arise in times such as the ones we had recently.

Again, we identified the risk and we computed the benefits of being especially vigilant. Because all of this occurred – maybe still occurs- when **many households and firms are most vulnerable**.

And so, as early as 2021, we detected the first cases of crisis cartels. This was the case in sectors that were benefiting from exceptional circumstances, e.g. health.

The investigation yielded, last December, an SO against a cartel regarding clinical tests, including Covid testing.

Advocacy and policymakers

There is a different type of gap that enforcers can plug and that's through timely advocacy that can make **competition benefits clearer to policymakers**.

In the past 3 years, policymakers had to support firms and people throughout a pandemic; and they had to kickstart the economy again under very uncertain scenarios - supply-side bottlenecks, labor shortages, inflationary pressures and the economic constraints resulting from the war in Ukraine.

Competition is not the magic solution to these challenges, but it **can be part of the response**, it can improve the overall response and it can lay grounds for an improved economy once the crisis subsides.

As ICN Vice-Chair, I have strongly advocated for the need to reach out to policymakers, urging them to support and maintain competition as they respond to the economic crises.

Given the mounting challenges on policymakers, this is an area to which the AdC has been devoting much effort.

To assist policy makers in **designing pro-competitive industrial policies**, we keep an eye on the legislation and regulation being produced; on public policies and plans; to ensure we get the timing right.

For example, in August 2022, as public decision makers were facing the surge in energy prices and **inflation**, the AdC sent a note, to the government and parliament, addressing the interplay between competition and inflation.

We are all aware that competition is not a primary tool to address inflation. But competition agencies can play an important role in an inflationary context.

Plugging gaps in international cooperation

None of these were issues of legal gaps. But there is one that we as a community still need to plug. And that is international cooperation in antitrust enforcement. We know the issue was mostly solved for international mergers. But not for international antitrust, in cartels or abuse cases. The exception being of course the European Competition Network that is quite a model for international cooperation.

Contrary to other policy areas where since 9/11 big gaps were plugged, e.g. in money laundering, in terrorism, in fiscal fraud, in other supervision issues in the financial sector, in corruption cases, in antitrust enforcement there is still much to achieve so

that cartels and dominant firms, when they infringe competition law, cannot find safe havens.