

High-Level Africa-EU Competition Conference

“Towards fairer markets in Africa and the EU. Fostering international partnerships in competition policy”

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(please check against delivery)

Good afternoon.

When it comes to international cooperation, there is a gold standard which is the European Competition Network, or ECN in short. There is indeed something particular about the European context that makes the ECN a unique multilateral platform for international cooperation, which is the European Union and the European Treaties.

The European Competition Network as a gold standard

At the ECN, we all share a common legal basis for our enforcement action across the European internal market¹.

All national competition authorities which are members of the ECN are all fully competent to apply Articles 101 and 102 of the Treaty of the Functioning of the European Union.

Apart from the Treaty, there are EU regulations, which are binding at national level, which enable ECN members to cooperate formally in their investigations, and exchange confidential information.

Some procedural rules may differ at national level, but we mutually recognize the standards of each other's systems as a basis for cooperation.²

Cooperation within the ECN is based on equality, respect, and solidarity between NCAs and the European Commission.

Regardless of the size, resources, or experience of each national agency, we are all equally involved.

All cooperation mechanisms within the network are accessible to all NCAs and the European Commission.

¹ See more on the ECN: <https://www.concorrenca.pt/en/international-activity/european-competition-network-ecn>

² https://www.concorrenca.pt/sites/default/files/Declarac%C3%A7%C3%A3o-sobre-funcionamento-da-rede-de-autoridades_EN.pdf

We inform each other of new cases and envisaged enforcement decisions, we may coordinate investigations, help each other with investigations and exchange evidence and other confidential information.

In fact, a key element of the functioning of the ECN is the power that all authorities have to exchange and use confidential information collected by each other. Also, the Commission/one NCA may ask another NCA to collect information or to carry out fact-finding measures on its behalf.

Just in October of last year, the Portuguese Competition Authority and the Spanish CNMC did just that. Both agencies carried out simultaneous unannounced inspections in Spanish territory³. The cooperation between the two agencies was possible under the framework of the ECN and took place as both authorities were investigating possible market sharing agreements and exchange of sensitive commercial information that could affect both the Portuguese and Spanish markets.

There are many examples of this type of cooperation across the European Union.

The fact that we can assist each other in fact-finding actions, such as inspections, or the notification of our decisions is key in ensuring effective competition enforcement.

But the ECN goes so much more beyond legal basis and formal cooperation.

The structure of the ECN enables close cooperation at all levels of the hierarchy of the agencies, from the Directors-General to case-handlers in the all the different areas of an agency.

For example, NCA's experts participate in regular working groups where experts can discuss and share experiences on various issues of common interest pertaining to a certain area, like energy, transport, digital markets or even communication. Chief economists also have their space. This contributes to mitigate gaps in terms of resources and experience among members.

Another relevant aspect of the ECN is that decisions on its functioning are based on consensus. This also contributes to ensure equal opportunities for all members.

So, there are ample opportunities for all members to share their views, pool knowledge and really improve competition enforcement and advocacy together, as a network.

To sum up, the ECN has indeed a unique feature which is the legal basis that allows for formal cooperation in investigations. But it goes beyond that. These informal features may inspire other networks of international cooperation. Regular discussions on substance and competition enforcement and advocacy among peers, either at DGs or case-handler level, are certainly a highlight.

How international cooperation benefits all agencies

International cooperation is important for the development of effective competition enforcement and advocacy strategies.

³ Press release (AdC), Oct. 24, 2022: <https://www.concorrenca.pt/en/articles/portuguese-and-spanish-competition-authorities-conduct-unannounced-inspections>

The Portuguese Competition Authority works with other competition authorities with a view to ensuring the efficient functioning of markets and the protection of consumers. This is done, not only in the context of the European Union, but also internationally.

As an agency that turns 20 years old this year, it has benefited immensely from international cooperation over the years.

The AdC often engages in cooperation in multilateral networks, and bilateral initiatives with other authorities, where we share and learn about recent activities, as well as experience and know-how related to different areas.

International cooperation has been the source of inspiration of many of our initiatives and cases. It has helped us deliver more robust decisions, both in legal and economic terms.

Also, some innovative procedures in our jurisdiction, such as the leniency program or the settlement procedure, have been implemented in Portugal thanks to international best practice.

Moreover, by participating in international cooperation we have actively contributed to best practices and other guiding principles on enforcement and advocacy.

It is important that international standards are, as much as possible, informed by experiences of agencies of all sizes and levels of experience.

In our international experience, I would say it is especially enriching for us to cooperate with authorities from different contexts, such as the ones from African countries.

This cooperation is mutually beneficial. Regardless of differences in experience or resources, more times than expected we face similar challenges. Only by discussing together, can we find the best approaches to respond.

The AdC also pursues international cooperation bilaterally, through Technical Cooperation Protocols, Memoranda of Understanding⁴ and mutual interest projects with other competition authorities, including agencies from Africa, with the aim of promoting and defending competition.

Some of the aspects included in these agreements are: (1) the development of joint studies and research on competition; (2) the establishment of platforms for technical and institutional assistance in all areas inherent to competition advocacy and enforcement; (3) sharing experiences in the implementation of good practices in competition advocacy and enforcement; and (4) promoting joint training sessions and other events for promoting competition.

Such agreements allow for both authorities to share knowledge and improve their policies and procedures.

⁴ See, for example: Portuguese and Mozambican competition authorities reinforce cooperation (2022): <https://www.concorrencia.pt/en/articles/portuguese-and-mozambican-competition-authorities-reinforce-cooperation>, Portuguese and Angolan Competition authorities' MoU (2020): <https://www.concorrencia.pt/en/international-activity/european-competition-network-ecn>; Portuguese and Moroccan competition authorities' MoU (2019): <https://www.concorrencia.pt/sites/default/files/2021-06/2019%20-%20Marrocos%20-%20MOU%20-%20FR.pdf>

Since we are discussing cooperation, it is also relevant to mention that, in its role of OECD/ICN Liaison, the AdC was part of a Special Project Group of the ICN Steering Group, which led the ICN drafting and review contribution of the OECD/ICN Report on International Co-operation in Competition Enforcement⁵ (2021).

Some of the key findings of the survey were that Authorities derive significant benefits from international enforcement co-operation, regardless of their respective size and maturity. The benefits listed include: (1) opportunities for more efficient and effective consideration of competition matters, (2) further enhancing co-ordination and co-operation systems and practices among authorities, and (3) improving relationships, trust and transparency.

So, in a nutshell, it is important to keep in mind that, in a globalized economy, competition authorities have a lot to gain with international cooperation.

There are increasingly competition issues that transcend jurisdictions. Only by joining forces, and sharing our different experiences, know-how and strategies, can we be more efficient in promoting competition, both through advocacy and enforcement, and achieve a more sustainable economic growth everywhere.

⁵ <https://www.oecd.org/competition/oecd-icn-report-on-international-cooperation-in-competition-enforcement-2021.htm>

Other examples of cooperation: the Lusophone Competition Network

The AdC engages in both formal and informal models of international cooperation. And indeed, there are advantages and shortcomings in both.

Formal cooperation, based on binding legislative instruments or treaties, as the ECN – that we’ve already talked about –, may allow for a deeper and more regular cooperation between the parties involved. However, it may imply more resources and obligations.

I could mention other examples of formal cooperation in the field of competition, such as the OECD or UNCTAD.

It is also important to notice that these formal organizations and networks also allow for informal cooperation.

Let me turn then to **informal cooperation**.

Informal cooperation allows us to engage with a wider scope of authorities, no matter how different our settings, contexts, legal systems, or geographical distance are.

The AdC’s cooperation with competition authorities from Africa is indeed mainly pursued on an informal basis, either bilaterally or within multilateral networks, such as the International Competition Network (ICN) or the Lusophone Competition Network.

The **International Competition Network (ICN)**⁶ is a clear example.

The ICN’s mission is to promote cooperation and convergence for a more efficient application of competition rules worldwide.

It brings together more than a hundred competition authorities and non-governmental experts. As a side note, I hope to see more African agencies join the ICN and actively participate.

The ICN develops consensus and cooperation platforms that may take may lead to recommended practices, of a non-binding nature.

ICN members engage in discussions structured around working groups on different topics: advocacy, agency effectiveness, cartels, mergers, and unilateral conduct, also participating in ICN workshops and Annual Conferences.

The focus is rather “hands-on” and there are different ways to participate. Each agency decides the level of resources it wants to engage in these activities. It is possible to choose the topics you are interested in.

The network also functions virtually, so there is a possibility to avoid time and travelling costs. Some funding is also available for in-person events.

The AdC has historically been a very active member in the different working groups and has greatly benefited from ICN outputs and discussions.

⁶ International Competition Network: <https://www.internationalcompetitionnetwork.org/about/>

To give you some examples: we have used in our enforcement activities the ICN Anti-Cartel Enforcement Manual or the Leniency waiver template⁷.

Also as an example of what we can achieve, just last year, along with my role as Vice-Chair of the ICN's Steering Group, the AdC hosted the Competition, Growth and Recovery Workshop⁸, where experts discussed the role of competition policy in fostering economic growth and overcoming inflation.

This is a challenge that we share globally and discussing it together can be beneficial to all.

Let me now tell you a bit more about our cooperation within the Lusophone Competition Network⁹.

The **Lusophone Competition Network** is a valuable informal network for cooperation between authorities from Portuguese speaking countries.

The Lusophone Competition Network was created in 2004 with the Declaration of Rio de Janeiro.

The Lusophone Competition Network, recognizing the importance of competition for economic development, aims to promote technical cooperation among its members and consolidate the foundations of competition systems following best international standards.

The members of this network are the entities responsible for competition issues in all Portuguese-speaking countries: Angola, Brazil, Cape Verde, Guinea Bissau, Mozambique, Portugal, São Tomé e Príncipe and Timor-Leste.

Cooperation between these jurisdictions has progressed through multilateral and bilateral meetings between officials responsible for competition matters.

When the network was created in 2004, there were only two competition agencies formally created, i.e. Brazil and Portugal. More recently, in the past 4 years, three more agencies were created, namely in Angola, Cape Verde and Mozambique. There are also encouraging steps being taken in other jurisdictions, such as Guinea-Bissau.

I should also add that, irrespective of there being a full-fledged agency or not, all member countries equally share the understanding that competition policy may have a positive role in our economies and welfare of our citizens.

This network allows us to take advantage of our common language to cooperate closely with each other in mutual benefit.

Network members meet at least once a year in a high-level meeting, where most important developments in each jurisdiction are shared. There is usually also an in-depth discussion on a topic of common interest.

⁷ "Full waivers of confidentiality in cartel investigations allow competition agencies to exchange substantive information on the submissions made by a leniency applicant".

<https://www.internationalcompetitionnetwork.org/portfolio/leniency-waiver-template/>

⁸ Competition, Growth and Recovery Workshop (Oct 2022)

<https://www.internationalcompetitionnetwork.org/featured/2022-vc-recovery-workshop/>

⁹ Lusophone Competition Network : <https://www.concorrencia.pt/en/international-activity/lusophone-competition-network>

This is a network of cooperation among peers and has also allowed for bilateral cooperation to flourish. For instance, the AdC has signed MoU with the Angolan and Mozambican competition authorities.

Much can be achieved with informal cooperation as it is typically an agency-driven cooperation among peers.

Having a diverse range of cooperation instruments is important to better address challenges all agencies face, as we all share a common goal: making markets more competitive, fostering economic growth and consumer welfare.

Gaps that need to be closed in international cooperation

We stand at a point in which much has been achieved in terms of merger review. Deepening international cooperation to include also antitrust is more challenging. But given that dismantling cartels and situations of abuse is important for all citizens, especially where purchasing power is lower, this should be made a priority.

It is important to be aware of the challenges that we face to achieve this. As mentioned in the OECD/ICN Report¹⁰, some of the challenges to international cooperation are, among others: (1) legal limitations, for example when it comes to exchanging confidential information or cooperate in enforcement investigations; (2) the lack of resources that some agencies may have in comparison to others; (3) trust and reciprocity.

This same reflection is ongoing at the ICN, where new ways of further strengthening opportunities for engagement are being implemented.

If we compare cooperation within the competition area with others, such as corruption, taxation, the financial sector (particularly in anti-money laundering and anti-terrorism), we certainly see that we fall short of expectations: members of international cartels can still find many safe havens.

Building on the successful experience within the EU, it is thus worth discussing how international cooperation in antitrust enforcement could be deepened worldwide.

¹⁰ OECD-ICN report on international cooperation in competition enforcement (2021): <https://www.oecd.org/daf/competition/OECD-ICN-Report-on-International-Co-operation-in-Competition-Enforcement.pdf>