

Women's Competition Network

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(please check against delivery)

Good afternoon.

It is a pleasure to be here today and take part in this event that re-launches the Women's Competition Network (WCN). I thank Kristina Nordlander for the kind invitation.

AdC's recent enforcement activity

Indeed, at the AdC, and despite the Covid-19 pandemic context since early 2020, we have continued to enforce competition as vigorously as possible because we believe that our economies, with or without crises, do much better without cartels and abuse of dominance; and they also do much better without unnecessary barriers to entry and expansion.

Throughout these past two years, the AdC's enforcement activity¹ covered sectors that are especially important to consumers in times of economic distress. And this is important so as to enable a stronger and faster economic recovery.

These sectors include **large retail distribution, health and telecommunications, on which we are ever so more dependent**, among others.

A few examples, we have had an array of hub-and-spoke decisions – with unprecedented fines imposed - over €500mn in six decisions – in large retail distribution. Although the facts date back to the pre-pandemic period, our enforcement will hopefully be beneficial to consumers, given that the behavior is very harmful to them, especially in a crisis situation.

During the pandemic, **the AdC has continued to actively carry out dawn raids** – an important part of its enforcement activity. The Authority carried out 10 such raids in the past 2 years, with lockdown periods affecting us but not holding us back. Recently, in 2022, three dawn raids conducted by the AdC concerned investigations for price fixing and market sharing including **in the health sector; there are links to the pandemic**.

Strengthening our actions on the ground with regular dawn raids every year is, of course, fundamental to be deterrent and to encourage leniency applications.

In the first quarter of 2022, the AdC received three **leniency requests** for full immunity from fines, and one leniency request for a reduction of fine.

Surely, the best incentive for firms and individuals to come forward and file for leniency is vigorous enforcement – the most powerful deterrent of all.

Given the characteristics of the recent crisis, I see potential for detecting cartels in areas such as: (1) in the digital space, and e-commerce in particular, because a lot of business shifted to that area during lockdowns - and stayed there; (2) in no-poach and other wage-fixing agreements; (3) in bid-rigging, especially in public procurement; and (4) in sectors that are most impacted by these exceptional circumstances, e.g. health.

Just a word on **merger control**, we have continued quite active throughout the pandemic, including by pursuing and concluding a number of investigations into **gun-jumping**.

¹ See AdC's main achievements in 2021 and other years in:
https://www.concorrenca.pt/sites/default/files/AdC%20Achievements%202021_1_0.pdf

Labor markets and their importance for the economic recovery

Why are labor markets important during these times? Open and flexible labor markets allow for new opportunities. They support a resilient, innovative and inclusive economy.

Topics such as **barriers to professional mobility** and **no-poach agreements** between firms are just a couple of examples where the interplay between competition and labor markets arises.

In September 2021, the AdC issued a Report and Best Practices Guide on anticompetitive agreements in the labor market². In this Report, the Authority emphasizes that agreements between firms regarding no-poach and wage fixing may have negative effects on markets, for example through the decrease in mobility, on innovation, a negative impact of downstream markets, to say a few. They limit the individual freedom of firms to define their strategic commercial conditions (e.g. hiring and/or setting wage and benefits conditions) and may be responsible for negative effects on workers and consumers.

The AdC seeks to **ensure that employers adopt an independent and competitive behavior** in labor markets, thereby contributing to more opportunities for workers, and favoring innovation.

The AdC's enforcement activity has also targeted anticompetitive behavior in labor markets. The agency is currently investigating several **no poach agreements**, one of which involving the Portuguese Professional Football League and 31 sports companies³.

Economic recovery and the role of competition policy

Looking back at the early onset of the pandemic, two years ago, no one could have expected the economic upheaval that was going to take place up to today. From record quarterly declines in GDP to disruptions in supply and a sharp decrease in the consumption of in-person services, the effects of the pandemic were extreme.

Today, as the threat of the pandemic seems to decline – but maybe a new one surfacing with the invasion of Ukraine -, countries have been deploying economic recovery strategies.

In this context, the role of competition is more important than ever.

Taking competition policy into account in the recovery agenda is a fantastic opportunity to make the economic rebound agile, inclusive and resilient for the future.

Competition breeds initiative and innovation. And innovation has been the main driver of the rise of living standards in the last decades.

Competition energizes the economy. And it can significantly contribute to foster the creation of new innovative businesses.

Competition is also a great instrument for providing equality of opportunities and allowing for success on the merits.

In other words, it makes products and services more accessible for all.

Also, **competition dynamics creates opportunities, including new jobs.** And this is critical at a time when the number of job seekers increased and when workers will need to adapt and retrain for different jobs.

Worldwide, governments have committed large funds to bolster economic recovery, in an effort that will last for years to come. Everyone is called to play a part, including through competition policy.

I will mention **three competition principles** that the AdC believes should be **embedded in recovery strategies** because they can be structurally beneficial to consumers and businesses:

² AdC (2021), Report and best practices guide on anticompetitive agreements in labor markets: <https://www.concorrenca.pt/en/articles/adc-publishes-final-report-and-best-practices-guide-anticompetitive-agreements-labor>

³ AdC's press release (2020) <https://www.concorrenca.pt/en/articles/adc-issues-statements-objections-anticompetitive-agreement-labour-market-first-time>

- **Ensuring competitive neutrality** in public financial support to firms;
- **Removing, across sectors, unnecessary barriers to entry and expansion**, so as to unleash the full potential for recovery and growth; and
- **Combatting bid-rigging and ensuring competitive and efficient public tenders**, given the sizeable public spending and investment head.

The AdC issued, in June 2021, a Report focused on the role of competition policy in implementing the economic recovery strategy⁴. In this Report, the Authority identified the abovementioned set of principles as essential to promote competition, efficiency and innovation.

The second principle, concerning the removal, across sectors, of unnecessary barriers to entry and expansion, ties well with the AdC's activity, concerning occupational licensing, that is, government regulation requiring a license to pursue a particular profession.

In 2018 the AdC worked on a joint project with the OECD to identify barriers to entry in the regulation of 13 professions, such as lawyers, economists, architects or engineers; and it issued a series of recommendations in order to remove existing barriers.

More recently, the Portuguese Government included some of these recommendations in the recovery plan submitted by Portugal to the European Commission.

To conclude on this topic, I think we all agree here that **we need more, not less competition**, to ensure that our economies come out of current circumstances better, stronger and more resilient.

Challenges stemming from crisis cartels and extraordinary measures

During the pandemic, there were temporary measures that established for cooperation and sometimes price caps. But they were (1) **temporary** and (2) **proportionate** to circumstances. Current strains on supply chains are also leading policy-makers to adopt extraordinary measures. Some may have an impact of prices. What is important to say here is that, if needed, these measures should again be temporary and proportionate to the extreme circumstance faced. We have all seen how price caps can be focal points that hinder price decreases, a recent example being, in several countries, the price of Covid self-tests.

On another topic, extreme changes in the economy can lead to crisis cartels.

Crisis cartels, as you know, are those in which firms affected by a crisis agree to reduce overcapacity and maintain or even increase prices.

This can be labeled opportunistic behavior – but it is also one that is illegal.

This is why it is important for consumers that antitrust agencies maintain high vigilance toward anticompetitive behaviors in this period. Because all of this occurs when many households and firms are in a financially vulnerable situation.

The AdC has maintained **anti-cartel enforcement as its core priority**⁵, keeping a strong enforcement record.

In the past 5 years, the Authority sanctioned dozens of companies and associations. Of the total of more than €1bn in fines, over 90% were applied to illegal horizontal practices.

Furthermore, in the last few years, combating **bid-rigging in public procurement** has been one of the priorities of the AdC. The agency launched a countrywide outreach initiative to raise awareness, which resulted in an increase in the quantity and quality of tips received at the AdC, and more enforcement action, with fines imposed.

But in periods of crisis, we must not forget that exceptions may arise, in terms of collaboration between competitors.

⁴ AdC (2021) *The role of competition in implementing the economic recovery strategy*: <https://www.concorrenca.pt/sites/default/files/2021-AdC-contribution-on-economic-recovery.pdf>

⁵ For full details on the AdC's priorities for 2022, please see https://www.concorrenca.pt/sites/default/files/Priorities%202022_0.pdf.

So, one of the challenges during periods of crisis is to ensure compliance with competition rules while taking into consideration some exceptional circumstances.

At the AdC, this is a topic we have embraced since the early stages of the pandemic.

In March 2020 – in tandem with the European Competition Network’s (ECN) joint statement⁶ on the application of competition law during the Covid-19 pandemic –, the AdC issued⁷ a policy statement indicating that, in the period of great collective effort that the country was going through, it remained particularly vigilant in the detection of anticompetitive behavior that exploits the current situation to the detriment of the people and the economy, as that will tend to worsen the economic consequences of the pandemic.

In that policy statement, the AdC acknowledged that the context could trigger the need for temporary business cooperation in order to prevent scarcity, for example, in the supply of essential goods or to address other market failures.

As a result, the AdC made itself available to provide individual guidance to companies, issuing written guidance in the banking and financial sector and in the pharma sector⁸.

Two years later, the possible need for temporary business cooperation is still a reality today, particularly as the war in Ukraine evolves, causing further disruption in several markets.

Enforcers may feel the pressure to act in this respect. The war in Ukraine has been impacting at least energy and wheat prices at a global level. In general, inflation is on the upward trend, though it is unclear how it will evolve. Whether these are lasting effects for the global economy, we still do not know.

In any event, in this regard, at the European Union level, the ECN – the network of competition authorities of the European Union, of which the AdC is part –, issued a joint statement in March 2022 on the application of competition law in the context of the war in Ukraine⁹.

Similar to the ECN joint statement during the Covid-19 pandemic, the ECN emphasized its understanding that the current extraordinary circumstances may trigger the need for companies to address severe disruptions caused by the impact of the war and/or of sanctions in the EU’s Internal Market.

This may include, for example, temporary cooperation in order to (i) ensure the purchase, supply and fair distribution of scarce products and inputs, or (ii) mitigate severe economic consequences, including those arising from compliance with sanctions imposed by the EU.

In any event, in the current circumstances, the ECN mentioned in its joint statement that it will not actively intervene against **strictly necessary and temporary measures** specifically targeted at avoiding the aforementioned severe disruptions caused by the impact of the war and/or of sanctions in the EU’s Internal Market.

Nonetheless, the ECN also mentioned that it would not hesitate to take action against companies taking advantage of the current situation by entering into cartels or abusing their dominant position.

Overall, it is of utmost importance to ensure worldwide (i) that essential products (for example energy, food, raw materials) remain available at competitive prices and (ii) that the current crisis is not used to undermine a competitive level playing field between companies.

Let me also focus my comments on policy measures undertaken during this crisis period and, in particular, on **price caps**.

⁶ See ECN’s joint press release (March 23, 2020): <https://www.concorrenca.pt/en/articles/antitrust-joint-statement-european-competition-network-ecn-application-competition-law>

⁷ See AdC’s press release (March 16, 2020): <https://www.concorrenca.pt/en/articles/ad-c-assures-vigilance-antitrust-practices-exploit-current-situation-detriment-people-and>

⁸ See AdC’s press release (May 20, 2020): <https://www.concorrenca.pt/en/articles/covid-19-ad-c-warns-associations-need-comply-competition-rules>

⁹ See ECN’s Joint Statement (March 21, 2022): <https://www.concorrenca.pt/en/articles/antitrust-joint-statement-european-competition-network-ecn-application-competition-law-0>

In principle – and while accepting very exceptional circumstances –, at the AdC we consider that it is always better to try to find alternative ways to foster competition and to foster conditions for a market outcome that delivers more competitive prices to consumers.

We all know that price caps are interventionist measures.

We think it is essential to take in consideration the array of recommendations that competition agencies have put forward throughout the years, in order to foster competition and better prices for consumers.

For instance, concerning the supply of natural gas to industrial consumers, the AdC put forward several recommendations¹⁰ in 2017 that are now more relevant than ever. Some of these recommendations included (i) deepening the integration of the Iberian natural gas market, (ii) eliminating the double tariff in the transit of natural gas through the Portuguese-Spanish border and (iii) strengthening the conditions for a competitive use of natural gas terminals. The AdC's recommendations were in line with the EU priorities when it comes to the importance of diversifying the sources of supply.

However, we understand that most competition agencies' recommendations may only have an impact in the mid-long term. Since we are currently facing a short-term issue, these recommendations may not give a short-term answer to the problems countries are facing.

Thus, it is our job as competition agencies to provide an informed view to the legislator of the *pros* and *cons* of proposed measures, considering the implications on markets' dynamics.

Indeed, price caps are not all roses for consumers: there are risks associated. It is a challenge to define price caps, particularly in circumstances where markets are rapidly evolving.

We also know that **price caps may function as a focal point for collusion**. This is not new, but it is important to ensure that policy makers are also aware of these risks, in order to balance them with other policy objectives.

Also, there are ways to minimize the impact of such policy measures, namely by ensuring that they are temporary and strictly limited to what is needed to address a wider policy goal.

Extraordinary times require extraordinary measures. However, it must still be a goal of competition agencies to inform policy makers from our lens perspective, so that they are aware of the risks of policy measures.

International coordination in antitrust enforcement

Our perspective is that international cooperation in antitrust enforcement during the pandemic context has been effective.

Certainly, in merger control it works more seamlessly as it is in the interest of merging parties to ensure that different antitrust agencies reviewing the merger avoid for example conflicting remedies.

But **cooperation in cartels** is also possible, and the **European Competition Network (ECN)** is a good example of how competition agencies can help each other when there is an appropriate institutional setting in place.

For example, we have recently carried out unannounced inspections in the surveillance market at the request of the Austrian antitrust agency and continue to cooperate with it on this case. Moreover, the AdC coordinated inspections on another case with the Spanish antitrust agency regarding a given product market¹¹. This would not have been possible without the ECN.

So to finalize our take on international cooperation, many agencies explore the full potential provided for them by law, both on enforcement and advocacy dimensions. And this is proving to be effective.

¹⁰ See AdC's report (2017): https://extranet.concorrenca.pt/PesquisAdC/EPR.aspx?Ref=EPR_2017_23&isEnglish=True

¹¹ See AdC's press release (June 21, 2021): <https://www.concorrenca.pt/en/articles/portuguese-and-spanish-competition-authorities-conduct-unannounced-inspections-possible>