



Questions & Answers - hub-and-spoke cases in the large retail sector
(Updated on September 15, 2022)

1. What is a hub-and-spoke practice? If the suppliers were responsible for the communication of prices, why are the supermarkets sanctioned as well?

A 'hub-and-spoke' cartel, generally referred to as 'hub and spoke', is an anticompetitive behavior which consists of an exchange of commercially sensitive information, in this case, prices, between competing distributors via a third party, e.g. a common supplier, and not between competitors, as is usually the case in a cartel. We speak of a hub-and-spoke in a supplier-distributor relationship when the supplier acts as a 'hub' between the competing undertakings, i.e. the 'spokes'. The hub facilitates, promotes, or guarantees the illicit collusion of commercial strategies and prices, in what constitutes a serious restriction to competition.

The supplier is therefore instrumental in ensuring an alignment that favors supermarket chains and the supplier itself. The ultimate goal of all firms involved is to achieve this alignment and the supplier's role allows to avoid direct contacts, which would have resulted in a traditional cartel.

2. Why is such behavior not admissible? Is it not legitimate for a supplier and a distributor to agree on sales terms?

The existence of contacts between non-competing commercial partners - supplier and distributor - on commercial strategy is in itself not illegal. It is, in fact, inherent to that type of partnership.

Thus, discussions on appealing ways to display products in stores, design of distinctive and more innovative products that respond to the needs of consumers, promotional activity, negotiation of commercial conditions, mere recommendations for selling prices to the public, as well as other ways to make supply more efficient,

are in general lawful and acceptable practices within the scope of such a commercial relationship.

However the exchange of information between competing undertakings via a third party related to each one of them with the purpose of aligning strategies in the market is not a normal and lawful business relationship between companies.

The mentioned behavior exceeds the limits of what is legal and acceptable in a supplier / distributor negotiation.

In a competitive setting, each economic agent autonomously sets its conduct on the market. This requirement for autonomy when operating in the market (e.g. in terms of price determination) is directly in contrast to any contact, direct or indirect, between companies which is likely to influence a competitor's market behavior.

On the contrary, a hub-and-spoke practice implies the exchange of sensitive information, related to the present and future commercial strategy between companies and the dissemination of this information, indirectly, to competing companies, in order to condition their respective behavior.

In the cases of hub-and-spoke decided by the AdC, the communications were aimed at fixing the selling prices to the public, for most of the supplier's products, therefore promoting, guaranteeing or maintaining an alignment of these prices in the large retail distribution market, with the purpose of making them rise, gradually and progressively, over a certain period of time.

3. What is the motivation of undertakings for participating in a hub-and-spoke scheme?

While the motivations of each of the companies participating in a hub-and-spoke scheme can be diverse, they are all oriented towards a common objective: to be favored by a decrease in the competitive dynamics in the market, by controlling the behaviour of all the involved.

On the one hand, suppliers try to fix the price of their products at an artificially higher level, so that they are not subject to contractual renegotiations by the distribution companies and can maintain the margin that they idealized for their products. On the other hand, distribution companies eliminate the uncertainty associated with a "price war", guarantee the expectation of a certain product margin and sell the products at a higher price than what would have resulted in an undistorted market.

Through such behavior, consumers are harmed, with no possibility of choosing the product relative to its price, therefore not benefiting from lower prices that would have resulted from the competitive functioning of the market.

4. What is the impact of this practice on the consumer and how is it affected?

As said before, each economic agent should define, in an autonomous way, its strategy in the market, so as to guarantee competition and consumers' welfare.

A competitive market allows consumers to obtain lower prices, higher quality of goods and services, greater choice among products that offer better value for money, more innovation and also the strengthening of the external competitiveness of agents.

This form of coordination of behavior in the market - as, indeed, any other form of collusion between competitors - involves a high degree of harmfulness to competition, as it causes a reduction in production, division in the market and price increases, leading to the poor allocation of resources to the detriment of consumers.

5. If the behavior has occurred, in some cases, for more than ten years why does the AdC only now sanction it? Is it difficult to detect this type of practice?

Cartels, or equivalent schemes, are by definition secret, and therefore difficult to prove. During the AdC's investigation, evidence allowed to show that the involved undertakings were conscious of the infringement. They evidenced this in communications obtained during unannounced inspections, in which they called for the destruction of evidence.

During the unannounced inspections that the AdC carried out in 2017 at numerous facilities of large distribution firms and suppliers across the country, evidence of this practice was seized. It was found that such behavior went back, in some cases, as far as 2007.

These unannounced inspections led to the opening of thirteen investigations by the AdC.

6. What is the consequence, for companies, of the involvement in this type of behavior?

When the involvement in this type of practice is established, it constitutes an infringement to Competition Law. As such, it is punishable with a fine which cannot exceed 10% of the turnover achieved by each company in the year immediately preceding the final decision. For individuals, the limit is 10% of the annual remuneration earned in the last year of the infringement.

The fines are decided within the framework set by Competition Law and the [Guidelines for the Application of Fines](#) [in Portuguese].

7. How many sanctioning decisions for hub-and-spoke practices has the AdC issued?

Since December 2020, the AdC has issued nine sanctioning decisions on investigations related to the unannounced inspections carried out in 2017. These nine decisions targeted nine suppliers of a wide range of products sold in supermarkets (i.e., soft drinks, alcoholic beverages, packaged bread and cakes, food, personal care and cosmetics, cleaning products). The decisions involved six large distribution chains and ten supermarket and supplier managers. Fines imposed exceeded €675.000.000.

See more on the decisions [here](#).