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Directorate for Financial and Enterprise Affairs
COMPETITION COMMITTEE

Annual Report on Competition Policy Developments in Portugal

-- 2021 --

This report is submitted by Portugal to the Competition Committee FOR INFORMATION.

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Portugal

1. This report covers the activities of the Autoridade da Concorrência (AdC) - Portuguese Competition Authority from 1 January 2021 to 31 December 2021.

1. Executive Summary

2. In 2021, the AdC experienced a dynamic year on both competition enforcement and advocacy, despite the impact of the pandemic.

3. Regarding its enforcement powers, the AdC issued six sanctioning decisions concerning anticompetitive practices covering different types of behaviors and sectors, totaling €137.8 million in fines. This amount of fines was significantly driven by the total fine of €134.7 million imposed in three sanctioning decisions on five large food retail chains, two beverage suppliers, a bakery supplier and four individuals, for hub-and-spoke arrangements. Since 2020, the AdC has been tackling hub-and-spoke arrangements in large retail distribution, which are a highly damaging practice to consumers, affecting most of the Portuguese population.

4. Furthermore, the AdC issued five Statements of Objections, including in the security and surveillance services sector, in the food retail sector (potential hub-and-spoke arrangements), in the health sector, in pay-TV services, as well as in labor markets, concerning the professional football sector (no-poach agreement). The AdC also carried out 5 unannounced inspections to 10 premises and 20 entities, and launched a new electronic platform for antitrust cases (STEP).

5. In the area of merger control, the AdC maintained its effective and rigorous activity, issuing 59 merger decisions. Furthermore, the AdC continued to prioritize the detection of non-notified mergers (gun-jumping), issuing three sanctioning decisions, one statement of objections and launching four investigations. In particular, in a merger that involved a vertical integration, the AdC imposed a fine of €300.000 on an insurance company for gun-jumping. Moreover, the AdC reduced and simplified the merger notification forms, aiming at reducing the burden on firms and on the AdC concerning the analysis and processing of information.

6. With respect to judicial review, the judicial interaction between courts and the AdC intensified in 2021. In particular, the AdC was the addressee of 60 judicial decisions, most of them issued in the context of administrative offences and concerning interlocutory decisions. Pursuant to recent years' activity, the AdC continued to have a high success rate in judicial litigation, to which the AdC's robust checks and balances system has contributed.

7. In the context of its advocacy powers, the AdC issued over 35 opinions, studies and recommendations on draft and existing legislation and regulation in a wide range of sectors, such as banking, energy, telecoms, digital economy, labor, transports or water and waste management, seeking to promote a more competitive legal and regulatory framework in Portugal.

8. In particular, the AdC issued the Issues Paper "Labor Market Agreements and Competition Policy" and Best Practices Guide "Preventing Anticompetitive Agreements in Labor Markets". The AdC centered this initiative in raising awareness regarding the negative effects of no-poach and wage-fixing agreements for workers and consumers.

9. In addition, the AdC published the Report “Competition in the implementation of the economic recovery strategy” aimed at contributing to an agile and resilient economic recovery, listing a set of principles that can guide the post-pandemic economic recovery policies, highlighting the importance of competition for a sustained recovery.

10. In 2021, the AdC continued its “Combating Bid-Rigging in Public Procurement” outreach initiative, launched in 2016 with the aim of raising awareness regarding bid-rigging in public procurement and promoting competition in this area. The AdC organized five sessions of the campaign, reaching a total of more than 3,200 participants in a wide range of sectors.

11. The AdC also awarded the 4th edition of its Competition Policy Award, which encourages research in competition economics and law, to a legal paper entitled “Shifting the Digital Paradigm: Towards a Sui Generis Competition Policy”.

12. In 2021, the AdC launched its new visual identity and website, in an initiative that sought to provide more transparency, better access to information and new contents.

13. Finally, the AdC remained very active in the various European and international *fora*, hosting key events. In particular, the AdC organized the European Competition Day and the 2021 ICN Cartel Workshop, in Lisbon, in a hybrid format, and hosted the 7th Meeting of the Lusophone Competition Network, in a virtual format. Moreover, during the first semester of 2021, the AdC was part of the chairing team of the Working Party on Competition during the Portuguese Presidency of the Council of the European Union (PPUE), which is leading the negotiation of the Digital Markets Act (DMA). The AdC also continued its active bilateral cooperation.

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

14. In 2021, the AdC adopted a total of six sanctioning decisions regarding anticompetitive behavior, which led to the imposition of €137.8 million in fines. The AdC's sanctioning decisions included an array of types of behavior, such as hub-and-spoke arrangements in large retail distribution, a non-compete agreement in the market for the provision of services to waste management systems in Portugal, a vertical agreement in the distribution of essential medical devices in the Portuguese market or a price fixing decision by an association of undertakings that restricted competition in the market of land surveying services.

15. Besides these six sanctioning decisions, the AdC issued five statements of objections, including in the security and surveillance services sector, in the food retail sector (potential hub-and-spoke arrangements), in the health sector, in pay-TV services, as well as in labor markets, concerning the professional football sector (no-poach agreement).

16. By the end of the year, the AdC was investigating 16 cases of anticompetitive behavior concerning alleged prohibited agreements - both vertical and horizontal ones -, concerted behavior and decisions by associations of undertakings.

17. **Fines.** The AdC fined undertakings in the total amount of € 137.8 million in six sanctioning decisions concerning anticompetitive behavior.

18. **Inspections.** The AdC carried out inspections in 10 premises of 20 undertakings in four proceedings and, in a fifth case, pursuant to cooperation request by a national competition authority of the European Union.

Table 1. Summary of antitrust cases in 2021

	No. of cases
Sanctioning decisions	6
Commitment decisions	0
Investigations filed	1
Investigations launched	3
Ongoing investigations (31.12.2021)	16

2.1.2. Sanctioning decisions

Case No. PRC/2017/5, PRC/2017/8 and PRC/2017/13 – concerted practices in the food retail sector

19. In November and December 2021, the AdC imposed fines amounting to a total of €134.7 million, in three sanctioning decisions, on five large food retail chains, two beverage suppliers, a bakery 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.

20. The first sanctioning decision adopted by the AdC concerned large food retail chains Modelo Continente Hipermercados, S.A. (Modelo Continente), Pingo Doce – Distribuição Alimentar, S.A. (Pingo Doce), Auchan Retail Portugal, S.A. (Auchan) and ITMP Alimentar, S.A. (Intermarché), two individual managers of Modelo Continente and the beverage supplier Super Bock Bebidas, S.A. (Super Bock).

21. In the second decision, the AdC fined three of the same large food retail chains (Modelo Continente, Pingo Doce and Auchan), as well as the common bakery supplier Bimbo Donuts Portugal, Lda. (Bimbo Donuts).

22. In the third decision, the AdC sanctioned Modelo Continente, Pingo Doce, Auchan, Intermarché and Cooplecnorte - Aquisição e Fornecimento de Bens e Serviços, C.R.L. (owner of E.Leclerc), the common beverage supplier Sogrape Distribuição, S.A. (Sogrape), as well as two individual managers of Modelo Continente and Sogrape.

23. This was the second set of sanctioning decisions issued in Portugal 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.

24. In its three decisions, the AdC also imposed an immediate halt to the behaviors, since it was not possible to rule out that the investigated behaviors were still ongoing.

25. 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.

26. In the cases decided in 2021, the AdC's investigations determined that the behaviors lasted at least between 10 and 13 years (at least between 2004 and 2017). In the three cases, the anticompetitive behavior aimed at gradually and progressively increase prices in the retail market.

27. In 2021, the strengthening of investigations concerning anticompetitive behavior was one of the AdC's priorities. In particular, behaviors with the greatest impact on consumers, such as those sanctioned in these decisions.

Case No. PRC/2020/2 – decision by an association of undertakings in the market of land surveying services

28. In March 2021, the AdC adopted a sanctioning decision against the National Association of Surveyors (ANT), as an association of undertakings, for restricting competition in the market for the provision of land surveying services, through fixing the prices of these services. The AdC imposed a fine of €50,000.

29. Within a settlement procedure, the ANT benefited from a reduction in the fine for acknowledging the practice, cooperating with the AdC and waiving any type of judicial litigation.

30. The AdC's investigation revealed that, from November 2003, the ANT approved and published, in its website, a fee table designed to standardize the prices of services provided by its members. Such a practice infringes competition rules by preventing each member of the association from autonomously defining its own commercial variables.

31. The fee table established the value of remunerations and other amounts to be charged by land surveyors in the exercise of their activity. In particular, the table segmented prices according to the scale used in the topographic work and the area associated to the surveyors' activities. Moreover, it stipulated fixed hourly wages and minimum unit wages.

32. The case was opened in May 2020, based on a complaint received by the AdC.

Case No. PRC/2020/3 – restriction of competition in the distribution of essential medical devices

33. In May 2021, the AdC sanctioned Natus Medical Incorporated (Natus) for restricting competition in the distribution of essential medical devices in the Portuguese market. The AdC imposed a fine of €50,000.

34. Within a settlement procedure, Natus benefited from a reduction in the fine for acknowledging the practice, cooperating with the AdC and waiving any type of judicial litigation.

35. The investigation, opened by the AdC in June 2020 following a complaint, revealed that Natus limited sales outside the geographic areas assigned to distributors and also defined the portfolio of products that could be sold by distributors to specific customers, from September 2018 until, at least, December 2020.

36. The AdC's investigation established the existence of a vertical agreement involving the supplier Natus and its two national distributors, Mundinter and Sano-Técnica. Such an agreement provided for market sharing and a ban on passive sales, with potential impact on the determination of prices and other commercial conditions to be practiced by distributors, thereby creating artificial conditions for market activity.

Case No. PRC/2019/3 – non-compete agreement in the market for the provision of services to waste management systems

37. In June 2021, the AdC sanctioned companies Blueotter, SGPS, S.A., Blueotter Circular, S.A., CITRI - Centro Integrado de Tratamento de Resíduos Industriais, S.A., Proresi, S.A., EGEO SGPS, S.A. and EGEO - Tecnologia e Ambiente, S.A., as well as six managers and board members, for implementing a non-compete agreement in the market for the provision of services to waste management systems in Portugal, between 2017 and 2019. The AdC imposed a total fine of €2.9 million.

38. The investigation was opened by the AdC in May 2019, following the notification of the acquisition of sole control of a company of the EGEO Group by the Blueotter Group.

39. The investigation allowed to conclude that the concerned undertakings entered into agreements that established non-compete clauses, through which the Blueotter Group and the EGEO Group agreed not to compete in the business areas in which each group was active.

40. Based on the available evidence, the AdC held that these non-compete obligations created a nationwide horizontal market sharing agreement, characterized by a continuous effort by the Blueotter Group and the EGEO Group to eliminate any competitive dynamics between them.

41. The non-compete agreement undermined the interests of the consumers of both groups, who might have benefited from better commercial conditions if there had been competition between the two groups.

42. The non-compete obligations agreed between the Blueotter Group and the EGEO Group were in effect from April 2017 to July 2019.

2.2. Judicial review of AdC decisions

43. In 2021, the judicial interaction between courts and the AdC intensified, when compared to 2020. In particular, in what concerns trials in cases where final sanctioning decisions were adopted: three trials were initiated and concluded with the sentencing of undertakings (APEC, Ferrovias and Super Bock cases) and a trial was initiated in the context of two other proceedings (Banks and EDP-CMEC).

44. Also, in the context of appeals against final sanctioning decisions, there was a judicial stabilization of the requirement to provide a suitable deposit for the purposes of obtaining the suspensive effect of an appeal (and guarantee of payment of the fine imposed). The TCRS has been ensuring a case-by-case analysis of the financial situation of those targeted in proceedings, requiring in some cases the provision of a deposit in the full amount of the fine imposed, while in other cases merely requiring a percentage of the full amount of the fine imposed. Also, in other cases, it has denied the possibility of providing a deposit, establishing that there is no suspensive effect on the appeal (as it happened in 2021 within the context of the APEC and EDP-CMEC proceedings).

45. In 2021, the AdC was the addressee of 60 judicial decisions, most of them issued in the context of administrative offences and concerning interlocutory decisions.

46. Of those 60 decisions, 50 were favorable to the AdC, six were partially favorable, and four were unfavorable, which determines a success rate of roughly 85%. This percentage increases to 93% if partially favorable decisions are also considered. Of this favorable percentage(s), 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.

47. Regarding interlocutory proceedings, most of the appeals (33 new appeals in 2021) continued to concern dawn raids, and the procedure for classifying and treating confidential information. As to the first topic, TCRS and TRL have consistently confirmed the AdC's activity in this type of diligence, including the legality of the seizure of read e-mails in the context of dawn raids. As to the second topic, 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.

48. The AdC's checks and balances system has contributed to the authority's effective activity and to the technical robustness of its decision-making practice. The interdepartmental cooperation within the AdC, both in the administrative and judicial phase of proceedings, has ensured a technical complementary, which is essential in the judicial confirmation of the AdC's decision-making practice. In 2021, this approach contributed to the fulfillment of the strategic and operational objectives established by the AdC for the year.

49. Finally, during 2021, the AdC was represented in around 110 legal proceedings, ensuring 25 court proceedings (some with multiple sessions), either in person or remotely. The AdC also ensured the submission of over 100 court pleadings.

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 2021

Notified mergers	61
Total decisions	59
Pending	8

Table 3. Breakdown by nature of operation (Final Decisions)

Phase I	Cases
Non-Notifiable transaction	5
Clearance	53
Withdrawn cases	1
Non clearance	
To initiate an in-depth investigation	
Referral to European Commission	
Tacit approval	
Phase II	
Clearance	
Clearance with commitments	
Non clearance	
Withdrawn cases	
Tacit approval	
Total final decisions adopted (does not include the Phase I decision to proceed into Phase II)	59

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

	Cases	%
Horizontal	30	51%
Vertical	6	10%
Conglomerate	23	39%
Total	59	100%

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

	Cases	%
Multi-jurisdictional filings (within EU)	4	7%
Multi-jurisdictional filings (outside EU)	6	10%
National with involvement of undertakings from other EU member states	22	37%
National with involvement of undertakings from countries outside EU	7	12%
Completely national	20	34%
TOTAL	59	100%

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

	Cases	%
Sole control	43	73%
Joint control	13	22%
Acquisition of assets	1	1.7%
Other	2	3.3%
TOTAL	59	100%

2.3.2. Summary of significant cases

SFI and AOC (gun-jumping)

50. In October 2021, the AdC sanctioned, through two separate proceedings, SFI Group Gestión de Participaciones Minoritarias (SFI) and AOC Health GmbH (AOC Health) for implementing mergers without prior notification of the acquisition and, consequently, without obtaining approval from the AdC (gun-jumping). The AdC imposed a fine of €60.000 to SFI and of €35.000 to AOC Health.

51. In both cases, the mergers should have been notified to the AdC by each of the undertakings prior to their implementation, since the notification thresholds foreseen in the Portuguese Competition Act concerning market share were fulfilled (Article 37).

52. In the case of SFI, the infringement took place in 2020, upon acquiring White and Green Natural, a producer and distributor of plant-based drinks.

53. In the case of AOC Health, the failure to notify also took place in 2020, upon acquiring Stemlab, the owner of the Crioestaminal and Bebecord brands.

54. In setting the amount of the fines, the AdC took the cooperation of the undertakings into account, as well as the fact that the mergers in question were notified voluntarily, although after their implementation.

55. The two undertakings used the settlement procedure foreseen in the Portuguese Competition Act, which allows undertakings to benefit from a reduction of the fine by acknowledging liability for the infringement and waiving their rights to litigate in court.

Fidelidade (gun-jumping)

56. In August 2021, the AdC sanctioned Fidelidade SGOIC for implementing a merger without prior notification of the acquisition and, consequently, without obtaining approval from the AdC (gun-jumping). The AdC imposed a fine of €300.000.

57. The merger in question consisted in the acquisition, by Fidelidade SGOIC, of sole control over the Saudeinveste Fund. The acquisition had already been implemented since October 2018 and was only notified to the AdC in February 2019.

58. The target Saudeinveste Fund is a real estate investment fund, with a portfolio comprising a number of real estate assets. These assets are used, under lease agreements, by several private hospitals and healthcare clinics controlled by competitors of Luz Saúde, the healthcare arm of the Fidelidade group.

59. As a result of the transaction, the Fidelidade group would acquire control over the management of the real estate's assets, where the competitors of Luz Saúde provide healthcare services. The vertical integration thereof would potentially create a risk of

foreclosing the market for private healthcare providers, which depend on the aforementioned assets to provide their healthcare services.

60. In July 2019, the AdC considered, based on the facts of the case, that the merger would likely create a negative impact on competition, with a particular focus on the market for the provision of healthcare services by private hospitals and healthcare clinics. Following this assessment, Fidelidade abandoned the merger and restored the management of the Saudeinveste Fund to its former management fund investment company.

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

3.1. Promoting a pro-competitive legislative and regulatory environment

61. In 2021, the AdC issued over 35 opinions, studies and recommendations on draft and existing legislation and regulation across many sectors. These included sectors such as Banking, Energy, Telecoms, Digital Economy, Labor, Transports or Water and Waste Management.

62. 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.

63. In addition, and following the AdC's submission to the Government of the proposal of draft legislation for the transposition of the ECN+ Directive in 2020, the AdC submitted an Opinion to the National Parliament on the proposal of draft legislation. The AdC also issued an opinion on amendments to the Competition Act.

3.1.1. AdC opinions, studies and recommendations across various sectors

64. During 2021, the AdC issued over 35 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 and recommendations on the temporary program to stimulate the economy "IVAucher", to promote competitive conditions, technological neutrality in public procurement and competitive neutrality of public intervention. The AdC warned, in particular, of the risks of competition that may arise from the implementation of the IVAucher program arising from the current design of the program, commenting on the requirements of the services to be provided and the award criteria in the tender procedure and the conditions for opening up the implementation of the IVAucher program.
- Comments on the Preliminary Draft of the Banking Activity Code (CAB), elaborated by the Bank of Portugal. The Draft CAB includes rules on competition policy, namely on practices restricting competition and on merger control. In this context, the AdC issued recommendations, on one hand, aiming to contribute to ensure the compliance of the Draft CAB with European Union Law and, on the other hand, to create effective competition conditions in the sector.
- Opinion on the Draft Law that approves the European Communications Law and transposes the European Code of Electronic Communications. The AdC commented on the bill from a perspective of promoting competition, with a focus

on issues relating to consumer mobility. The AdC referred to its study on loyalty clauses in the telecom market published, in April 2020. The AdC noted as positive the inclusion of three of the AdC's 2020 recommendations in the bill. However, the AdC identified a set of relevant aspects on which it commented and put forward concrete recommendations.

- Comments on to the European Commission's Draft Guidelines on collective bargaining agreements for solo self-employed. The AdC considered that the European Commission's initiative, in general, stemmed from legitimate and important concerns about the working conditions of individual self-employed workers who are in a situation of "vulnerability and economically dependents". However, it signaled that the public policy options under discussion could cover more than just the truly vulnerable self-employed. As such, the AdC considered that it would be important to ensure that the final measure to be adopted, by the European Commission, would be limited to self-employed workers, in a situation of real vulnerability, and not to others, to avoid unnecessary costs for competition and consumers.
- Comments regarding four legislative initiatives, under assessment in the National Parliament, aimed at amending Law No. 2/2013 (public professional associations) and Law No. 53/2015 (professional entities subject to public professional associations). The legislative initiatives, in particular the broadest in scope (Bill No. 974/XIV/3), welcomed the recommendations and proposals for legislative amendment to Law No. 2/2013 and Law No. 53/2015 resulting from the AdC/OECD Cooperation Project (2016-2018), which resulted in OECD recommendations (2018) and in the AdC's Action Plan (2018) for the implementation of those recommendations, towards the elimination of legal barriers to access and exercise of self-regulated professions.

3.1.2. Competition Impact Assessment of Public Policies

65. In 2021, the AdC continued its involvement in the competition impact assessment of public policies, issuing eight opinions. These opinions concerned various sectors, such as the book sector and the water and waste management sector. 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.

3.1.3. AdC/OECD Cooperation Project

66. 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 2021, the AdC continued to implement and promote the conclusions of the AdC/OECD Impact Project, particularly concerning self-regulated professions. The AdC issued comments and recommendations concerning two legislative initiatives in this sector, aimed at the public decision-maker, namely: (i) regarding the "Draft Law No. 94/XIV/2nd that proceeds to the revision of the CVM and the CMVM Statutes, and proposes amendments to the RJSA, to the OROC Statutes, to the RGOIC, to the RGICSF, to the CIRE, to the CSC and to related legislation", with an impact on the access and exercise of the profession of Certified Public Accountant (ROC) and the activity of Certified Public Account Firms (SROCs); 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, thereby allowing the

establishing of conditions for the implementation of other proposals of the AdC's Action Plan.

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

3.2.1. Cooperation with Sector Regulators

67. During 2021, the AdC sent 22 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 Authority for Mobility and Transports (AMT), the Portuguese Civil Aviation Authority (ANAC), the Regulatory Authority for Communications (ANACOM), the Regulatory Authority for the Media (ERC), the Regulatory Authority for Health (ERS), the Water and Waste Services Regulation Authority (ERSAR) and the Regulatory Authority for Energy (ERSE).

3.2.2. AdC Strategy for Public Procurement and Labor Markets

68. In 2021, the AdC organized five sessions of the “Combatting Bid-Rigging in Public Procurement” campaign, reaching an audience such as the Regional Health Administration of Lisbon and Tagus Valley, the Northern Regional Health Administration, the Center Regional Health Administration or the Portuguese Railways (CP). In total, since 2016, the AdC has reached over 3,200 participants in the campaign. The outreach initiative regarding bid-rigging in public procurement is an AdC priority given the expected benefits to the economy. The AdC also launched the advocacy initiative regarding the AdC's Best Practices in preventing Anticompetitive Agreements in Labor Markets.

3.2.3. AdC Webinar and Podcast CompCast – Competition Talks Series

69. To promote dialogue and debate on issues of competition policy, the AdC held seven public webinars on competition law and economics. Speakers included Patrick Rey (University of Toulouse, France), Christos Genakos (University of Cambridge, UK), William E. Kovacic (George Washington University, USA), Tommaso Valletti (Imperial College in London, UK), Oles Andriyчук (Strathclyde University, UK), Alison Jones (King's College London, UK) and Giorgio Monti (Tilburg University, The Netherlands). The guest speakers of the podcast series *CompCast – Competition Talks* on competition law and economics were Patrick Rey, Christos Genakos, William E. Kovacic, Tommaso Valletti, Oles Andriyчук, Alison Jones, and Giorgio Monti.

3.2.4. 4th Edition of the AdC Competition Policy Award

70. The AdC held the 4th edition of the Competition Policy Award, which encourages research in competition economics and law. The award was given to a legal paper entitled “Shifting the Digital Paradigm: Towards a Sui Generis Competition Policy” by Oles Andriyчук.

3.2.5. New Visual Identity and Website

71. In October 2021, the AdC launched its new visual identity and website. This initiative sought to modernize the agency's identity, provide a better user interface, as well as provide better access to information and new contents.

4. International cooperation

4.1. European Cooperation

4.1.1. ECN – European Competition Network

72. The AdC participated in 35 meetings in the European Competition Network context, as well as in 9 Oral Hearings and Advisory Committee meetings regarding anticompetitive behavior, dominant positions, and mergers. Furthermore, in 2021, the AdC and the *Comisión Nacional de los Mercados y la Competencia* (CNMC) carried out simultaneous dawn raids concerning investigations into possible market sharing agreements in the market for business information subscriptions. Also, in 2021, the AdC organized, alongside the Austrian Federal Competition Authority (BWB), dawn raids in the surveillance sector, pursuant to the formal cooperation foreseen in Regulation (EC) No. 1/2003.

4.1.2. Portuguese Presidency of the Council of the European Union

73. Between January 1 and June 30, 2021, Portugal took over the rotating Presidency of the Council of the European Union. In this context, the AdC, together with the Ministry of Foreign Affairs, chaired the meetings of the Working Party on Competition during the Portuguese Presidency of the Council of the European Union (PPUE). In particular, the AdC was Vice-Chair in the 20 meetings of the Working Party on Competition, which is leading the negotiation of the Digital Markets Act (DMA). The DMA aims at establishing, at the European level, rules applicable to digital gatekeepers, to ensure fair and open digital markets. In this respect, in March 2022, the Council of the European Union and the European Parliament reached a provisional political agreement on the DMA, which benefitted from the early work of the PPUE.

4.1.3. European Competition Day

74. In the context of the PPUE, the AdC organized the Conference of the European Competition Day on 15 June 2021, in a hybrid format (both in Lisbon and remotely). Trending topics were addressed, including digital markets, economic recovery and the role of competition policy for a more inclusive and social Europe. The Conference was aimed at the general public and brought together government representatives, competition authorities, companies and academia, with a total of more than 500 participants. In the context of the European Competition Day, the AdC published a report on the role of competition in implementing the economic recovery strategy, aimed at contributing to an agile and resilient economic recovery.

4.2. Bilateral cooperation

4.2.1. Italy

75. In September 2021, in tandem with the annual ECA meeting, a bilateral meeting took place between the President of the AdC and the President of the *Autorità Garante della Concorrenza e del Mercato* (AGCM). The two heads of authority discussed topics such as digital markets and strengthening the cooperation between the two agencies.

4.2.2. Poland

76. In October 2021, the AdC and the Polish Office of Competition and Consumer Protection (UOKiK) held their 1st High-Level Bilateral Meeting in Warsaw. This meeting

followed a visit of staff from the Polish authority to the AdC in Lisbon, in December 2019. The 1st High-Level Bilateral Meeting focused on the priorities of both institutions, presented by the President of the UOKiK and the President of the AdC. Both authorities discussed recent developments in cartels and antitrust, the interplay between competition and labor markets, as well as competition in digital markets.

4.2.3. Angola

77. In December 2021, the AdC participated in the “II Conference on Competition and Economic Regulation in Angola”, organized by the Angolan Competition Authority (ARC). The Conference marked the third anniversary of the ARC and brought together national and international experts, academics, lawyers, and economists to discuss current and relevant topics, under the motto "Promoting Competition in the Development of Economic Policies."

4.3. Multilateral cooperation

4.3.1. ICN - International Cooperation Network

78. In 2021, and despite the Covid-19 pandemic context, the AdC kept its active participation at the ICN, as member of the ICN Steering Group, ICN/OECD Liaison and at working group level.

79. 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 Special Project Group on International Enforcement Cooperation.

80. Also, in 2021, the AdC, as a founding member, continued to integrate the ICN Framework for Competition Agency Procedures (ICN CAP). The ICN CAP is a multilateral informal instrument designed to strengthen procedural fairness in competition law enforcement.

81. The AdC 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.

82. It is worth highlighting the AdC’s participation as a speaker in the Economics Webinar of the Agency Effectiveness Working Group on “Market Studies: Economist’s Perspective”, in March 2021, and in the Webinar of the Cartel Working Group on “Assessing Crisis Cartels at Time of Covid-19: Lessons Learnt from Past Crises”, in May 2021. The AdC also participated as a speaker in the plenary session of the Merger Working Group "Merger control in the 3rd ICN Decade" and in the breakout session "ICN Third Decade Project", at the ICN Annual Conference, hosted by the Hungarian Competition Authority (GVH).

83. Finally, it is worth highlighting the AdC’s active participation in the ICN Steering Group Project on Competition, Consumer & Privacy, a project that deals with the intersection between competition, consumer protection and privacy.

ICN Cartel Workshop 2021

84. Between 17 and 19 November 2021, the AdC hosted the ICN Cartel Workshop 2021, in Lisbon, with in-person participants and livestreaming for ICN member agencies and non-governmental advisors (NGAs).

85. The ICN Cartel Workshop 2021 brought together 100 in-person attendees and more than 550 online participants, including representatives of competition authorities from all around the globe, as well as NGAs from international organizations, lawyers, economists, academics, and others, in a unique opportunity to engage in both high-level and practical discussions on anti-cartel enforcement and policy.

86. Topics included, among others, enforcement in the context of economic recovery, detection, and investigative tools, including dawn raids and digital evidence, crisis cartels, hub-and-spoke arrangements, cartels in labor markets, and collusion and algorithms.

OECD – Organization for Economic Cooperation and Development

87. During 2021, 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 a virtual format from 7 to 11 June 2021, and from 29 November to 3 December 2021.

88. In 2021, the President of the AdC continued to act as member of the OECD Competition Committee Bureau, as well as ICN/OECD liaison.

89. The AdC also participated in the 20th Global Forum on Competition (GFC), which took place in a virtual format, from 6 to 8 December 2021.

90. Moreover, in February 2021, the President of the AdC was a speaker at the OECD's "Open Competition Day, with an intervention on the "Keynote Panel on Competition Policy in the Economic Recovery".

91. The AdC also held various speaking positions in different OECD initiatives: workshops / webinars "Fighting Bid-rigging in Brazil" (organized in the context of a OECD project to fight bid-rigging in Brazil, in February), "Workshop on Merger Control" (organized by the OECD Korea Policy Centre, in March), "Abuse of dominance and unilateral conduct" (organized in the context of the OECD Thailand Country Programme, in May), "Advocacy issues with heads of agencies" (organized by the OECD Regional Centre for Competition in Latin American in Lima, in May), "Regulatory Barriers to Competition in Professional Services: Measurement and Reform Experiences" (November) and "Carrying out effective antitrust investigations" (organized by the OECD-GVH Regional Centre for Competition in Budapest, in December).

Lusophone Competition Network

92. 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 September 2021, considering the importance of competition for economic development and recovery, the AdC held the 7th Meeting of the Lusophone Competition Network, in a virtual format. The Meeting was attended by representatives of the Autoridade Reguladora da Concorrência (ARC) of Angola, Conselho Administrativo de Defesa Econômica (CADE) of Brazil, Ministry of Finance of Cape Verde, Ministry of Commerce and Industry of Guinea-Bissau, Autoridade Reguladora da Concorrência (ARC) of Mozambique, AdC, Autoridade Geral de Regulação of São Tomé and Príncipe, and Ministry of Tourism, Commerce and Industry of East Timor. The meeting consisted of a session focused on the challenges faced in the context of economic recovery, attended by representatives of the members of the Lusophone Competition Network, and of a webinar on the importance of competition policy for economic recovery, open to the public in general.

United Nations Conference on Trade and Development (UNCTAD)

93. In July 2021, the AdC participated in UNCTAD's Intergovernmental Group of Experts on Competition Law and Policy – 19th session, with the President of the AdC being a speaker at the Opening Session. The AdC also took part in the international webinar on Law and Competition Policy in Lusophone Countries, held by the UNCTAD in September 2021. Besides the UNCTAD and the AdC, representatives from the CPLP, Cape Verde, CADE Brazil, East Timor, and the ARC Angola were present.

Ibero-American Competition Forum

94. In parallel to the OECD-IDB Latin American and Caribbean Competition Forum (LACCF), the Ibero-American Competition Forum was held, in a virtual format, in September 2021. The Forum was co-organized by the AdC and the CNMC (Spain). The Ibero-American Competition Forum includes the co-organizers and competition authorities from Latin America, the Caribbean and the United States of America. The 2021 Ibero-American Competition Forum comprised two panels: "Competition in digital markets: instruments and institutional design" and "Effective antitrust sanctioning policy: fines, director disqualification, bans from public tenders and other sanctions".

5. Resources of Competition Authorities

5.1. Resources overall

5.1.1. Annual budget

95. The AdC's 2021 annual budget was € 9 406 420.

5.1.2. Number of employees

Table 7. 5.1.2. Number of employees in 31.12.2021

Specialization	No. of Staff*
Competition Economists	28
Competition Lawyers	35
Other NAC** staff (Forensic IT, Communications)	5
Other professionals and support staff	24
Total*	92

Notes: * 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 31.12.2021

Area of activity	No. of Staff*
Enforcement against anticompetitive behavior**	28
Mergers	12
Legal Service	9
Advocacy	9

Notes: *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. Report on the role of competition in implementing the economic recovery strategy¹

96. In June 2021, the AdC published a Report on the role of competition in implementing the economic recovery strategy. The AdC sent the report to the Portuguese Government, to contribute to an agile and resilient national economic recovery.

97. The AdC report consists of a roadmap of principles and recommendations in three core areas:

- Removing, across sectors, unnecessary barriers to entry and expansion;
- Combatting bid-rigging and promoting competitive and efficient public tenders; and
- Ensuring competitive neutrality in public financial support to firms.

98. In particular, the AdC highlighted the importance of removing unnecessary barriers to entry and expansion, so as to unleash the full growth potential of the economy.

99. The AdC saw an opportunity to promote the implementation of several recommendations, aimed at removing barriers to entry in a number of crucial sectors such as energy, transport and ports, telecommunications. The AdC also reiterated the recommendations issued following the AdC/OECD cooperation project, aimed at promoting the removal of unnecessary restrictions on access to liberal professions, thus helping to create opportunities for retraining, mobility and reintegration into the labor market.

100. The AdC also stressed the importance of ensuring that public procurement procedures are efficiently designed, enhancing competition, and combatting bid-rigging, given the sizeable public spending and investment ahead.

¹ <https://www.concorrenca.pt/sites/default/files/2021-AdC-contribution-on-economic-recovery.pdf>

101. Finally, the AdC highlighted the importance to ensure the competitive neutrality of the state's financial support to companies, so as to minimize distortions to competition among companies in the market.

102. This advocacy initiative aimed at promoting competition, efficiency, and innovation and to foster the conditions for a sustained and inclusive economic recovery, following the Covid-19 pandemic, in line with the AdC's priorities for 2021.

6.2. Report and Best Practices Guide on anticompetitive agreements in the labor market²

103. In September 2021, the AdC published the Issues Paper “Labor Market Agreements and Competition Policy” and adopted the Best Practices Guide “Preventing Anticompetitive Agreements in Labor Markets”, at a time where the interaction between competition and the labor market have occupied a prominent place in the recent global discussion on competition policy.

104. The AdC centered this advocacy initiative in raising awareness as to the negative effects of no-poach and wage-fixing agreements – both liable to infringe the Portuguese Competition Act and, if applicable, article 101 of the TFUE – for workers, consumers, firms, efficiency and innovation.

105. With this initiative, the AdC seeks to promote labor markets in which employers adopt a competitive behavior, in favor of efficiency and innovation. Both are even more essential in a context of economic recovery. This initiative also promotes compliance with competition rules and informs about leniency and other reporting tools.

106. No-poach and wage-fixing agreements can arise in a variety of sectors and involve different types of employees, from top-level managers to highly skilled workers and unskilled workers. In the Issues Paper, the AdC identifies a number of sectors where these agreements have been found, namely in the health sector, technology sector, railway sector, among many others. In the sports sector, the AdC recently issued a Statement of Objections for a no-poach agreement that arose in the context of the Covid-19 pandemic.

107. The Best Practices Guide is a key pillar of the communication strategy of this initiative. It is a comprehensive tool to ensure that companies, human resources professionals and other employees, recruitment agencies, among others, understand the negative effects for workers, consumers and the economy more widely, resulting from anticompetitive agreements on labor markets.

108. The publication of the Issues Paper and Best Practices Guide was preceded by a public consultation to gather the views of stakeholders. The AdC received contributions from consumer associations, business associations, and representatives from workers, among others. The AdC has launched an outreach campaign among stakeholders to promote the key messages of its advocacy initiative.

² <https://www.concorrenca.pt/en/articles/adc-publishes-final-report-and-best-practices-guide-anticompetitive-agreements-labor>

6.3. Sector Inquiry on FinTech³

109. The AdC recently carried out an analysis of the FinTech market in Portugal to follow up on the recommendations made in 2018. The results show that although some progress has been made, obstacles to competition and innovation persist in the financial sector and that full implementation of most of the measures recommended by the AdC is still pending.

110. In parallel, the AdC conducted a sector inquiry to companies providing financial services based on digital technologies (FinTech), with the aim of collecting operators' perspectives. The results of the inquiry also show that barriers to entry and innovation persist in the sector.

111. The AdC has reiterated the importance of adopting measures aimed at removing unnecessary barriers to the entry and expansion of operators in Portugal, allowing the benefits of innovation and competition in this sector to be materialized for consumers.

6.4. Best Practices for Awarding Public Road Passenger Transport Service Contracts⁴

112. In March 2021, the AdC adopted best practices for awarding public road passenger transport service contracts. The best practices are addressed to transport authorities, as entities that are responsible for planning, organizing and concession of services.

113. The AdC sent a set of guidelines for best practices in the public road transport sector to municipalities, Inter-Municipal Communities (CIM) and Metropolitan Areas (AM). The guidelines are intended to promote competition and efficiency when signing public road passenger transport service contracts, a process that is currently underway in Portugal.

114. The AdC advocates that the process should follow, with the necessary adaptations, the set of principles and measures to promote competition that the AdC has been defending for public procurement and concession awarding, across several sectors in the economy. Furthermore, given that some matters take on added relevance in the case of public road passenger transport services, a set of specific best practices for this sector was put forward.

115. The implementation of these best practices will allow promoting competition for the market, to the benefit of consumers, via better service quality and/or greater innovation, and for the State, in terms of the efficient allocation of public resources.

6.5. Competitive analysis of the hemodialysis care provision sector⁵

116. In April 2021, the AdC proposed recommendations to the Portuguese Government, aimed at removing unnecessary barriers to the opening of new centers and at promoting

³ <https://www.concorrenca.pt/en/articles/adcs-sector-inquiry-fintech-74-companies-operating-portugal-consider-there-are-barriers>

⁴ <https://www.concorrenca.pt/sites/default/files/documentos/guias-promocao-da-concorrenca/2021%20-%20AdC%20Best%20Practices%20Public%20Service%20Contracts%20Road%20Passenger%20Transport.pdf>

⁵ <https://www.concorrenca.pt/en/articles/ad-c-restates-recommendations-hemodialysis-sector-after-public-consultation>

patient choice concerning hemodialysis treatments, after receiving contributions from the Regulatory Authority for Health (ERS) and stakeholders in a public consultation on the preliminary version of the report.

117. These recommendations include:

- Publishing the standard contract clauses for the hemodialysis sector, overdue since 2013;
- In the standard contract clauses:
 - Assessing the possibility of granting a contract by tacit approval; or, if not possible, assessing alternative mechanisms to increase legal certainty for private operators; and
 - Introducing a deadline to respond to contract requests.
- Removing unnecessary obstacles that prevent entry of operators and/or the opening of centers because of the existing capacity, the concentration in the market, or the use of existing resources.
- Creating a unique portal or form that, from the point of view of the operators, link both the licensing and the contract procedures required by the NHS.
- Ensuring that the quality requirements indicated by best practice guidelines for hemodialysis are technologically neutral.
- In the non-emergency patient transport regulations:
 - Introducing a duty for the Regional Health Administrations (ARS) to inform the patients when several facilities meet the NHS transportation criteria; and
 - Developing a cost-benefit analysis on the possibility of introducing a reimbursement option for patients who ensure their own transport, limited to a certain reference value.
- Creating a system of indicators based on quality so as to facilitate comparison between hemodialysis centers.