

Opening Remarks - ICN Cartel Workshop 2021

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Good morning. *Bom dia.*

On behalf of the Portuguese Competition Authority (AdC), it is my great pleasure to welcome you to the **2021 ICN Cartel Workshop**.

Today is a truly special date.

After more than a year and half marked by the absence of ICN in-person events, **this workshop brings the ICN back together in the same room.**

I am sure you share a sense of appreciation today for being able to gather circa 100 in person participants from 24 jurisdictions. And more than 400 attending remotely from another 42 jurisdictions.

Together, we make the global antitrust community with a keen interest in cartels.

The ICN turned 20

First, a word on the International Competition Network, which has turned 20 this year. This network has been all about sharing knowledge and experience. About connecting competition enforcers and experts from across the globe. Because of the ICN, we have over time become more effective anti-cartel enforcers. More effective in our own jurisdictions because of the shared best practices, but also more

efficient on a global scale because of international cooperation. As a consequence, there are less places to hide for firms that breach antitrust law.

This is the spirit of the ICN.

At the Portuguese Competition Authority (the AdC) we are strongly committed to enhancing the relevance of the ICN.

One of its most relevant moments, as I am sure you will agree, is one when we discuss the most harmful behavior to consumers and to firms which abide by the law, i.e. cartels.

So let me go over why cartel workshops, and this one, in particular, matter.

[Crisis cartels and economic recovery](#)

In the current context, anti-cartel enforcement is more important than ever.

Countries around the world are strongly increasing public spending in the context of recovery strategies. This is done simultaneously with a movement towards new digital and green standards.

Moreover, firms are revising their business models and workers who were affected by lasting changes due to the Covid crisis are looking for new professional avenues.

All of this means that we are, at present, in a context that may induce collusive behavior. Therefore we must maintain high vigilance for so-called **crisis cartels**.

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

All of this occurs when many households and firms are in a financially vulnerable situation.

We must therefore do our best so that efforts of taxpayers, households and firms, are not misappropriated by members of a cartel.

How do we do this?

We must be up to speed in all dimensions of cartel enforcement: prevention, detection, investigation and deterrent sanctioning.

This workshop will allow precisely for that.

Dear colleagues, the fight against cartels is **at the heart** of antitrust enforcement.

This is why, at the AdC, we have maintained anti-cartel enforcement as our **core priority**. In the past 5 years, we have sanctioned dozens of companies and associations. Of the total of more than €900mn in fines, over 80% were applied for illegal horizontal practices.

In times such as the current one, we find the right amount of inspiration among ICN members to keep competition enforcement very much alive. As citizens, we would also benefit from seeing it embedded in countries' recovery agenda. Competition is very much a **catalyzer** for a more innovative, more inclusive and more resilient economic recovery. Therefore, we need more, not less competition in our economies.

[Anti-cartel enforcement: priorities during the economic recovery](#)

We have an ambitious agenda for the next three days.

We will discuss how anti-cartel enforcement enables a stronger economic recovery. There are many dimensions in which economic recovery and anti-cartel enforcement intersect. I just mentioned crisis cartels.

But let me also mention cartels in labor markets.

Firms may collude to coordinate their strategies in labor markets, namely engaging in no poach and wage fixing agreements, or even coordinating strategies for dismissing employees.

At the AdC, we recently published an Issues Paper on “*Labor market agreements and competition policy*”¹ along with a guidebook for firms to avoid anticompetitive agreements in such markets. We state that employers should adopt an independent and competitive conduct. By doing so, they will be contributing to higher levels of efficiency and innovation, which are even more essential in a context of economic recovery.

Another aspect that concurs to a more resilient economic recovery is **combatting bid-rigging in public procurement**.

With levels of public spending surging, we must avoid wasting funds due to a lack of competition in tenders. It is thus crucial to ensure that public tenders are efficiently designed so as to promote bidder participation and competition. This also lowers the risk of seeing cartels being formed for the tender.

At the AdC, we have put in place a full program on Combatting Bid-Rigging in Public Procurement². This outreach initiative has had several positive results that span from an increase in the quantity and quality of tips received at the AdC to more procedures with efficient tender design. More importantly for this audience, it has led to open important cases in sectors such as railway maintenance, and, more recently, one in security services and two in the health sector.

Finally, investigating and sanctioning cartels in sectors with a direct impact on households is particularly relevant in times of economic downturn.

At the AdC we have been addressing hub-and-spoke agreements in the large retail sector. We have issued four sanctioning decisions for this conspiracy over the past eleven months. These schemes deprive consumers of more choice and better prices in many essential goods. Hub-and-spoke conspiracies is amongst the topics to be addressed at the workshop.

¹ Autoridade da Concorrência (2021): *Labor market agreements and competition policy*, at <https://www.concorrencia.pt/sites/default/files/Issues%20Paper%20Labor%20Market%20Agreements%20and%20Competition%20Policy%20-%20final.pdf>

² Autoridade da Concorrência: *Combatting bid-rigging in public procurement* at <https://www.concorrencia.pt/en/fighting-bid-rigging-public-procurement>

The **effectiveness of competition enforcers' toolboxes** in their mission to prevent and combat anticompetitive agreements will also be discussed.

This is particularly relevant when digitization has so much changed business models and the way firms and enforcers work.

Throughout the years, **competition agencies have grown in resources and expertise**. Let me give you a few examples many of which I draw from the AdC:

- Enforcers now extensively use IT forensic tools that enable case teams to seize and review evidence in a more efficient way;
- Many have complaints platforms, with a dedicated tipline and even a whistleblower tool;
- Several have developed screening tools for public procurement procedures that allow for an efficient detection of suspicious patterns.

Furthermore, I would also emphasize, at the EU level, the relevance of the **ECN+ Directive**, which aims to empower competition authorities of EU Member States to be more effective enforcers and ensure the proper functioning of the EU internal market. In particular, the ECN+ Directive ensures that agencies can seize digital evidence, including emails and instant messaging.

Finally, during this workshop we will **discuss the challenges ahead in anti-cartel enforcement, with a focus on the digital era**.

Competition agencies have set a **strategy** to tackle concerns in the **digital space**. This strategy encompasses conduct from dominant players, but also coordination between competitors. The latter may be, to date, an issue less well explored and one that will also be discussed in this forum. It is important to understand the use of **algorithms and artificial intelligence**, including in anti-cartel enforcement.

That is why the AdC has deepened its understanding of the use of algorithms and artificial intelligence that may facilitate anticompetitive practices through its 2019 **Issues Paper on Digital Ecosystems, Big Data and Algorithms**.

One thorough and systematic way of informing anti-cartel teams on potentially illegal behavior in the digital space is through the work of our teams in sector enquiries and surveys. At the AdC we are currently conducting an open call to update and gather information on potential barriers to entry and expansion of firms in the digital space, including exclusionary strategies. This is an open survey aimed at listening to the views of the different stakeholders that will allow us to make the digital features of our economy work in a more competitive manner, to the benefit of consumers. At the same time, we are also updating and widening the coverage of a survey on the use of algorithms that we conducted in 2018.

I come to an important point which is the following: enforcers are generally relatively small entities that tackle competition across vast economic sectors. We have a lot to gain from pooling our talent from different departments and thus achieve a more targeted enforcement by using this pooled knowledge. This is something we, at the AdC, did in creating a Digital Task Force, which joins efforts between different departments so as to better enforce.

A strong enforcement record

To conclude, let me say a word of appreciation for your continued antitrust enforcement during the pandemic, including carrying out dawn raids. You have proved that antitrust agencies are determined, deterrent and transparent agencies. Together, we have delivered robust cartel enforcement throughout these times. We have kept perceived risks of illegal behavior at a higher level than potential rewards.

I hope that the coming days will allow each of us to get up to speed with the state of the art in cartel enforcement in many parts of the world.

So that next year, we will meet again and discuss the great work that each of you did in combatting new cartels. And by doing so, adding value to our citizens and to firms that play by the rules.

Thank you.