
The Role of Competition Policy in the Economic Recovery

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(please check against delivery)

It is a great pleasure to take part in the OECD Competition Open Day.

I view this initiative, now in its third edition, as an important opportunity created by the OECD to reach out, beyond a specialist circle, to **anyone** interested in the topic and in the benefits of competition policy. Congratulations to the OECD Competition team for the continued initiative.

Just a year ago, when we met before the onset of the first wave of Covid-19, we had scarce visibility on the **economic upheaval** that was going to take place throughout the rest of the year and beyond.

We have since seen record quarterly and annual declines in GDP¹, which were led both by disruptions in supply and a sharp decrease in the consumption of in-person services.

Air travel in Europe was down by more than 90% last April and it is still down by almost 70% relative to last year².

Stadiums have been empty, with fans now exclusively watching matches at home.

Open air and indoor concerts were cancelled for the most part.

These are some of the severely injured sectors: transportation, hospitality and in-person recreation³.

A year on, as many of our countries are experiencing a third wave, we meet again for the Competition Open Day. This time, to discuss the **role of competition policy in the economic recovery**.

A massive recovery effort will be needed. Not like a recovery from a cyclical economic downturn, but rather like a recovery from a major shock.

Contribution from advocacy initiatives

Recovery effort does not mean necessarily financial support. It means **much more**, including reform that fully allows companies and individuals to innovate and demonstrate their unique skills.

So my first point is that for the recovery to be as ample as possible, **competition policy** must be **at its core**.

It is never enough to remind oneself that competition is what drives productivity and innovation. And that it is at the core of the transformation we aspire. Transformation towards digitalization and sustainability, for example.

¹ In Portugal, 2020 saw the largest annual decrease in GDP since 1928 (-7.6% in 2020, -8.1% in 1928) and 5th largest since 1865. Cf. Instituto Nacional de Estatística (INE)

https://www.ine.pt/xportal/xmain?xpid=INE&xpgid=ine_destaques&DESTAQUESdest_boui=415333651&DESTAQUES_modo=2&xleng=en

² Cf. European Statistical Recovery Dashboard : <https://ec.europa.eu/eurostat/cache/recovery-dashboard/>

³ Cf. American Economic Association: <https://www.aeaweb.org/conference/webcasts/2021/>

We thus need **more, not less, competition** so as to ensure that we come out of this challenging process better, stronger, more resilient.

It is important to keep this in mind – *more, not less, competition* - because of the strong waves against competition law enforcement that we face in times of crisis.

But we won't succeed in putting competition policy in *every* policy measure.

So my second point is that, as enforcers, we should focus on those **sectors** that enable a stronger and faster recovery.

How do we do this?

We could look at recent data and what read it tells us.

For example, that:

- Many workers have been laid off because their workplace was closed.
- There has been a spike in unemployment⁴ and labor market slack⁵, defined as the shortfall between the workers' desired amount of work and the amount of paid work available.
- Many workers have their home as their office⁶ and therefore are not working face-to-face. There is certainly a lot to be said about gains from this situation, but also about losses, for example in terms of innovation processes.
- The same goes for students whose school or university is now at their own home⁷.
- Online medical appointments have seen an unprecedented increase⁸. Also with positives and negatives.
- Our purchasing habits have also changed⁹. We are now a lot more into online retail¹⁰ and the number of paid users of streaming services has surged during the pandemic¹¹.
- At the same time, governments around the world have reacted to the pandemic with support measures of several trillion USD dollars worldwide¹².

⁴ Cf. Eurostat, *Unemployment statistics*:

https://ec.europa.eu/eurostat/statistics-explained/index.php/Unemployment_statistics

⁵ Cf. Eurostat, *Statistics explained, Labour market slack*:

https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Labour_market_slack_-_unmet_need_for_employment_-_quarterly_statistics&oldid=507103

⁶ In Q2 2020, 23.1% of the employed population in Portugal was working remotely. In Q4 2020, this was 12.3%. Cf. INE, *Labour force survey, Ad-hoc module, Working from home*: https://www.ine.pt/xportal/xmain?xpid=INE&xpgid=ine_destaques&DESTAQUESdest_boui=479312693&DESTAQUES_tema=55574&DESTAQUESmodo=2

⁷ The number of people using learning platforms for their own education increased from 14.5% to 30.8% in 2019-2020 among people aged 16 to 74 in Portugal. Cf. INE, *Information and knowledge society, household survey*: https://www.ine.pt/xportal/xmain?xpid=INE&xpgid=ine_destaques&DESTAQUESdest_boui=415621509&DESTAQUESmodo=2

⁸ In 2020, in-person medical appointments and home visits decreased by respectively 38.2% (-7.9 million) and 36.7% (-70,000) in Portugal. On the other hand, the number of virtual medical appointments and other medical virtual contact increased by 101.5% (9.3 million). <http://www.saudeemdia.pt/?p=indicadores>

⁹ In January 2021, the number of physical sales using the Multibanco network or scheme was 22% lower relative to one year earlier. In the same period, online sales through the same scheme were 37% higher. <https://www.sibsanalytics.com/wp-content/uploads/2021/02/Analise-regional-PT-4-fevereiro-2021.pdf>

¹⁰ Online retail is expected to have grown in Portugal three times faster in 2020 than in 2018 and 2019. <https://www.ctt.pt/grupo-ctt/media/noticias/e-commerce-cresce-20-em-2019-para-5-9-mil-milhoes-de-euros>.

¹¹ E.g., Netflix: <https://www.france24.com/en/live-news/20210119-netflix-keeps-growing-in-pandemic-tops-200-mn-subscribers>; Spotify: <https://www.reuters.com/article/us-spotify-tech-results-idUSKBN2A31JB>

¹² International Monetary Fund, *Fiscal Monitor Update January 2021*:

This brief diagnosis points to several priorities for competition advocacy, of which I will choose three:

connectivity, labor markets and state intervention.

These three areas have marked the AdC's activity in 2020 and certainly **guided its priorities for 2021.**

First, connectivity.

At a time when consumption patterns are adjusting, consumers cannot be prevented from switching to telecom providers that better match their preferences and optimize their spending.

However, an AdC analysis in April 2020 showed that loyalty clauses in the telecom sector create serious constraints to consumer switching. It also showed that prices paid by Portuguese consumers for communication services are higher than the EU average, especially in mobile internet services. As a result, the AdC issued a set of recommendations, to Government and to the sector regulator, which aimed at removing barriers to switching.

For example, it recommended that consumers should always be able to terminate a contract - online or over the phone – with the same ease and simplicity with which they can subscribe a service.

The AdC also called for a swift transposition of the EU Electronic Communications Code, which allows to solve some concerns.

Why is all this important?

Because for consumers, freedom of choice and of switching in the telecom sector is critical today. Because of the pandemic, connectivity took an even more central role for all of us, be it in academic, professional or social roles.

At the same time, we are in a significant moment for improving competition in this sector.

Why? Because the outcome of 5G spectrum auctions, still undergoing in many countries, will determine to a significant extent what the market will look like for the years to come.

With that in mind, and given the lack of competitive dynamics we found in the sector, the AdC recommended measures to promote entry in the Portuguese telecom market. For example, we argued for the inclusion of 5G frequencies in the bidding stage reserved for new entrants.

The **second priority area** is labor markets.

In times of crisis and job loss, flexibility becomes even more important. **Professionals need to have the opportunity to adapt to new conditions in the market.** In other words, they need to be able to change careers if they need to.

It is therefore important that the legal and regulatory framework does not create unnecessary obstacles for workers seeking to change trades¹³. This is why the AdC has been advocating to remove unnecessary

<https://www.imf.org/en/Publications/FM/Issues/2021/01/20/fiscal-monitor-update-january-2021>. There has been a significant degree of state intervention in response to the pandemic, not only because of the lockdowns, but also due to a strong fiscal response to face the economic crisis the virus has created. Portugal's response is 14th in the EU, with fiscal measures representing 4.7% of GDP. The most significant (in relative terms) fiscal responses were in Germany and Greece (both at 11% of GDP). Others include: United States (16.7%), United Kingdom (16.3%), France (7.7%), Italy (6.8%). Cf. also International Monetary Fund (2021), *Fiscal policy database in response to COVID-19*: <https://www.imf.org/en/Topics/imf-and-covid19/Fiscal-Policies-Database-in-Response-to-COVID-19>

¹³ Some of the recommendations also aim at adjusting the supply to the new needs on the demand side of the market. For example, the AdC argued for the legislator to allow multidisciplinary practice in all professional firms, allowing the

barriers on self-regulated professions. This follows, by the way, the recommendations issued by the OECD¹⁴ in 2018, after a two-year project developed in collaboration with the AdC.

The removal of these barriers has been envisaged in the Portuguese Government's recent Recovery and Resilience Plan¹⁵, which is currently under public consultation.

Finally, a **third area** for priority action: and that is **state intervention**.

Competition agencies can and should play a key role in advocating for the **competitive neutrality** of state intervention. It is important that enforcers warn about the risks of picking winners and losers, or that they raise a red flag when public measures can lead to distortions of competition in the market.

The objective must be to reconcile the underlying policy goals, especially those that promote economic recovery, while minimizing distortions of competition in the market, because this may compromise efficiency and consumer welfare both in the immediate and longer term.

I can give you a couple of examples from the AdC's initiatives during the pandemic.

One of them is advocating for **technological neutrality** in the payment services field. Last summer, the AdC undertook a large scale survey on FinTech and we found that new entrants still face legislative and technical hurdles when they try to provide several financial services in Portugal. So, public stimulus measures that are run through payment services should, in our view, encourage competition and innovation. We have highlighted the relevance of technologically neutral and competitive public procurement procedures and state measures that envisage open standards and interoperability with different types of providers, including new entrants and business models.

This is particularly important in sectors where innovative newcomers to the market face barriers to entry and expansion that can stifle innovation and competition. Technological neutrality and interoperability mitigate entry barriers, promote innovation and prevent picking winners and losers in terms of the prevailing business model.

As we face an unprecedented scale of state intervention, it is crucial to ensure that it does not distort competitive conditions in the market. This would risk hurting efficiency and innovation, thus hindering the conditions for recovery. The State, in procuring goods and services and when intervening in the economy can actually play an important role in promoting innovation and competition. Regarding FinTech, we have advocated for technologically neutral competitive procedures in our 2018 Issues Paper and also, more recently, on state intervention to promote the recovery. But this, of course, is not restricted to FinTech.

These are principles that we have long advocated for across all sectors of the economy.

Another advocacy initiative includes an opinion issued on a recent Government proposal to amend the Public Contracts Code. The AdC expressed concerns as to the risks for competition, and efficiency as well, of an increased use of **direct** procurement awarding, even those due to the needs caused by Covid-19, to the detriment of **wider** competitive procedures.

creation of "alternative business structures" which will enable different forms of business models to emerge within the market, to cater for different types of market players such as innovative start-ups or traditional professional firms.

¹⁴ OECD (2018), *Competition Assessment Reviews - Portugal – Self-regulated professions*:

<http://www.oecd.org/daf/competition/Portugal-OECD-Competition-Assessment-Review-Vol2-Professions-preliminary-version.pdf>

¹⁵ Ministry of Planning (2021), *Recovery and Resilience Plan*, p.69:

https://www.portugal2020.pt/sites/default/files/planoderecuperacaoeresiliencia_consultapublica.pdf.

Contribution from enforcement

Enforcement in 2020 and the AdC priorities set for 2021 closely follow the insights drawn from the brief diagnosis made above.

For example, in 2020 the AdC had a significant action in antitrust enforcement in the **telecoms and digital sectors**. In December 2020, the AdC sanctioned one of the largest telecom operators in Portugal with an €84mn fine for having agreed with a competitor to increase prices, reduce quality and share markets. Both reached an anticompetitive agreement regarding fixed and mobile telecoms after signing an MVNO agreement.

In July 2020, the AdC also issued a statement of objections to the 4 major telecom operators in Portugal for participating in a cartel where they agreed not to advertise online next to each other, and thereby softening competition. It is the AdC's preliminary conclusion that this agreement limited competition amongst telecom operators within the **advertising** space that exists on Google's search engine, therefore reducing the incentive to compete and present better deals to consumers. Comparison became more difficult for consumers.

So, the AdC's focus on the digital economy, through its dedicated task force, will continue, because the **risks** of collusion and other anticompetitive behavior have significantly **shifted** from brick-and-mortar **to the online environment**.

Another priority this year that finds grounds in our 2020 enforcement efforts is **labor markets**, which need to be free of unnecessary barriers, but also of anticompetitive behavior.

In 2020, we opened an investigation regarding a standalone no-poach agreement, while issuing an interim measure to cease the behavior. This investigation concerns an agreement between the Portuguese Professional Football League and the male professional football clubs in the 1st and 2nd League. Football clubs agreed not to hire each other's football players who unilaterally terminate their employment contract evoking issues related to Covid-19.

This was not the only agreement in labor markets that warranted intervention by the AdC last year. Shortly after the first case, the AdC issued a recommendation regarding a proposal by the Portuguese Football Federation to **set a cap on wages** of female football players. The AdC warned that the proposed ceiling on wages should not be adopted, because it could raise competition concerns and could amount to an infringement of the Portuguese Competition Act. The Federation's proposal was later withdrawn.

It is interesting to note that these measures were part of a package to deal with the financial impact of the Covid-19 pandemic on football clubs. These were also measures made public.

What we need to be aware is that in facing a crisis, firms may thus seek to reach agreements regarding their labor force. These agreements can:

- distort the competitive functioning of labor markets;
- reduce worker mobility and wages; and I highlight mobility because when so many workers are unemployed and soon to be unemployed, then labor mobility must be enhanced.
- have an instrumental role in market sharing;
- decrease investment in human capital
- introduce allocative inefficiencies;
- limit production in downstream markets, and
- reduce quality and innovation.

Therefore, as we face a hefty crisis and seek to foster economic recovery and employment, it is important that enforcers ensure that labor markets remain open and competitive.

It may be also worth mentioning how we have dealt with forms of **cooperation** arising from the pandemic. In the banking and financial sector, we issued written guidance to the Portuguese Banking and Consumer Credit Associations. The guidance related to the adoption by these associations of the main conditions of loan payment suspensions (or moratoria) to be applied by their members. This type of joint action had been encouraged by banking authorities in order to allow banks to temporarily support debtors without affecting banks' prudential duties.

We warned about the risks of exchanging confidential information. We also stressed that banks and credit institutions should remain free to grant their clients more favorable conditions than the ones set under such moratoria.

The takeaway is that crisis management may prompt competitors to engage in new forms of cooperation, with the support of public authorities.

This means that enforcers must remain vigilant towards opportunistic behavior that in the end may hurt consumers and the economy. And, in what concerns other public authorities' support, it is worth noting, as it is mentioned in the OECD's background note¹⁶, that short-term painkillers that only disguise the underlying problem, but may compromise a sound recovery in the longer-term.

¹⁶ OECD (2020), *The Role of Competition Policy in Promoting Economic Recovery*:
<http://www.oecd.org/daf/competition/the-role-of-competition-policy-in-promoting-economic-recovery-2020.pdf>