

Economic recovery: how competition policy can materialise potential growth

Annual Public Guest Lecture

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(please check against delivery)

Good morning and thank you for joining us.

I am very happy to be with you today and I would like to thank the Queen's University | Belfast and professor Marek Martyniszyn for the kind invitation to intervene in this Annual Public Guest Lecture, at the School of Law.

The focus of this session is on how competition policy can materialize potential growth. I will discuss the **role of competition policy in the economic recovery**. This role can sometimes be underestimated and I will provide examples of the AdC's (Portuguese Competition Authority) experience in this respect.

In addition, I will address some of the EU's priorities and initiatives that contribute to the economic recovery, as well as to the current European priorities, such as the **European Green Deal** and the **European Digital Package**. This, as you know, includes the Digital Markets Act (DMA) and the Digital Services Act (DSA).

These are particularly relevant topics that fall into the ongoing Portuguese Presidency of the Council of the European Union, in which the AdC plays a role – as we will see ahead.

Economic Recovery and Competition

I will start with economic recovery and competition.

We know we are living in unprecedented times. The crisis resulting from the COVID-19 pandemic has been a major economic shock. The crisis has unique and severe features, not least because of its cross-sector and global nature.

If we look back to exactly one year ago, no one could have expected the **economic upheaval** that was going to take place throughout the rest of 2020 and beyond. We have seen record quarterly declines in GDP¹, led by disruptions in supply and a sharp decrease in the consumption of in-person services.

¹ Declines in Q2 YoY: -13.9% in Portugal, -11.8% in the Euro area. Source: Eurostat, *GDP quarterly data, YoY rates*: https://ec.europa.eu/eurostat/documents/portlet_file_entry/2995521/2-08092020-AP-EN.pdf/43764613-3547-2e40-7a24-d20c30a20f64.

Some of the most impacted sectors include hospitality, transportation, restaurants and in-person recreation². In this respect, for instance, air travel in Europe was down by more than 90% last April and it is still down by 73% when compared to last year³.

At a time when countries are focused on developing strategies to recover their economies from this major shock, the discussion regarding the role of competition policy is more relevant than ever.

From the competition enforcer's perspective, this recovery effort comprises two dimensions that you may know well: **competition advocacy** and **competition enforcement**.

Competition Advocacy

I will start by arguing that recovery efforts do not necessarily mean only 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**.

On the competition advocacy side, this means adopting reform that unleashes the productivity growth potential embedded in our economies.

Unnecessary barriers to productivity growth and to innovation can be found, among others, in legislation for products and services, but also in labour markets.

I will pause here to remind you that we have seen calls for relaxing competition rules, at least temporarily (i.e. at least 12-18 months). We will continue to see them.

These calls seem the intuitive move to make. But I will argue that we can do better if we embrace competition rules, particularly in these challenging times.

We need **more, not less, competition** so as to ensure that we come out of this challenging process better, stronger and more resilient. At the AdC, we have avoided the suspension or mitigation of competition rules storyline. On the contrary, since the start of this pandemic, competition rules have been – and are – fully in force. Many other competition agencies have also taken the same approach.

While it is hard to draw lessons from the past given the unprecedented nature of this pandemic, if there is anything that we could learn from the 2008 financial crisis is that **under-enforcement is counterproductive**.

I would also add that competition enforcers may wish to focus on sectors that enable a stronger and faster recovery. As such, and due to their particular relevance in the pandemic context, I would highlight three key areas: **connectivity, labour markets** and **state intervention**.

² Cf. American Economic Association: <https://www.aeaweb.org/conference/webcasts/2021/>

³ Cf. European Statistical Recovery Dashboard: <https://ec.europa.eu/eurostat/cache/recovery-dashboard/>

These sectors have marked the AdC's activity in 2020, as well as guided its priorities for 2021. Let us look at these three areas.

First, connectivity.

At a time when consumption patterns are adjusting and we depend so much on telecommunication services for our daily lives, consumers cannot be prevented from switching to telecom providers that better match their preferences and optimize their spending.

To let competition fully play its part, consumers need to be effectively informed about their options and be able to easily switch to alternative operators if they are not satisfied with their contractual conditions.

In this respect, an AdC analysis issued in April 2020⁴ 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**⁵ to the Government and to the sector regulator (ANACOM), which aim at removing barriers to switching. For instance, the AdC 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. In addition, the AdC also called for a swift transposition of the EU Electronic Communications Code⁶, which allows to solve some of the identified concerns.

Particularly in this pandemic context, **connectivity plays a key role in our daily lives**, be it in academic, professional or social roles. As such, freedom of choice and of switching in the telecom sector is critical today.

At the same time, we are in a defining moment for improving competition in the telecom sector – 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.

In this respect, and since the AdC identified a **lack of competitive dynamics** in the sector, it recommended⁷ measures to promote entry in the Portuguese telecom market. For instance, it argued for the inclusion of 5G frequencies in the bidding stage reserved for new entrants.

⁴ AdC (2020), *Report on loyalty policies in telecommunications services*:

http://www.concorrenca.pt/vEN/Estudos_e_Publicacoes/Estudos_Economicos/Other/Pages/Loyalty-policies-in-telecommunications-services-%E2%80%93-final-version.aspx?lst=1

⁵ AdC (2020), *Summary of the Report on loyalty clauses in telecommunications services*:

http://www.concorrenca.pt/vEN/News_Events/Comunicados/Documents/Loyalty%20clauses%20in%20the%20telecom%20market_Onepager.pdf

⁶ Directive (EU) 2018/1972 of the European Parliament and of the Council establishing The Electronic Communications Code: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018L1972&from=EN>

⁷ Opinion to ANACOM (the telecoms sector regulator) on the 5G auction regulation (2020), in

Portuguese: http://www.concorrenca.pt/vPT/Estudos_e_Publicacoes/Documents/2020%20-%20Parecer%20da%20AdC%20-%20leil%20a%20para%20a%20atribui%20a%20direitos%20de%20utiliza%20a%20frequ%20ancias.pdf

Second, as a key area for enforcers, **labour markets**.

According to the OECD, the COVID-19 pandemic has triggered one of the worst jobs crises since the Great Depression. So as a result of this crisis, there is a real risk that poverty will increase and that inequalities will widen, worldwide.

In the current unsettling and rather unpredictable situation, countries need to develop new strategies to prevent a job crisis from turning into a social crisis.

In such times, the idea of labour flexibility is more important than ever. And we find unnecessary barriers in many jobs. Professionals need to have the opportunity to adapt to new conditions in the market, including changing careers, if they wish or need to.

As such, it is crucial that the legal and regulatory framework do not create **unnecessary obstacles** for workers seeking to change jobs. This is why the AdC has been advocating to remove unnecessary barriers on self-regulated professions⁸ (e.g. lawyers, architects, engineers, but also nutritionists and customs staff). We are pleased to see that the removal of these barriers has been envisaged in the Portuguese Government's recent Recovery and Resilience Plan⁹.

Third, state intervention.

Competition agencies can and should play a 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 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 such distortions may compromise efficiency and consumer welfare both in the immediate and longer term.

In this respect, the AdC has had recent advocacy initiatives that promote the competitive neutrality of state intervention. I would emphasize two:

1. Advocating for technological neutrality in the payment services area; and
2. Issuing an opinion on a recent Government proposal to amend the Public Contracts Code.

Regarding advocacy for technological neutrality in the payment services field, I would emphasise that the payments system sector has seen, since 2018, several recommendations by the AdC, with the purpose of eliminating barriers to entry and expansion.

⁸ 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>

⁹ Ministry of Planning (2021), *Recovery and Resilience Plan*, p.69 (in Portuguese): https://www.portugal2020.pt/sites/default/files/planoderecuperacaoeresiliencia_consultapublica.pdf.

Last summer, the AdC undertook a large scale survey on **FinTech**¹⁰ and found that new entrants still face legislative and technical hurdles when they try to provide several financial services in Portugal.

As such, public stimulus measures that are run through payment services should, in the AdC's perspective, encourage **competition** and **innovation**. In this regard, we have highlighted¹¹ 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 the world faces an unprecedented scale of state intervention, it is crucial to ensure that competitive conditions in the market are not distorted. This would risk hurting efficiency and innovation, thus hindering the conditions for a successful economic recovery.

In the second initiative I mentioned – 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 the COVID-19 pandemic, to the detriment of wider competitive procedures.

These are only two examples to consider.

Above all, we must remind ourselves that policy choices made under pressure can result in less competitive procedures or can alter markets' structure through the introduction of preferences or barriers. And those choices, even if intended to be temporary, can be stickier than anticipated.

So it is an enforcer's duty, in my view, to raise awareness for competitive neutrality in states' policies.

Competition Enforcement

On the **competition enforcement** side, the AdC has significantly stepped up its work in the key sectors previously identified, namely connectivity and labour markets.

¹⁰ Summary on FinTech sector enquiry (2021):

http://www.concorrenca.pt/vPT/Estudos_e_Publicacoes/Documents/2021%20-%20Fintech%20-%20follow-up%20on%20recommendations.pdf

¹¹ FinTech sector enquiry and report (2021), in Portuguese:

http://www.concorrenca.pt/vPT/Estudos_e_Publicacoes/Documents/2021%20-%20Relat%C3%B3rio%20de%20Acompanhamento%20das%20Recomenda%C3%A7%C3%B5es%20da%20AdC%20no%20%C3%A2mbito%20do%20Issues%20Paper%20FinTech.pdf

For instance, the AdC had a significant action over the past 12 months in the **telecoms and digital sectors**.

In December 2020, the AdC sanctioned¹² one of the largest telecom operators in Portugal with an €84 million fine for having agreed with a competitor to increase prices, reduce quality and share markets. Both companies made an anticompetitive agreement for fixed and mobile services after signing an MVNO agreement.

In addition, in July 2020, the AdC issued a statement of objections¹³ to the four major telecom operators in Portugal for participating in a cartel where they agreed not to advertise online next to each other, 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.

Regarding labour markets, in May 2020, the AdC imposed an **interim measure**¹⁴ and ordered the Portuguese Professional Football League to immediately suspend a standalone no-poach agreement.

A **no-poach agreement** in this field was an agreement not to recruit or hire other clubs' football players of the First and Second Leagues during the pandemic. Subsequently, and shortly after this first case, the AdC issued a recommendation regarding a proposal by the Portuguese Football Federation to set a salary cap on women's clubs¹⁵. After the AdC's recommendation, alongside several players that spoke against the initiative, the Portuguese Football Federation decided to withdraw the proposal. Interestingly, the proposed measure was included in a package to deal with the financial impact of the COVID-19 pandemic on football clubs.

Overall, what we need to be aware is that, in facing a crisis, firms may seek to reach agreements regarding their labour force. Such agreements can:

- Distort the competitive functioning of labour markets;
- Reduce workers' mobility and wages; and I highlight mobility because when so many workers are unemployed or soon to be unemployed, then labour mobility must be enhanced;
- Have an instrumental role in market sharing;
- Decrease investment in human capital;
- Introduce inefficiencies in the allocation of resources;
- Limit production in downstream markets; and
- Reduce quality and innovation.

¹² AdC, Press release 20/2020:

http://www.concorrenca.pt/vEN/News_Events/Comunicados/Pages/PressRelease_202020.aspx?lst=1&Cat=2020

¹³ AdC, Press release 11/2020:

http://www.concorrenca.pt/vEN/News_Events/Comunicados/Pages/PressRelease_202011.aspx?lst=1&Cat=2020

¹⁴ AdC, Press release 8/2020:

http://www.concorrenca.pt/vEN/News_Events/Comunicados/Pages/PressRelease_202008.aspx?lst=1&Cat=2020

¹⁵ Recommendation to the Portuguese Football Federation (2020), in Portuguese:

http://concorrenca.pt/vPT/Noticias_Eventos/Noticias/Documents/Recomenda%c3%a7%c3%a3o%20a%20FPP.pdf

Therefore, as we face this pandemic crisis and seek to foster economic recovery and employment, it is a competition enforcer's duty to **ensure that labour markets remain open and competitive**.

It is also worth mentioning that early in the pandemic 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.

The AdC made itself available to provide individual guidance to firms. This was a natural process, since these requests for informal guidance and approval started reaching the AdC and other competition agencies in the EU, which led us to consider to be fair and appropriate to provide guidance.

But, at the operational level, how exactly has the AdC dealt with the forms of cooperation arising from the pandemic?

For instance, in the **banking and financial sector**, we issued written guidance¹⁶ to the Portuguese Banking and Consumer Credit Associations related to the adoption by these associations of the main conditions of private moratoria that is, a suspension of debt payments, to be applied by their members – banks and other credit institutions – on loans, in the context of the crisis.

We warned that associations should refrain from promoting exchange of information between members which is not strictly essential, adequate and proportionate for the definition of the loan moratoria regime. We highlighted that the cooperation regime should not prevent each institution from creating more beneficial conditions for consumers, if it so chooses.

In addition, in the **pharma sector**, the AdC issued guidance addressed to the Pharmacies National Association. Following the sudden price increase of face masks, alcohol gel, certain medicines and medical devices – this occurred to a certain extent throughout the world –, the association had recommended that pharmacies should comply with a specific maximum resale margin for these products.

Under normal circumstances, a recommendation of this sort from a sector association, even if apparently benign, may actually serve as a focal point and, therefore, lead to a price alignment in the market, besides discouraging innovation. We had many previous investigations and fines imposed on trade and professional associations for the exact same reason.

The key takeaway is in managing a moment of crisis, competitors may be prompted to engage in new forms of cooperation, sometimes even with the support of public authorities.

This means that competition enforcers must remain vigilant towards opportunistic behaviour that in the end may hurt consumers and the economy.

So to finalise this point, we came into 2021 with the following **priorities**¹⁷:

¹⁶ AdC, Press release 07/2020:

http://www.concorrencia.pt/vEN/News_Events/Comunicados/Pages/PressRelease_202007.aspx?lst=1&Cat=2020

¹⁷ AdC's Priorities for Competition Policy (2021):

http://www.concorrencia.pt/vEN/A_AdC/Instrumentos_de_gestao/Documents/Competition%20Policy%20priorities%20for%202021.pdf

- To support the economy by keeping a focus on detecting and sanctioning abuse and other anti-competitive behaviour that exploit the current situation, to the detriment of households and firms;
- To investigate signs of abuse and collusion in a digital environment, given the partial shift in the risk of anticompetitive behaviour to e-commerce;
- To contribute to the economic recovery by recommending the removal of legal barriers, such as those that unnecessarily prevent professional mobility and corporate innovation.

Portuguese Presidency of the Council of the European Union

I have been telling you what the competition enforcer can do and does so as to maintain markets open and contestable while contributing to the economic recovery.

Now let us consider what the European Union is envisaging and in particular what the EU Presidency of the Council of the European Union is envisaging in this first semester.

The presidency is currently held by Portugal with the motto “Time to deliver: a fair, green and digital recovery”¹⁸. Five lines of action that can drive growth in the EU have been defined: 1. Resilient Europe – Fostering recovery, cohesion and European Values; 2. Green Europe – Promoting the EU as a leader in climate action; 3. Digital Europe – Accelerating the digital transformation for citizens and businesses; 4. Social Europe – Enhancing and strengthening the European social model; 5. Global Europe – Promoting a Europe that is open to the world.

We have been talking about some of these concepts. Now let us address the remainder from a competition policy’s perspective.

European Green Deal

First, I would emphasise the European Green Deal. European citizens have put the environment at the top of their values.

In this context, on 11 December 2019, the European Commission announced its Green Deal¹⁹. The European Green Deal is a growth strategy for the EU, aiming to transform the area into a climate-neutral, fair and prosperous society, with a modern, resource-efficient and competitive economy.

A discussion has emerged on **how competition policy can help achieve green objectives**.

¹⁸ The main priorities of the Portuguese Presidency of the Council of the European Union are: 1. To pave the way out of the crisis towards a fairer, greener and more resilient future; 2. To contribute to shape a better tomorrow and an inclusive recovery, leaving no one behind; and 3. To build bridges to enhance global solidarity and partnerships.

¹⁹ European Commission, *A European Green Deal*: https://ec.europa.eu/info/strategy/priorities-2019-2024/european-green-deal_en

While there is a general consensus that competition law is not the primary instrument to achieve green objectives, that does not mean competition does not have a role to play in this green script.

The discussion must then seek to strike some balance between ensuring efficiency and fair deals for consumers in the future, while seeking to become a climate-neutral economy.

Such a balance is being devised taking into account three areas:

- (1) state aid, which in my view is the preferred competition-related vector for a strong contribution to the European Green Deal objectives;
- (2) horizontal agreements, and
- (3) merger review.

We should start by **demystifying** views that place competition policy as an obstacle to sustainability. Actually, in many aspects, that is quite the opposite.

Let us see how.

Competition and innovation are generally positively correlated. They tend to go hand in hand because it is contestability that induces innovation. This is also true for competition and green innovation.

Historically, innovation has led to significant productivity and welfare increases. And to sustainability increases. Why? Because firms want to develop more efficient production processes. When they achieve this, it gives them competitive advantage over rivals. More efficient production processes often mean that an important part of process innovation is **green innovation**.

Think of the cases where firms focus on spending less energy, on reducing and reusing waste, on using renewable or more durable inputs.

Therefore, I would like to make two points:

1. Strong competition creates incentives to reduce costs through innovation;
2. Strong consumer demand for green products is also a strong incentive for firms to be more sustainable in their production processes and in the products and services they offer.

In fact, **consumer demand** is extremely powerful in driving change. And consumers are valuing sustainability more than ever. Consumers' willingness to pay for green is therefore an extremely powerful incentive for green innovation.

As such, keeping competition conditions strong is an effective contribution of competition policy for the European Green Deal. Again, more competition – not less – is needed here.

But how do competition enforcers achieve this?

In the case of **merger control**, for instance, let us look at the landmark Bayer/Monsanto merger²⁰. In its assessment, the European Commission found product and pipeline overlaps, as well as innovation capability overlaps.

The assessment of the European Commission considered whether the merger would hamper innovation competition for crop protection and seed industries. This included the development of more environment-friendly products. Ultimately, the European Commission considered that consumers could be harmed: 1. In the short run, by the loss of product quality and variety; and 2. In the long run, by a significant loss of innovation, given the incentives of the merging parties to delay, redirect and discontinue innovation efforts after the merger.

This merger, among others, has bolstered the debate on the role of competition in promoting innovation.

Another message drawn by competition authorities is that they need to be vigilant of attempts by incumbents to protect their market power through the acquisition of disruptive entrants. If incumbents who are lagging in terms of green innovation adopt a killer strategy to prevent or delay the introduction of green innovation to the market, they may under certain circumstances²¹ be halted by competition enforcers.

It may interest students and scholars present here today, that the AdC has an annual Competition Policy Award²² and last year it was given precisely to a paper by Colleen Cunningham, Florian Ederer and Song Ma on *Killer Acquisitions*²³.

In the case of **cooperation agreements and antitrust**, I would like to make two points:

1. Competition enforcers acknowledge that firms wish to operate in a predictable and certain environment from a legal standpoint;
2. The debate on competition and sustainability has revived and acknowledged the flexibility provided by European Law, which allows certain agreements to take place.

In this respect, enforcers might need to improve communication regarding the **leeway** that already exists in our competition framework regarding sustainability initiatives. In addition, it may be important to avoid giving the wrong impression to consumers, that competition law is not open to agreements between firms – it is open, under certain circumstances²⁴.

²⁰ European Commission, M.8084 Bayer/Monsanto:

https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_8084

²¹ This is reviewed under merger analysis: by protecting their business through green killer acquisitions, incumbents are seeking to eliminate competition, at the cost of less quality, lower variety and higher prices.

²² AdC Competition Policy Award:

http://www.concorrenca.pt/vEN/Estudos_e_Publicacoes/AdC_Competition_Policy_Award/Pages/Competition-Policy-Award.aspx

²³ AdC Competition Policy Award, 2020 Edition:

http://www.concorrenca.pt/vEN/Estudos_e_Publicacoes/AdC_Competition_Policy_Award/Edition2020/Pages/Edicao2020.aspx

²⁴ Some of the accepted agreements may include standardised packaging, waste production and waste management, or standardised certification and labelling. As competition enforcers, our focus must be on ensuring that sustainability agreements do not hinder competition dynamics in a given market. And, in this respect, the risk of **cartels** hidden behind sustainability claims is real. For instance, such cartelization has occurred with detergents, in a parallel

I must again highlight this: the necessary economic recovery is one in which competition enforcement and advocacy remain vigorous and strong, incentivizing open and innovative markets.

There is also a debate on efficiencies, namely out of market efficiencies that I will not address here for the sake of time and of your attention²⁵.

European Digital Package

The second initiative that I will address is the European Digital Package, which seeks to achieve a Europe fit for the digital age. The European Commission considered there was a clear need to tackle issues in the digital sector so that we can ensure fundamental rights, competition and, ultimately, social and economic welfare.

Following an extensive public consultation in the summer of 2020, the European Commission proposed, in December, a comprehensive set of new rules for all digital services. This is called the Digital Markets Act (DMA) and the Digital Services Act (DSA).

These rules seek to reform the digital space in the EU in line with the European Commission's ambition to make this Europe's Digital Decade²⁶.

Digital Markets Act (DMA)

agreement among some players, and, more recently, a statement of objections on car makers was issued because of possible restrictions to competition on emission cleaning technology. In addition, one must also consider the risk of having firms disclosing **strategic information** to one another.

²⁵ Still regarding the European Green Deal, a word on efficiencies. My view is that existing tools already provide the opportunity to bring sustainability concerns into a competition assessment. Sustainability may be, in itself, valuable to both consumers and to society in general. In that case, it is a dimension of competition and, as such, environmental positive effects may be treated as efficiencies and environmental negative effects treated as harmful. This applies equally to mergers and to agreements between firms that may be restrictive of competition, but be offset by net benefits. For instance, last year, in the Aurubis/Metallo merger, there were relevant sustainability considerations. The European Commission was concerned whether competition in the copper recycling sector would be reduced and, after an in-depth assessment, found that harm was unlikely to occur. When the merger was cleared, this concern was framed in the context of the European Green Deal, given the role of copper in the circular economy. However, environmental concerns may involve significant negative externalities. This means green efficiencies typically occur out of the market. And competition assessments usually narrow down efficiencies to relevant markets and related markets. In this respect, a methodological revolution on competition enforcement is not desirable: out of market efficiencies may be better addressed by regulation, rather than by competition policy.

²⁶ On the European Digital Package, Margrethe Vestager, Executive Vice-President for a Europe fit for the Digital Age, has stated: *"The two proposals serve one purpose: to make sure that we, as users, have access to a wide choice of safe products and services online. And that businesses operating in Europe can freely and fairly compete online just as they do offline. This is one world. We should be able to do our shopping in a safe manner and trust the news we read. Because what is illegal offline is equally illegal online"*. European Commission, A Europe fit for the Digital Age: https://ec.europa.eu/commission/presscorner/detail/en/ip_20_2347

The DMA²⁷ aims at preventing “gatekeepers” from imposing unfair conditions on business users and end-users, and at ensuring the openness of important digital services. In this regard, the DMA introduces a set of rules that are only applicable to large companies designated as “gatekeepers”, according to objective criteria set out in the proposal²⁸.

These companies have a significant impact on the internal market, serve as an important gateway for business users to reach end users and enjoy, or will foreseeably enjoy, an entrenched and durable position.

What may interest us more, as users, as citizens, is in practice, what unfair practices will the DMA tackle? Some examples include:

- A provider of online intermediation services that does not allow hotels/e-books publishers to offer better prices on different online travel agents/e-books platforms;
- An app store operator that unilaterally requires all app developers to integrate the app store’s own user ID functionality in their apps and to show this ID functionality to the customers of their apps;
- An online marketplace using commercially sensitive data such as sales quantities and patterns collected from individual sellers to compete with these sellers on its own online marketplace.

In the context of the DMA proposal, and during the Portuguese Presidency of the Council of the European Union, the AdC participates in the Working Party on Competition, in collaboration with the Portuguese Permanent Representation to the EU and the Directorate-General for European Affairs (Ministry of Foreign Affairs), co-chairing the meetings of the Working Party on Competition of the Council.

This is where the discussions on the DMA are taking place. The DMA negotiation has started in January 2021 and is currently ongoing at the Council of the European Union level.

Digital Services Act (DSA)

Besides the DMA, the European Digital Package also includes the DSA²⁹, which is being negotiated in tandem with the DMA, at the Council of the European Union level.

²⁷ European Commission, Digital Markets Act: https://ec.europa.eu/info/strategy/priorities-2019-2024/europe-fit-digital-age/digital-markets-act-ensuring-fair-and-open-digital-markets_en

²⁸ To be designated as a “gatekeeper”, these large companies must control at least one so-called “core platform service”. According to the proposal, these “core platform services” can include: online intermediation services; online search engines; social networking services; video sharing platform services; number-independent interpersonal electronic communication services; operating systems; cloud services; and advertising services.

²⁹ European Commission, Digital Services Act: <https://ec.europa.eu/digital-single-market/en/digital-services-act-package>

The main objective of the DSA is to provide a better protection to consumers regarding illegal content, transparent advertising and disinformation. This will modernising the e-Commerce Directive, adopted in 2000³⁰. That's like ancient history for what online is concerned.

According to the DSA, platforms that reach more than 10% of the EU's population (45 million users) are considered systemic in nature. As such, they are subject both to specific obligations.

The DSA includes, for instance:

- Measures to counter illegal content online, including goods and services, such as a mechanism for users to flag such content, and for platforms to cooperate with “trusted flaggers”;
- New rules on traceability of business users in online market places, to help track down sellers of illegal goods;
- Wide-ranging transparency measures for online platforms, including on the algorithms used for recommendations;
- New obligations for very large online platforms to prevent abuse of their systems by taking risk-based action, including oversight through independent audits of their risk management measures

The DSA negotiation is currently ongoing at the Council of the European Union level, specifically at the Internal Market Working Party. Both the DSA and the DMA fall under the Competitiveness Council (COMPET), which brings together the Ministers responsible for trade, economy, industry, research and innovation and space from the 27 EU Member States.

Similarly to the DMA, the DSA is expected to contribute to European digital transformation.

Final remarks

We come to our conclusion.

During this session, I provided several insights on how competition policy can materialise potential growth, particularly in the aftermath of the global pandemic.

In this respect, competition policy plays a role in proposing conditions for more dynamic, resilient and competitive economies.

At the same time, and particularly at the EU level, we are experiencing a transformation where digitisation and sustainability are at its heart. Competition enforcers can have an active role in ensuring a successful and fair transformation.

With more competition – not less.

³⁰ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on Electronic Commerce').

At the AdC, our competition advocacy and enforcement clearly show our commitment to these objectives. We play our part in these objectives.

But all of us and all of you here today - scholars, students, other enforcers, lawyers - can make competition policy be heard and taken into account in public policy, or in firms. Or even with anonymous citizens.

Do not take competition policy achievements for granted: ours is a continued struggle. But one that benefits us all.