

# M&A Outlook: A view from the Portuguese Competition Authority



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President

M&A Outlook: Portugal Breakfast Briefing  
30 October 2019

# Topics

1. **Why do we value competition**
2. **The AdC's priorities**
3. **Merger control – how does it work?**
4. **Recent trends in merger control**
5. **Other antitrust aspects in M&A**



## Why do we value competition?



# Why do we value competition

Competition brings significant **benefits** to the economy and to society

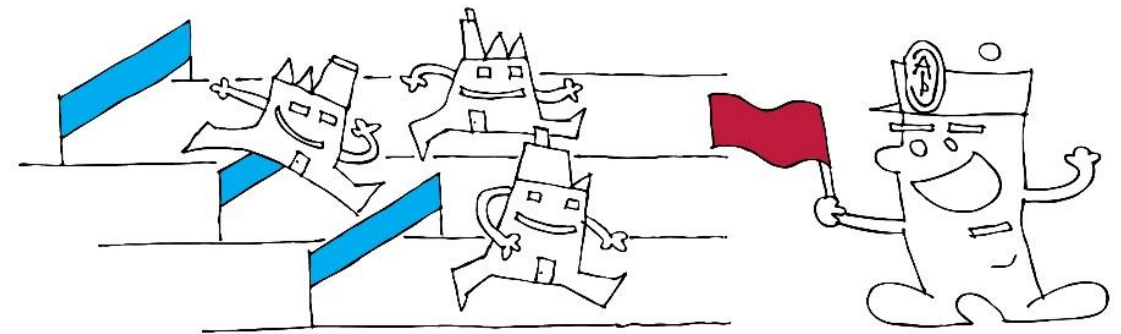
Higher **productivity** and **competitiveness**

Products and services with improved **quality**

**Innovation** and choice

**Lower** prices

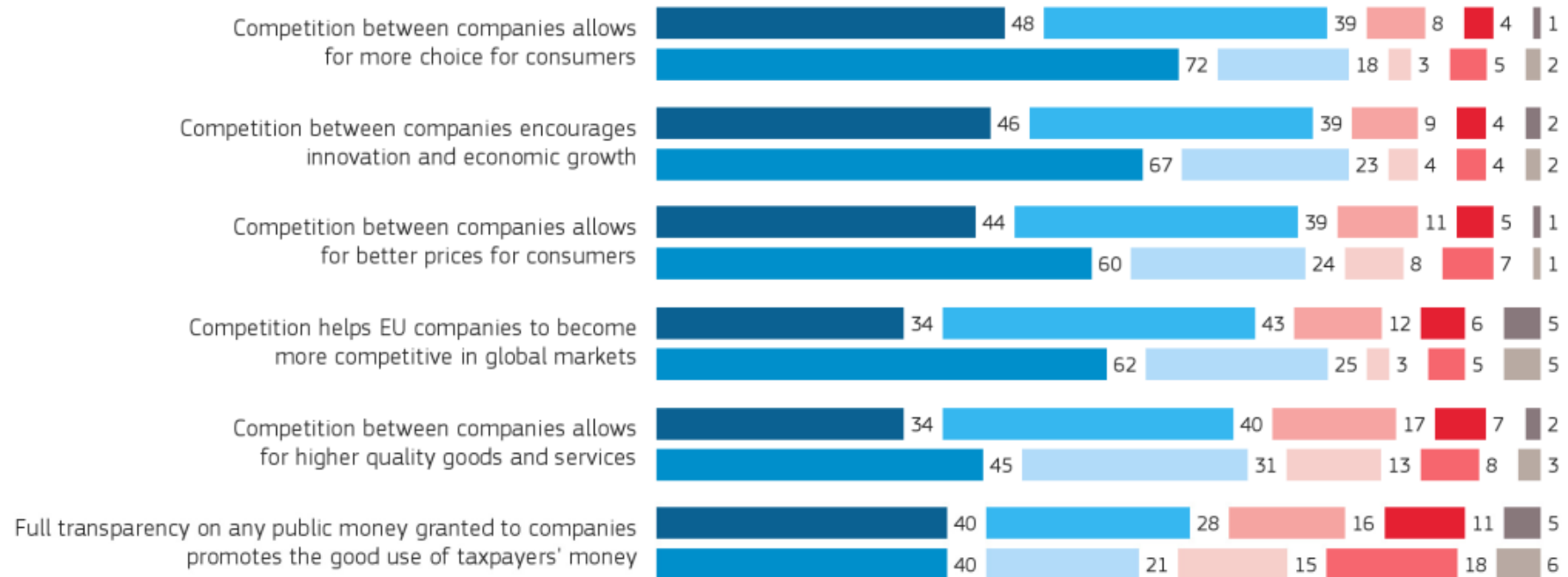
Greater consumer **well-being**



The **breach of competition rules**  
**harms** consumers, the competitiveness  
of businesses and the economy as a whole.

# Perception of competition in Portugal and the EU

**Q1A** For each of the following statements, please tell me whether you totally agree, tend to agree, tend to disagree or totally disagree:  
(%)



EU28



PT



Totally agree

Tend to agree

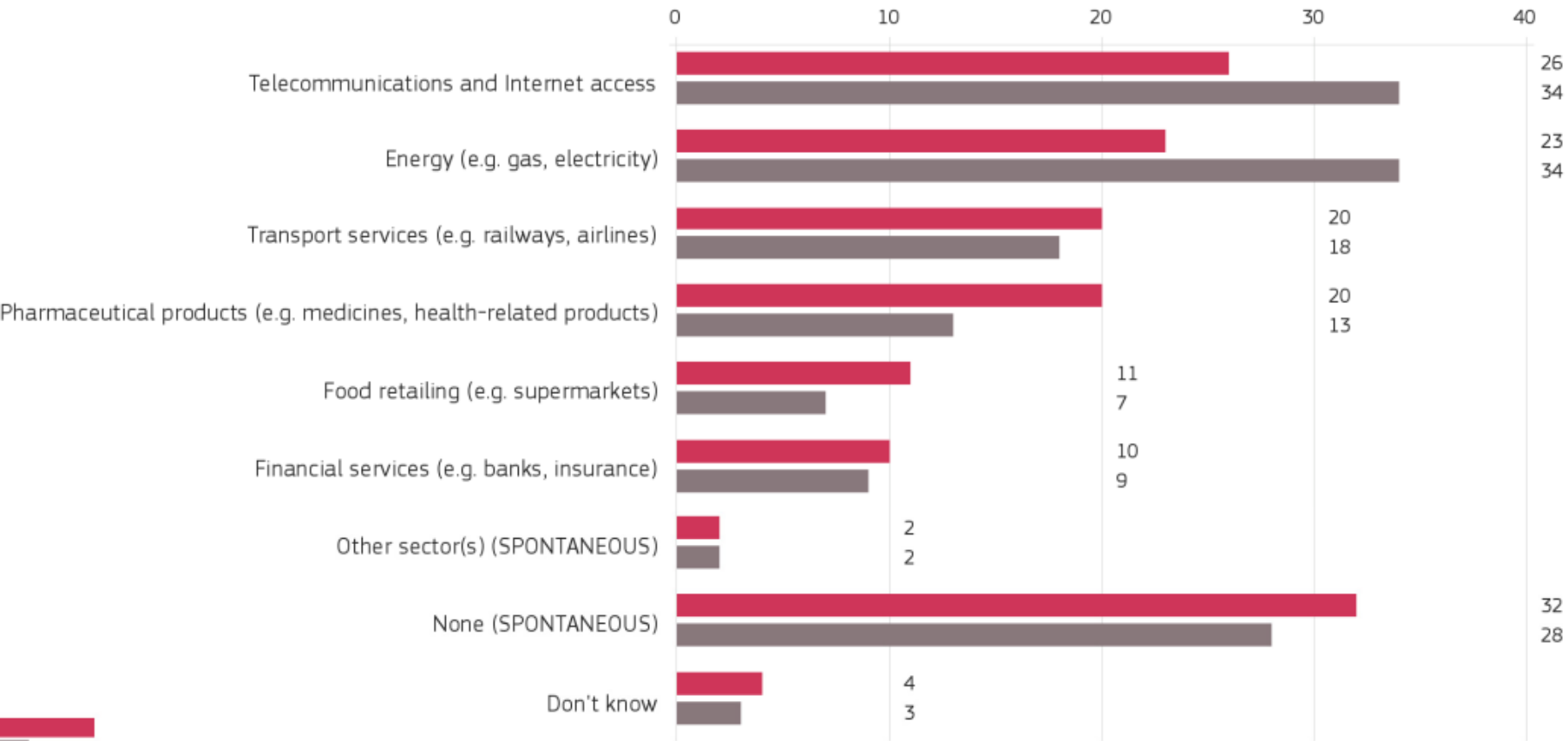
Tend to disagree

Totally disagree

Don't know

# Perception of competition in Portugal and the EU

**Q2T** Have you ever experienced problems due to a lack of competition in the following sectors that resulted in problems such as higher prices, less product or supplier choice, or lower quality? Firstly? And secondly? (MAX. 2 ANSWERS)  
(%)



# What do we do

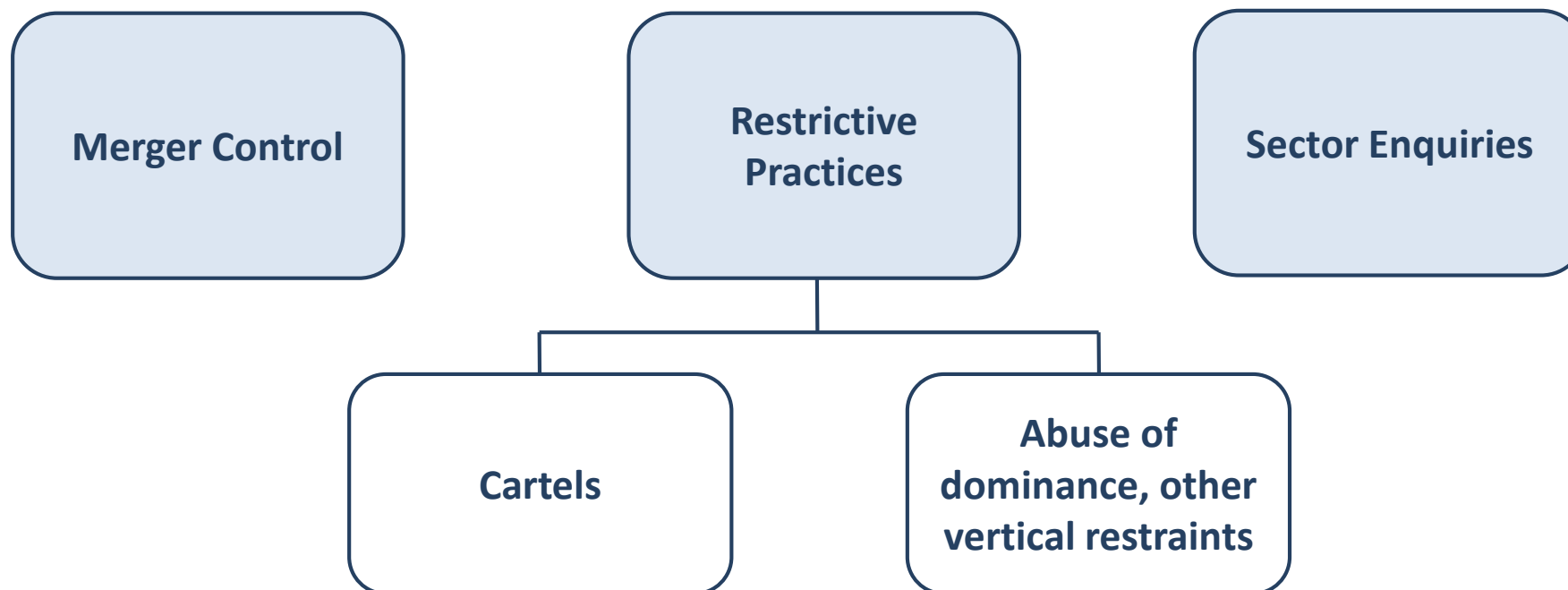
## PURPOSE

**To defend competition for the benefit of companies and citizens.**



# What do we do

## *Core areas*





# What do we do

## Core areas

### Mergers

- Is it likely that prices will increase after the merger? Or that quality will deteriorate?
- Are there risks of foreclosure? Will the market become more prone to collusion?

### Restrictive practices

- Analysis of the **conduct** in horizontal restrictions, vertical restrictions or abuse of dominance.

### Sector inquiries






- Are there competition bottlenecks in the market?
- Put forward measures to promote competitive conditions.



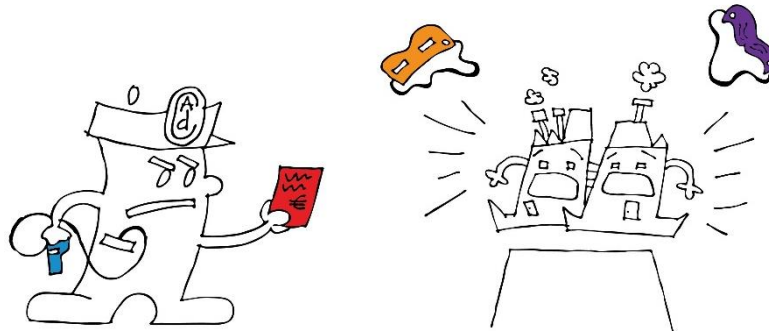
# The AdC's priorities



# Competition Policy Priorities (2019)

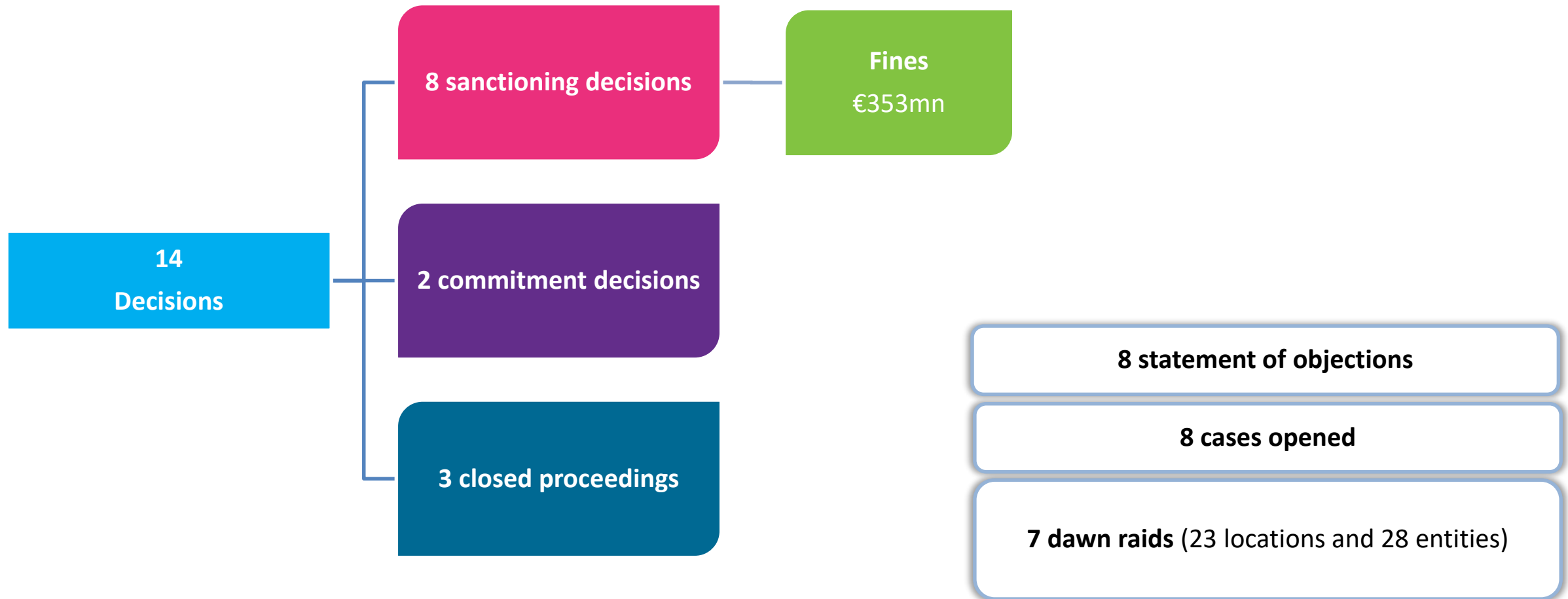
-  Detect and investigate anti-competitive practices, namely cartels.
-  Increase *ex officio* detection of anti-competitive practices by way of, namely, cooperation agreements.
-  Deepen understanding of the use, by companies, of algorithms or artificial intelligence in facilitating anti-competitive behaviour.
-  Promote innovation by removing barriers created either by legislation or by anti-competitive behaviour on the part of incumbents.
-  Raise awareness of the Fighting Bid-Rigging in Public Procurement campaign as well as the Guide for Business Associations.
-  Promote the implementation of the recommendations issued in 2018 on liberal professions and the transport sector.
-  Achieve speedier merger control.
-  Consolidate internal checks and balances.
-  Reinforce the publication and searchability of AdC decisions and subsequent judicial decisions, studies, opinions and recommendations.

# How has this translated into practice (2018-19)?



# Anti-competitive practices

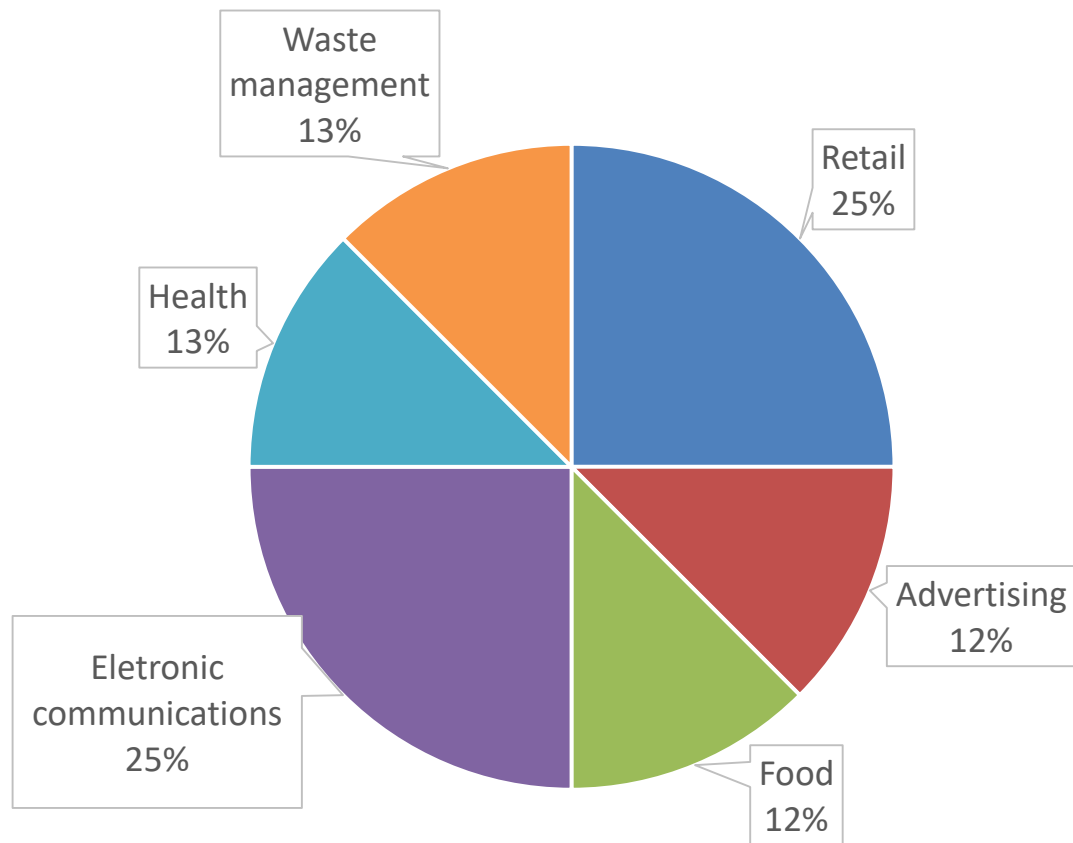
## Overview 2018 - 2019YTD



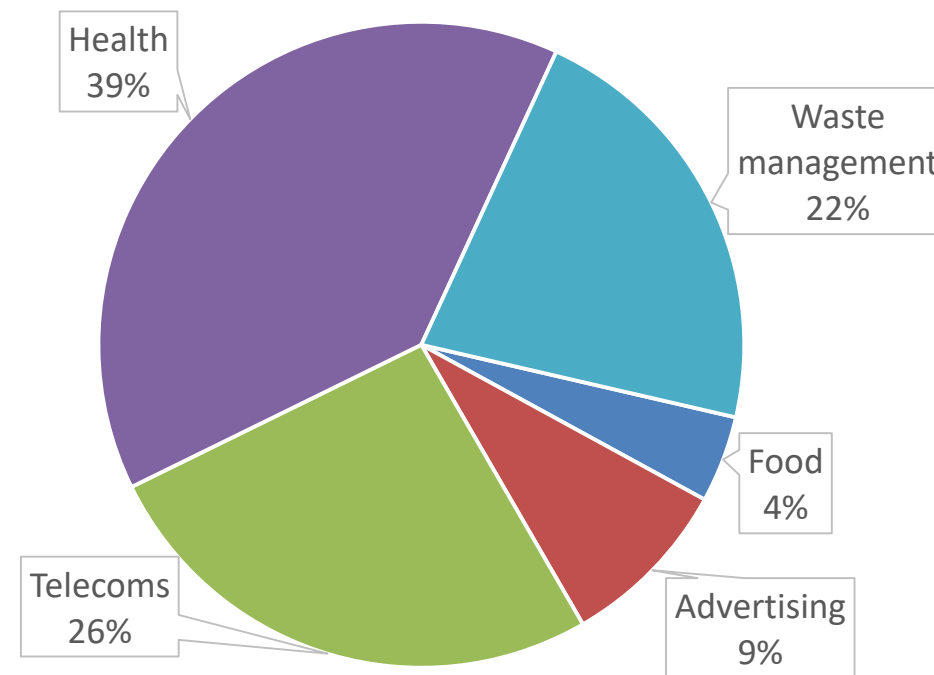
# Anticompetitive practices

## Overview 2018 - 2019YTD

Opening of proceedings (per sector)



Entities targeted in dawn raids (per sector)



# Merger control

## Overview 2018 – H1 2019

72 final decisions

1 commitments decision  
1 notification withdrawn  
during phase II  
3 phase II investigations

29 requests for **preliminary review**

7 proceedings concerning **gun-jumping investigations**

79 % of the mergers **notified eletronically**

# Competition advocacy

## Overview 2018 - 2019<sup>YTD</sup>

Assessment of competition conditions in 4 sectors:



**Liquid road fuels**



**FinTech**



**Ports sector**



**Digital ecosystems, big data and algorithms**



# Merger control - how does it work?



# Merger control – how does it work?

**Goal:** to avoid a post-merger significant impact on competition

**Defining merger:** long lasting change in control on at least part of a firm or firm's assets, as a result of an acquisition of the share capital

**A merger may:**

- strengthen market power and **lessen competition** – as a result, prices may increase and quality and choice may decrease
- entail **efficiencies** – that are considered in the AdC's competitive assessment if merger specific, quantifiable and verifiable
- be **cleared**, if the AdC's assessment concludes that it causes no significant harm to competition
- be **blocked** or **cleared subject to remedies** if the AdC identifies competition concerns

# Merger control – how does it work?

**Notification thresholds:** if met, the merger cannot be implemented without prior approval by the AdC:

- market share  **$\geq 50\%$**  (national market or a substantial part of it)
- turnover  **$> \text{€}100\text{mn}$  in PT**, provided that the individual turnover in PT of at least 2 of these companies  **$> \text{€}5\text{mn}$**
- combined: market share  **$\geq 30\%$  and  $\leq 50\%$**  (national market or a substantial part of it) and at least **2 companies** with a **turnover of  $\text{€}5\text{mn}$  in PT**

## **AdC's approach:**

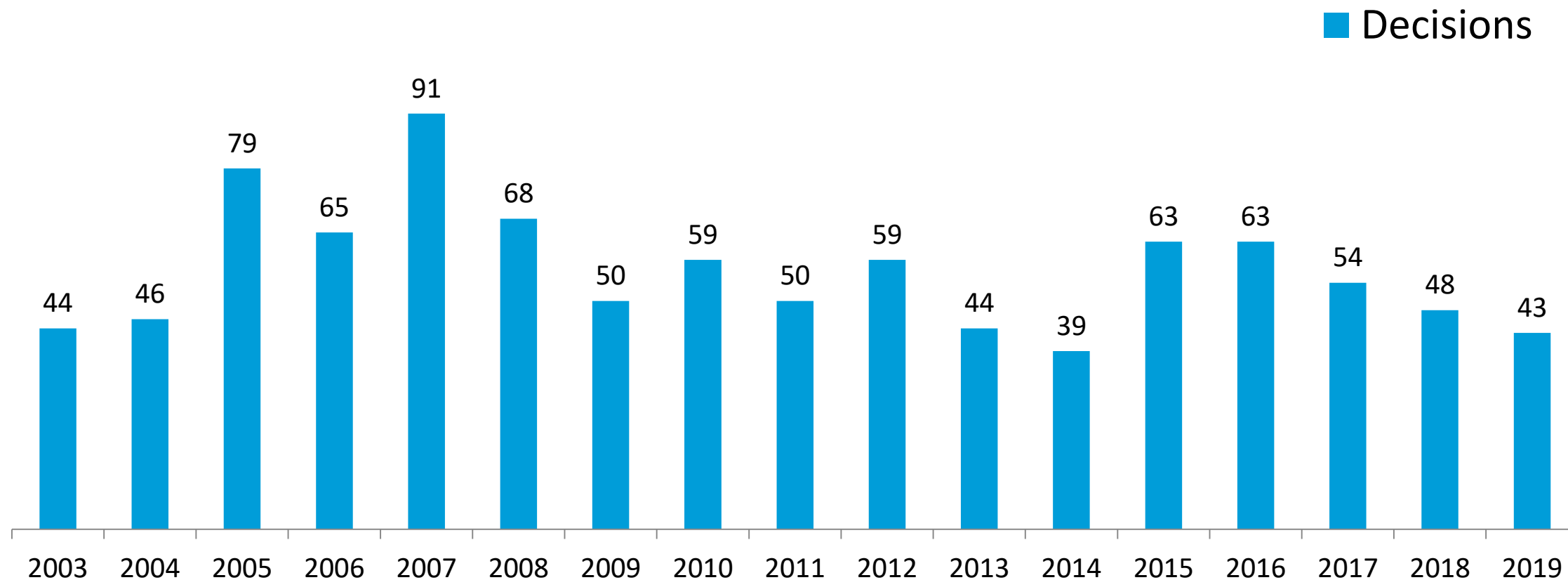
- comprehensive, fast and flexible assessment
- average duration of non-complex mergers: ~34 days

# Recent trends in merger control



# Merger control

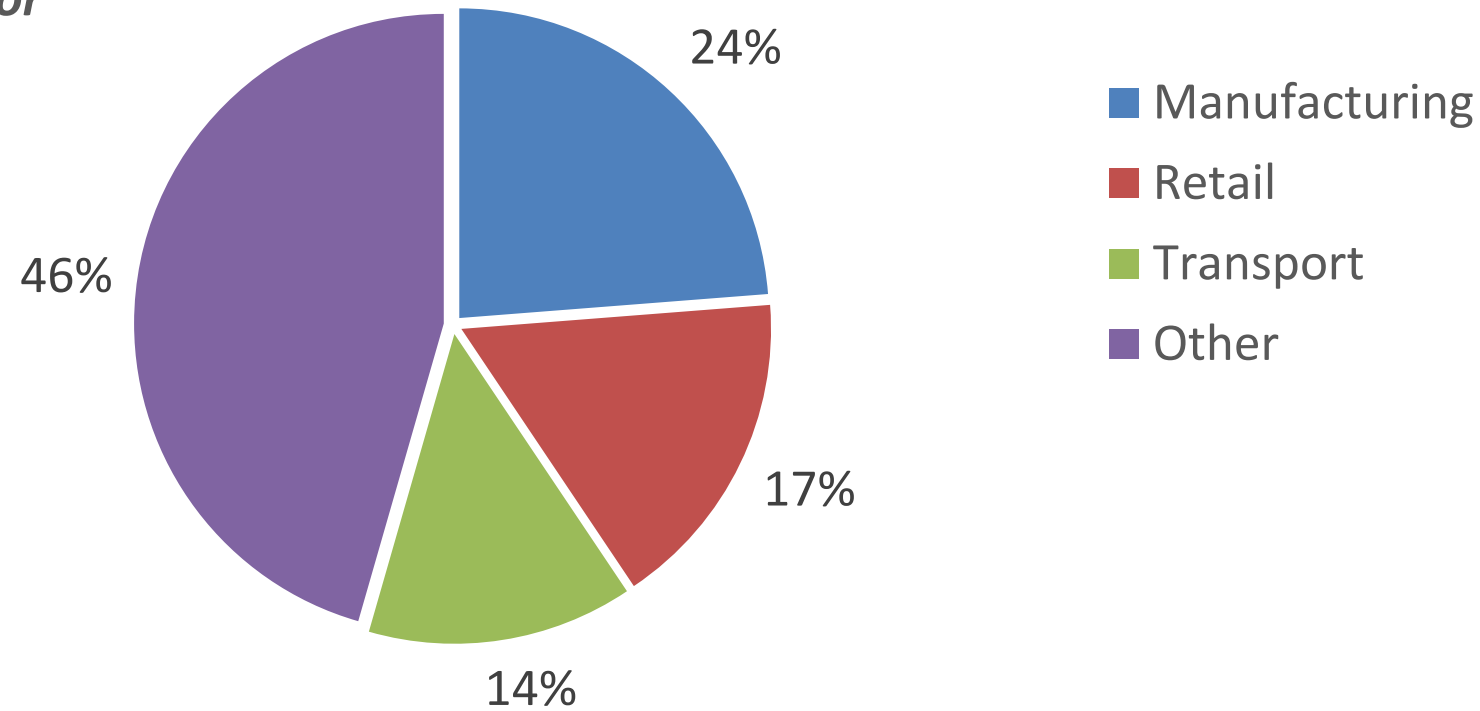
2003 – Q3 2019



# Merger control decisions, per sector

2015 – Q3 2019

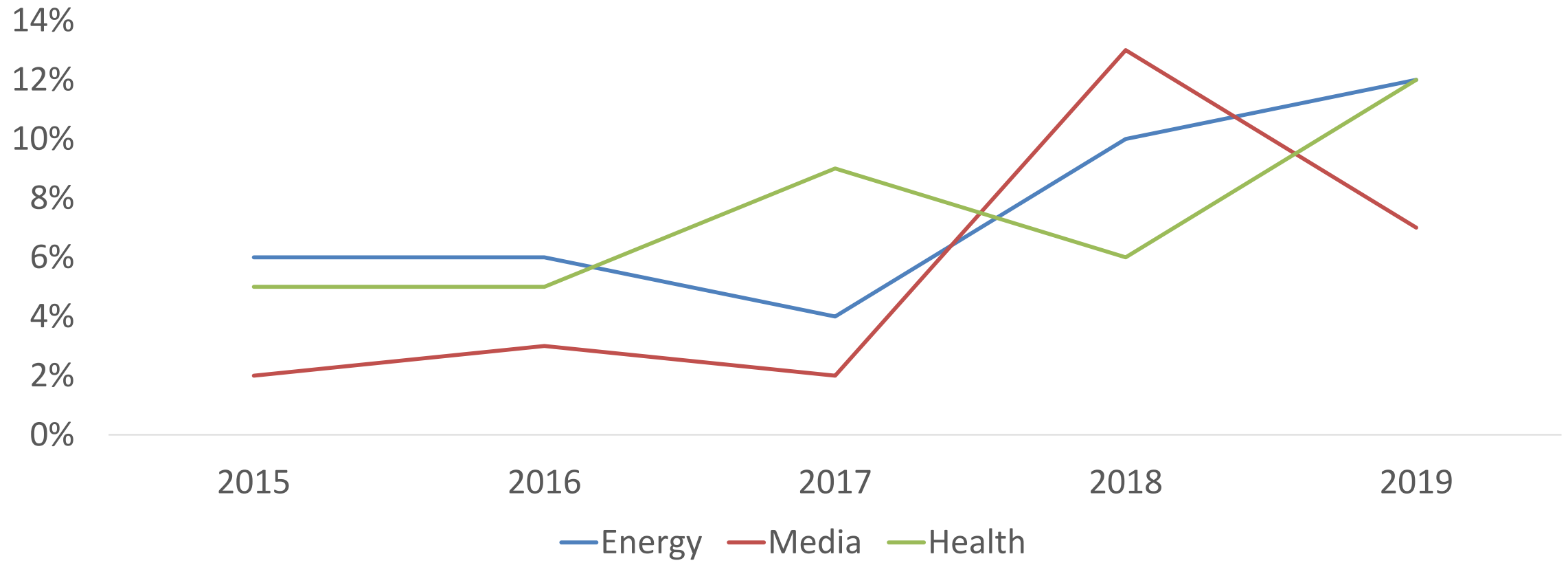
*Breakdown of  
mergers per sector*



# Merger control decisions, per sector

2015 – Q3 2019

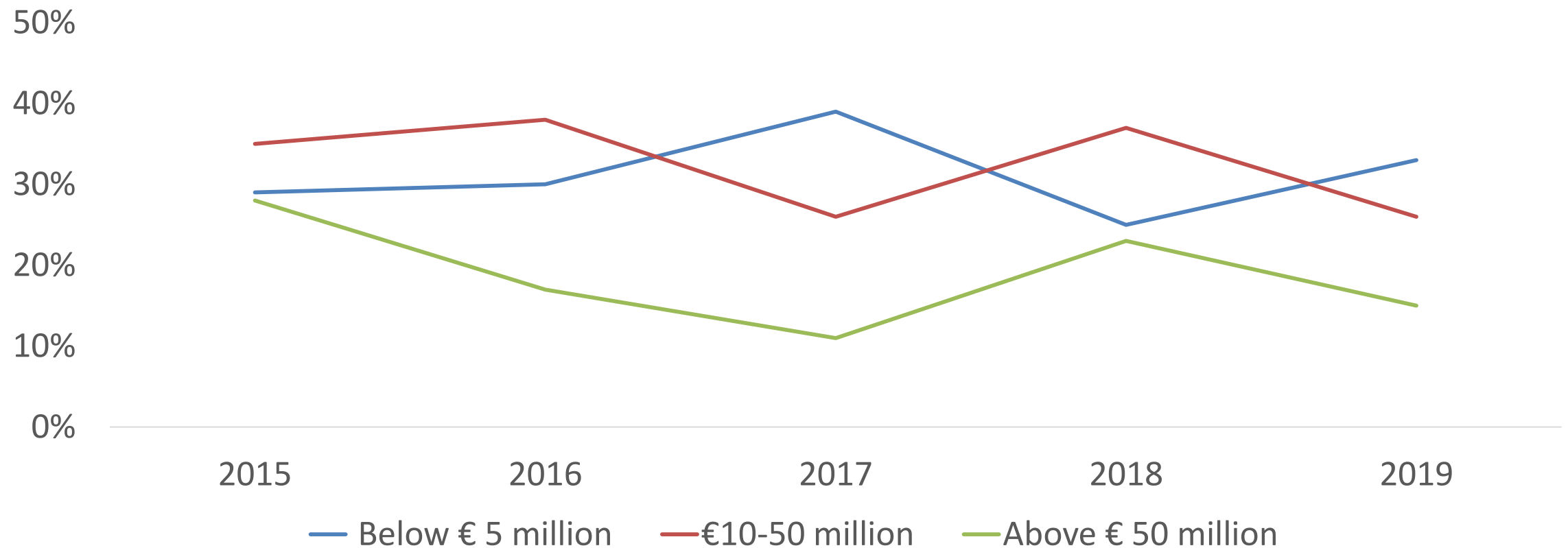
Breakdown of mergers per sector



# Targets, turnover in Portugal

2015 – 2018

## *Breakdown of mergers per target's turnover in PT*

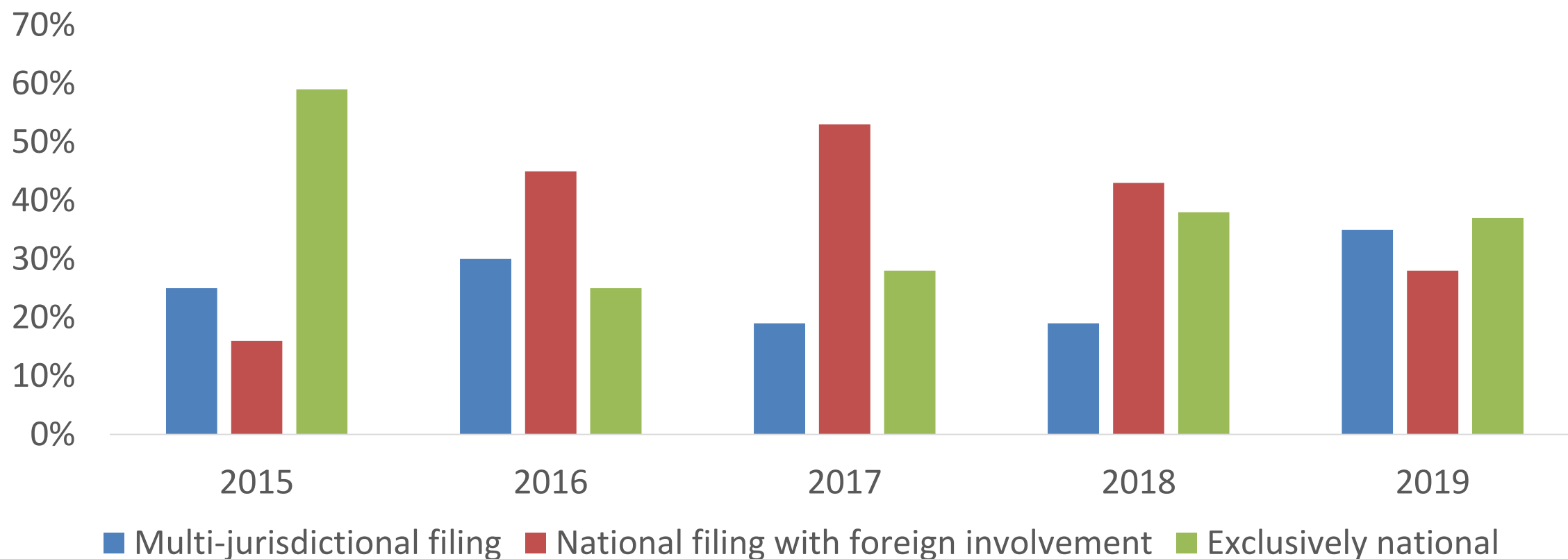




# Merger control, geographic scope

2015 – Q3 2019

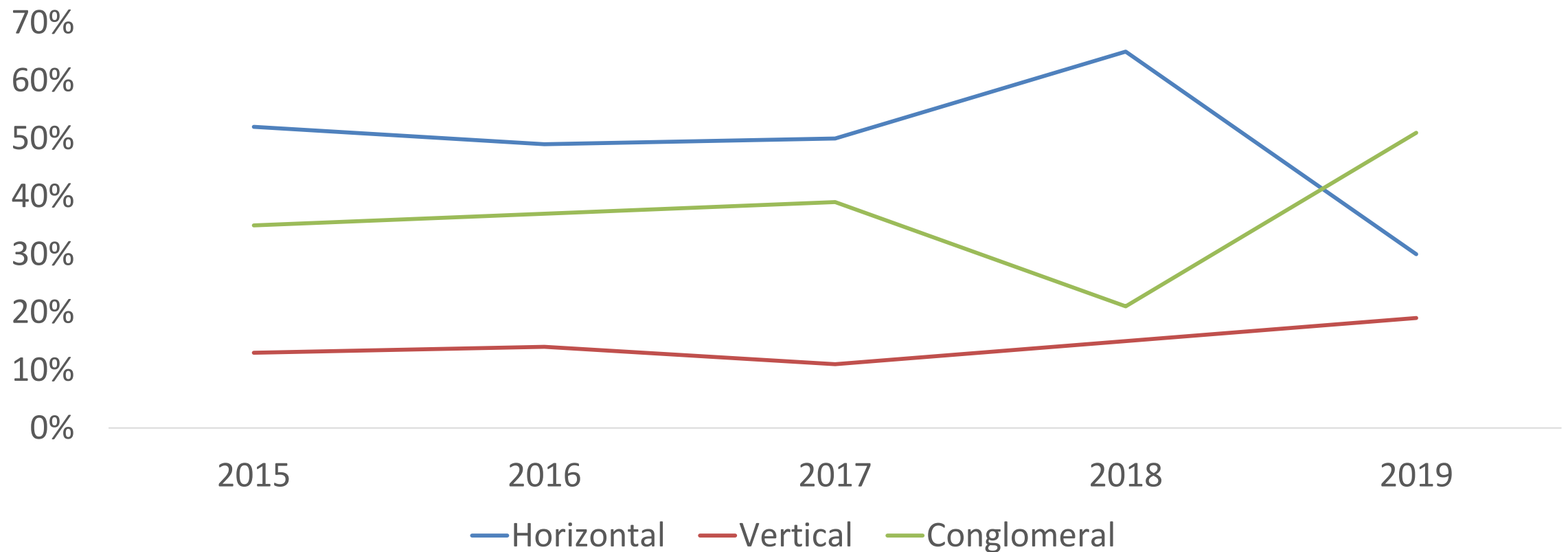
## *Breakdown of mergers per geographic scope*



# Merger control, type of merger

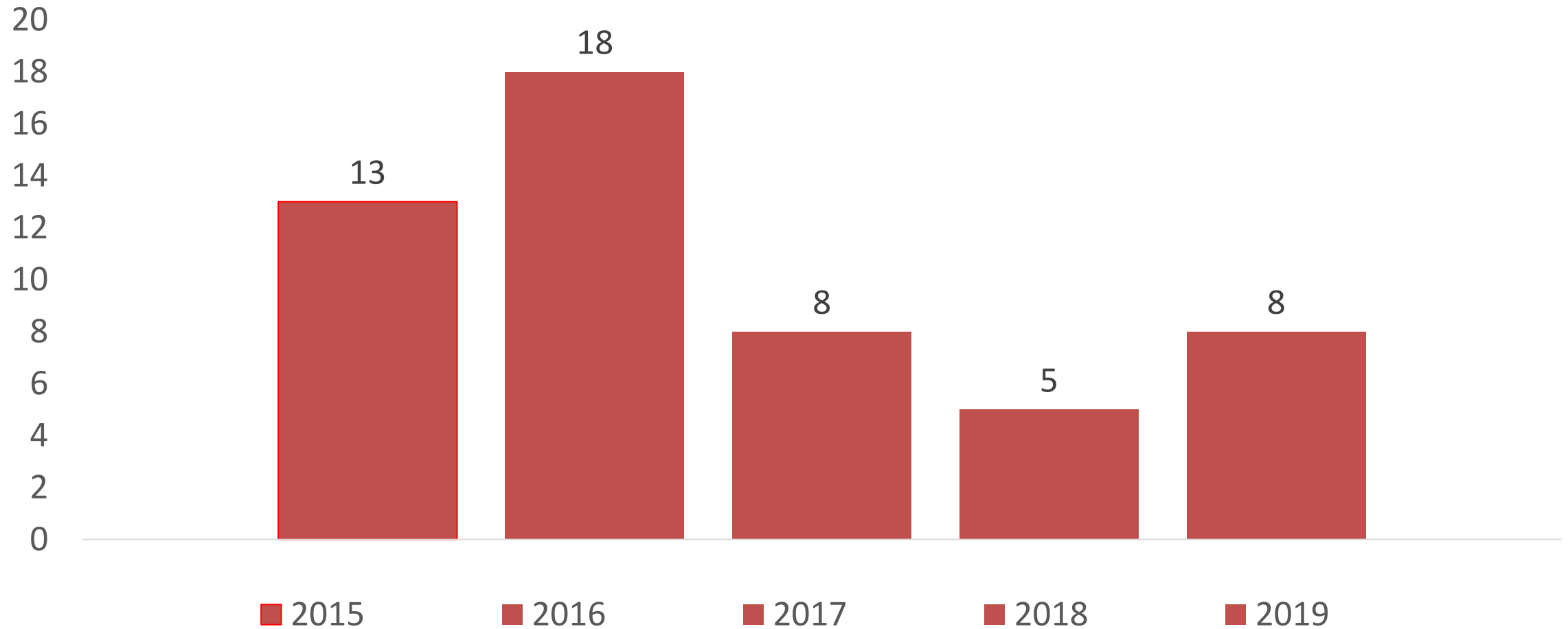
2015 – Q3 2019

## *Breakdown of mergers per relationship between merging parties*



# Mergers involving private equity firms

2015 – Q3 2019



# Recent trends in merger control

## *Takeaways*

- Number of notified mergers is cyclical (~40-60 per year)
- Hot sectors: energy, health and media
- Target profile: a third is below €5 million turnover in Portugal
- Acquirer profile: two thirds are foreign investment; most below €5 million turnover in Portugal
- ~50% of the mergers involve competitors
- Private equity firms: in 10-30% of merger deals

# Other antitrust aspects in M&A



# Types of anti-competitive practices

## Cartels and Horizontal Agreements

Coordination between competitors

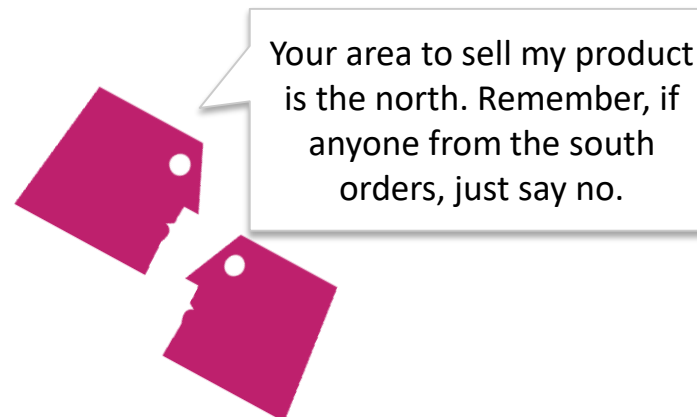
- Price fixing
- Limitation of production
- Division of markets
- Exchange of sensitive information



## Vertical Agreements

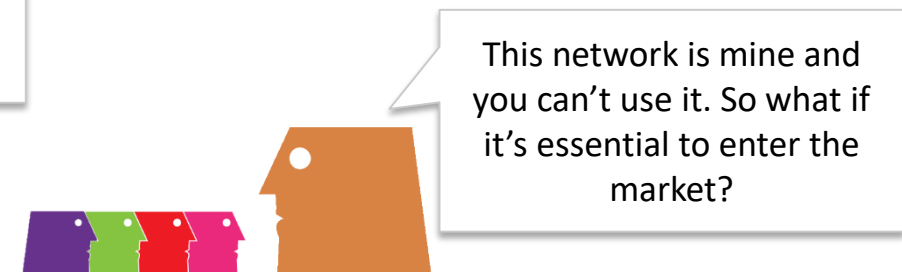
Coordination between non-competitors, i.e. companies on different levels of the value chain

- Resale price maintenance
- Restriction of passive sales
- Selective distribution
- Exclusive distribution



## Abuse of a dominant position

- Margin squeeze
- Predatory pricing
- Access to essential facilities
- Discrimination
- Limitation of production



# Other antitrust aspects in M&A

## *What can due diligence save*

### 1. Financial cost

- Sanctions of up to 10% of the firm's annual turnover
- Sanctions of up to 10% of the joint turnover of the associated firms, in the case of Associations of firms or Professional Orders
- Sanctions of up to 10% of the annual salary of the managers

### 2. Reputational cost

### 3. Litigation cost

### 4. Agreements/Decisions null and void

### 5. Private enforcement cost



# Other antitrust aspects in M&A

## *Importance of due diligence*

- Leniency program
- Complaints
- *Ex officio* – acting on our own initiative





# Other antitrust aspects in M&A

## *Avoiding gun-jumping*

- Failure to notify transaction
  - Merger cannot be implemented before clearance
  - Limited exceptions
  - Possibility of preliminary reviews (e.g. market share thresholds)
- Parties co-ordinate competitive conduct prior to closing of transaction
  - Sharing sensitive information (customers, prices, plans)
  - Decision-making

# Other antitrust aspects in M&A

## *Avoiding gun-jumping*

- Consequences: fines of up to 10% of turnover
- AdC has imposed fines for gun jumping twice
- 6 new gun jumping investigations in 2019

# Final remarks

## *Takeaways*

- Merger control: comprehensive, fast and flexible
- Ensure antitrust due diligence during acquisition, alongside financial DD
- Avoid jumping-the-gun



# FAIR PLAY.

With competition,  
everybody wins.