

Cooperation between Competition Agencies and Public Procurement Authorities

Portuguese recent experience



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Why prioritize bid-rigging in Public Procurement?

- **Rationale:**
 - Enforcement is the key priority for the AdC
 - Cartels are the most serious infringement to competition law
 - Public procurement is seen as fertile ground for cartel activity
 - Cartels in public procurement cause 10% - 30% overcharge (estimates)
 - Promoting competition and efficiency and fighting bid-rigging in public procurement may generate substantial savings

Since 2016: Comprehensive strategic plan including enforcement/advocacy initiatives geared towards fighting bid-rigging in public procurement and promoting competition and efficiency in public procurement

AdC Strategy for Public Procurement

Ex-officio Enforcement & Awareness (2 vectors)

- **Increase Awareness**

- Redesigned complaints website and hotline



- Outreach Campaigns:

- » Fair Play (2014) addressed to business community
 - » **Fighting bid-rigging in public procurement** (Launched 2016)
 - » Guidance for Business associations (Published 2016)
 - » Leniency: promoting the program with companies and lawyers



Fighting Bid-Rigging Campaign

Raising awareness among PP Officials

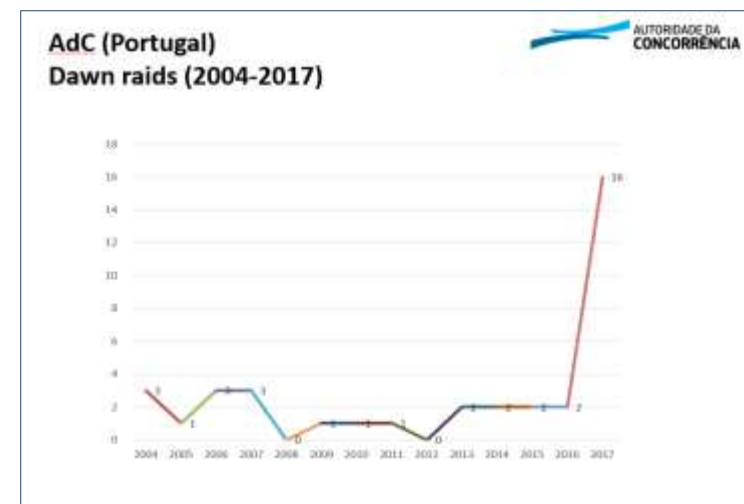
- Campaign directed at **public procurement officials** (reached more than 1800 YTD)
- Aims to raise awareness on the **benefits of competition** and the **costs associated with bid-rigging in public procurement**
- **Guide of Good Practices in the Fight against Bid-Rigging in Public Procurement**
- Ways to **detect and prevent bid-rigging**
 - How to identify potential collusive behavior in public procurement
 - How to design public procurement procedures which are less vulnerable to bid-rigging
- Create **privileged communication channels** with public procurement officials as a means to strengthen the **AdC's enforcement action**



AdC Strategy for Public Procurement





Ex-officio Enforcement & Awareness (2 vectors)

- **Strengthening *ex-officio* investigation**
 - Increasing number of dawn raids (16 in 2017; 4 in 2018)
 - Increasing number of sectors targeted
 - Increased investment in IT Forensic Tools
 - Setting up dedicated teams, including **Intelligence Team**
 - **Advanced Economic Analysis** (structural analysis)
 - **Screens** (use of quantitative methods for behavioral analysis)
- **Data Sources:** corporate data collected upon request for information by the AdC, news in the press & other media, structural screens from the chief economist's office, evidence and data from dawn raids and **existing databases managed by other governmental agencies**



AdC Strategy in Fighting Bid-Rigging

Case examples

| Case | Sector | Private/Public Procurement | Undertakings involved | Origin | Sanction levied by AdC |
|--|---|----------------------------|-----------------------|---|---|
| Cartel in the provision of reagent strips for glucose determination (2004; 2008) |  Health | Public procurement | 2004: 5 2008: 5 | 2004: Adjudicating body 2005: Ex officio | 2004: €3.3mn 2008: €13.5mn |
| Cartel in provision of industrial cleaning (2011) |  Industrial cleaning | Public procurement | 5 | Ex officio | €0.3mn |
| Cartel in the provision of modules for schools (2015) |  Construction | Public procurement | 5 | Leniency | €0.8mn |
| Railway maintenance (Ongoing) |  Railway | Public procurement | 9 | In the scope of the AdC campaign | €0,365mn (Settlement with one undertaking) |

7 condenações por cartel na contratação pública

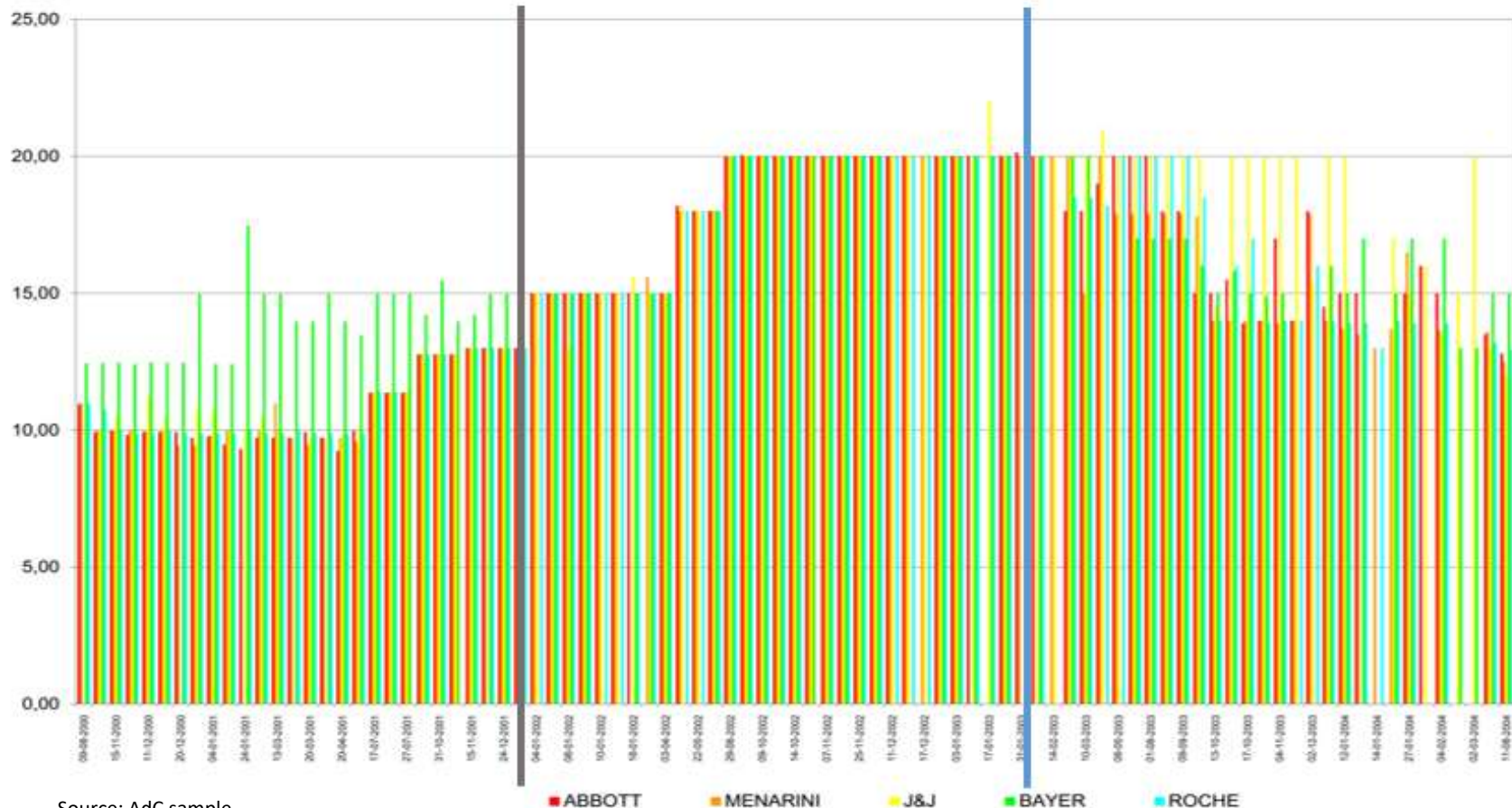
€33 milhões em coimas aplicadas

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Case examples

Example of data analysis in public procurement

Gráfico 1 – propostas de preço das arguidas para o Reagente de Determinação de Glicose no Sangue no período da amostra (valores em €), segundo data de abertura das propostas



Source: AdC sample

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Access to data on existing databases

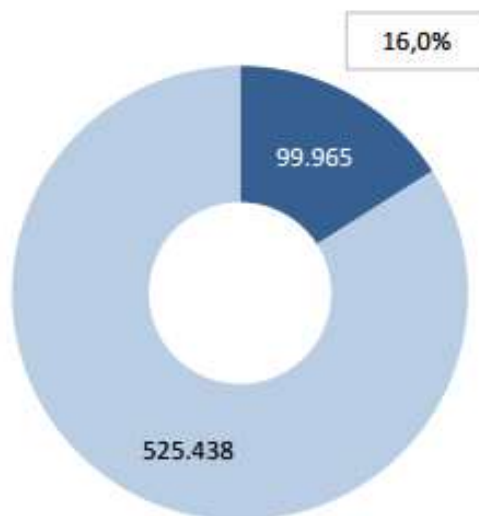
- Since 2009, procedures of a competitive nature* launched under the Public Procurement Code must be performed through electronic platforms, for all stages from the notice publication to the contract award
- For direct awards it is mandatory the publication of public contracts in **the BASE portal**
- **The BASE portal** receives information from the contracting authorities, directly or through the electronic platforms licensed for public procurement, including identification of contracting authorities and tenderers (name and taxpayer number), information about the procedure (number, type of tender and type of contract, description, object, awarding price, location), relevant dates (publication, call for tenders, decision, contract award, contract closure)

* Open procedure, limited bidding by prequalification, competitive procedure with negotiation, competitive dialogue, design contest, framework agreement, dynamic purchasing systems.

Electronic public procurement in Portugal

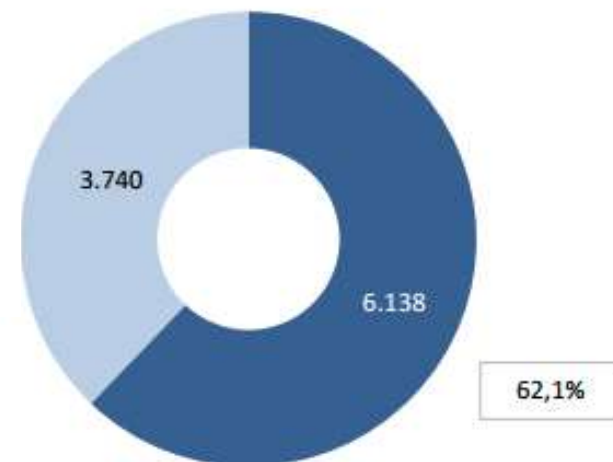
2016

Number of procedures



- Procedures performed through an electronic platform
- Procedures performed directly by the contracting authority

Base price value



Source: BASE Portal (May 2017)

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Access to data in existing databases

Until August 2017, access to data was made on specific request by the AdC under the following provisions:

- Article 15 of the Portuguese Competition Act – General provision on RFI
- Article 11 of the Legal Framework of Regulatory Authorities – Duty to cooperate among sector regulators
- Article 9 of AdC Statutes – Duty to cooperate and inform the AdC of potential infringements (governmental agencies)
- Article 35 of the Portuguese Competition Act – Provision on coordination with sector regulators on prohibited practices

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Access to data in existing databases

Since August 2017, the Public Procurement Code was amended and the following article was enacted (entry into force on 1 January 2018):

Article 454.º-C

Duty of collaboration with other authorities

*1 - The contracting authorities and the Institute of Public Procurement, Real Estate and Construction, I. P., must collaborate promptly as required by the public prosecutor, **the competition authority** and the audit and inspection authorities referred in the previous article in order to allow the performance of their mission, in particular by **ensuring direct access to databases of public procurement information and presenting the documents or records requested.***

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Access to data in existing databases

As of 1 January 2018, the AdC has **full and direct access** to the e-procurement BASE Portal, having signed an MoU with IMPIC in November 2017 to fully implement this access

On 21 September 2018, AdC and INFARMED (National Authority of Medicines and Health Products) signed a MoU for cooperation and exchange of information

The AdC is taking action to **enhance institutional cooperation** in order to encourage sharing of information and data that will assist in detecting cartel behavior

AdC Strategy for Public Procurement

- Reinforcing investigative capacity is **top priority** for the AdC
- **Synergies and mutually reinforcing action** in advocacy and enforcement
- **Promoting awareness** on practical ways to detect bid-rigging in public procurement
- **Aligning incentives** with public procurement officials and bodies with public procurement responsibilities to encourage complaints
- **Access to data and information** important to enhance ex officio cartel detection
- **Institutional cooperation** can promote exchange of information and data that is already being collected (or can be collected)
- **Greater investigative capacity** will also contribute to cartel detection through other means (namely leniency)

Thank you / Muito obrigada!



