LEGAL ALERT

ADC CONSULTS THE MARKET ON DIGITAL ECOSYSTEMS, BIG DATA AND ALGORITHMS

On November 2nd, the Portuguese Competition Authority (*Autoridade da Concorrência* – "AdC") launched a call for information with the purpose of gathering comments for the **identification of possible barriers to entry and/or expansion of companies, including operator's strategies that may limit competition in the digital sector in Portugal**.

This call for information follows the Issues Paper on Digital Ecosystems, Big Data and Algorithms, published by the AdC in July 2019. In that paper, the AdC focused essentially on competition law issues in the context of digital transition, big data, multilateral platforms and digital ecosystems. For the AdC, **big data play a central role in digital ecosystems and enhances network effects in several markets**. Network effects occur when products/services acquiree greater value for those using them the larger the overall number of users, thus conferring a competitive advantage on the largest companies, which are more prone to market concentration.

On the other hand, **through big data, algorithms that help companies decide on strategic variables for their business and facilitate the discovery of products by consumers have been developed**. In particular pricing, monitoring, ranking, and recommendation algorithms may, according to the AdC, facilitate the creation and maintenance of "concerted" or collusive balances on the market. However, they may also bring advantages for product discovery and price comparability, effects that would typically intensify competition.

The AdC's analysis also focuses on the impact of pricing and monitoring algorithms on the competitive interaction between undertakings, notably in terms of market transparency and implementation of coordinated behaviour.

It also highlights the role that ranking and recommendation algorithms can play in discovering new products or showing consumers products that are more relevant to them considering their preferences and needs. However, this more personalised offer to each user makes these algorithms particularly influential in a consumer's final decision, which may, according to the AdC, lead to bottlenecks in the market, for instance if they are associated with vertically integrated platforms or large digital ecosystems and may thus be tools for competitor exclusion strategies.

It is in the context of an economy characterised by the emergence of new business models, the explosive growth of e-commerce and the trend towards a strengthening of the regulation of online platforms and social networks (exemplified by the ongoing legislative process around the European Commission's Digital Services Act and Digital Markets Act proposals) that the **AdC has defined the digital sector as a priority**, being mainly focused on identifying the **main barriers to the entry and expansion of new companies**.

In fact, the AdC considers that operators in this sector may have incentives to implement strategies to exclude competitors already present in the market and potential new entrants, concluding that there are new challenges in defense of competition rules in the digital sector.

The consultation thus **includes a set of questions that the AdC invites all interested parties to answer without prejudice to other information they may consider relevant**.

The deadline for submission of contributions ends on **16 December 2021**.

We remain at your disposal for any further questions or clarifications.

Gonçalo Machado Borges [+ info]
Inês Ferrari Careto [+ info]
David Noel Brito [+ info]