

Bid-rigging in public and private procurement

- The Portuguese experience -

ICN Cartel Workshop



Ottawa

Oct.4, 2017

Summary

- 1. Cartel investigations in the EU context**
- 2. Why prioritize bid-rigging in public procurement?**
- 3. The AdC's strategy in the fight against bid-rigging**

Cartel investigations in the EU context

- A system of parallel competences, within the ECN
- Antitrust cases usually handled by:
 - A single NCA, if case relates to one jurisdiction;
 - The European Commission, if case relates to several jurisdictions;
 - Several NCAs in parallel in some cases.
- Principles of allocation
 - In the Commission Notice's on cooperation within the Network of Competition Authorities
 - The authority that receives a complaint or starts an ex-officio procedure investigates the case

Fighting bid-rigging in public procurement

Why prioritize bid-rigging?

- **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 efficiency and competition and **fighting bid-rigging in public procurement may generate substantial savings:**
 - In Portugal: an estimated \approx €1.8 to 4.5bn/year, i.e. nearly the public deficit in 2016
- Justifies a strong campaign geared to fight bid-rigging in public procurement
- **Target sectors with highest spending in public procurement:**
 - E.g. health, defense, education and infrastructure.

Fighting bid-rigging in public procurement

AdC's strategy

The 3 vectors of AdC's strategy in the fight against bid-rigging:

- Strengthening enforcement action
- Outreach to public procurement officials
- Continued institutional cooperation

AdC Strategy in Fighting Bid-Rigging

Reinforcing investigative capacity

- Definition of 2017's priorities: strong increase in investigations and enforcement.
- Increasing the risk of detection, including perceived risk
- AdC seen as a statistically important threat to cartels
- Nb. of dawn raids increased 6x YTD
- Combine proactive experienced and young team members
- Increased efficiency in the logistics of dawn raids (one focal point for preparation), dedicated teams (experience steepens the learning curve)
- Significant increase in IT forensics so as to improve efficiency in investigations (dawn raids and analysis of evidence)

AdC Strategy in Fighting Bid-Rigging

Reinforcing investigative capacity

- Increase in ex-officio investigations: **intelligence team** being set up
- Full access to entire **public procurement database**
- Redesigned **complaints' website** and hotline
- New platform for **anonymous whistleblowers** (2018)
- Fostering **international cooperation** in cartel investigations
- **Outreach campaigns** with a double purpose: pure advocacy and new pipeline
 - Bid-rigging in public procurement with priority to large expenditure areas
 - Business associations: raising awareness to leniency
 - Fair play: raising awareness with SMEs
 - Leniency: promoting the program with companies and lawyers



Reinforcing investigative capacity

AdC intelligence team

1. **Advanced econ analysis (structural analysis)**
2. **Quant methods (behavioral screens)**
3. **Data mining for large volumes of evidence/data**



Ex-officio investigations



Support to dawn raids and ongoing investigations

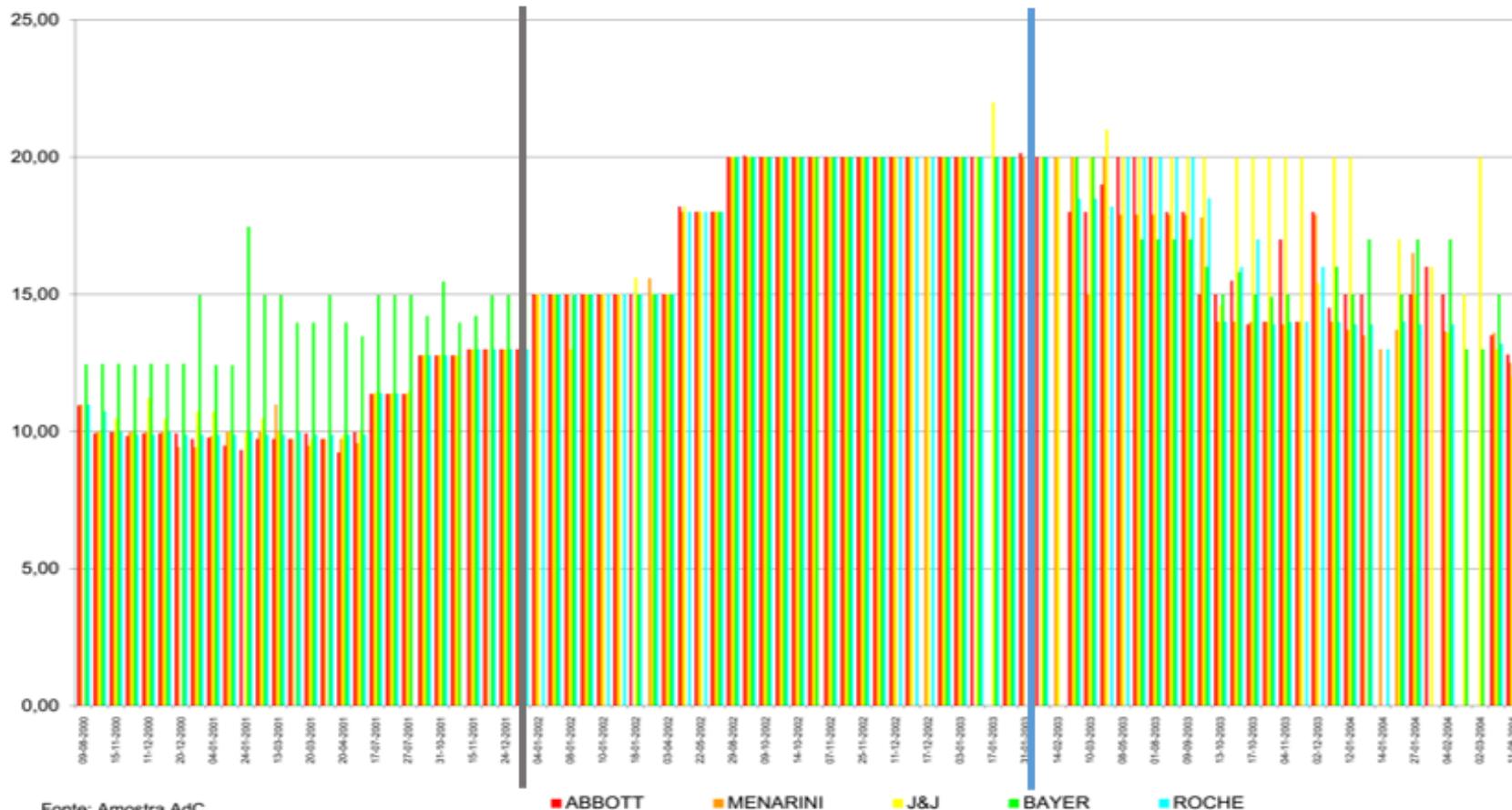
- Existing databases, i.e. public procurement and pharmaceutical sector
- Corporate data collected upon request
- News in the press and other media
- Structural screens from the chief economist's office
- Evidence and data from dawn raids

Reinforcing investigative capacity

AdC intelligence team

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



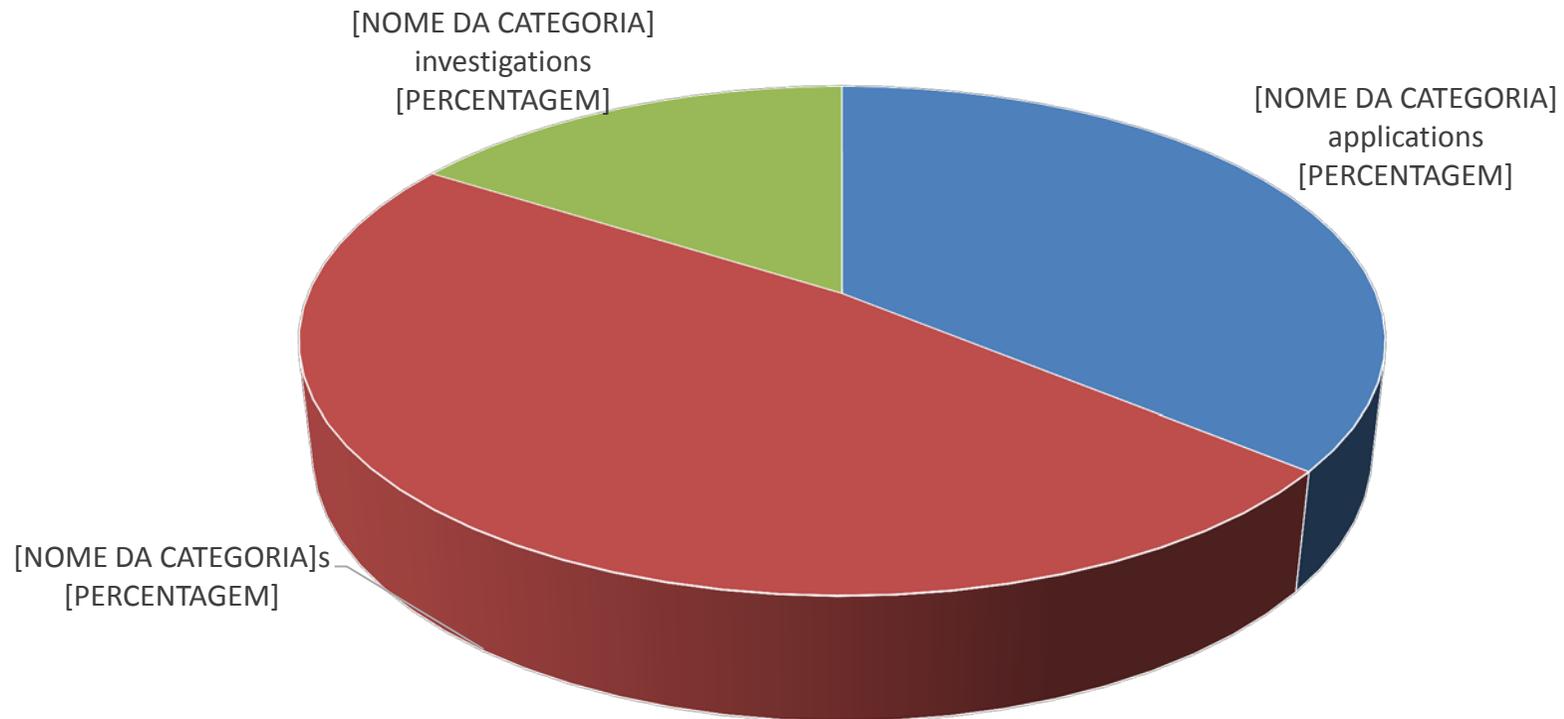
Fonte: Amostra AdC



AdC Strategy in Fighting Bid-Rigging

Origin of cartels

Origin of pending and closed cartel proceedings



Reinforcing investigative capacity

Promoting the leniency program

Main features of the program:

- Immunity from fines (companies and individuals) granted for the 1st to fulfill conditions
- 2nd, 3rd and following applicants benefit from a reduction of fines of 30-50%, 20-30% and <20% respectively
- Cease the conduct, confess and collaborate
- Scope of collaboration: identify other participants, provide information, documents and evidence of the reported behavior

Leniency program has brought important **bid-rigging** cases to the AdC.

AdC Strategy in Fighting Bid-Rigging

Outreach campaign

- Campaign directed at **public procurement officials** (reached 1200 YTD)
- Aims to raise awareness of 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 communications channels** with public procurement officials as a means to strengthen the **AdC's enforcement action**



AdC Strategy in Fighting Bid-Rigging Campaign materials



COMO ACONTECE

Esteja atento

O CONLUIO NÃO É PEGÃO

APARECE EM DIVERSOS SETORES

HÁ FORMAS DE DETEÇÃO

TEM ELIENADOS CUSTOS SOCIAIS

MAIS PODE SER PREVENIDO

PUNÍVEL COM SANÇÕES ELEVADES

UMA COISA É CERTA: O CONLUIO NÃO É SEGRETO PARA VENCER

SABER
O QUE É O CONLUIO NA
CONTRATAÇÃO PÚBLICA
Saber mais +

REDUZIR
O RISCO
DE CONLUIO
Saber mais +

CONHECER
AS FORMAS MAIS
COMUNS DE CONLUIO
Saber mais +

IDENTIFICAR
INDÍCIOS
DE CONLUIO
Saber mais +

ENTENDER
CARACTERÍSTICAS
DE MERCADO QUE
FACILITAM O CONLUIO
Saber mais +

CHECKLIST COMBATE AO CONLUIO NA CONTRATAÇÃO PÚBLICA

O conluio na contratação pública consiste na celebração de propostas com o objetivo de eliminar ou limitar a concorrência nos procedimentos de contratação. Vários indícios podem alertar as entidades adjudicantes para a possibilidade de conluio neste tipo de procedimentos.

concorrencia.pt

Autoridade da Concorrência

O que é a contratação pública?

A contratação pública é o processo através do qual o Estado e outras entidades públicas se aprovisionam dos bens e serviços necessários ao desempenho das suas funções.

Em Portugal, a contratação pública é regulada pelo Código dos Contratos Públicos, aprovado pelo Decreto-Lei n.º 18/2008, de 29 de janeiro, e que procede à transposição para legislação nacional do Diretiva Comunitária.

O que é o conluio na contratação pública?

O conluio na contratação pública consiste na celebração de acordos secretos entre as adjudicantes para concertar propostas, em prejuízo da concorrência nos procedimentos.

<http://www.concorrencia.pt/CombateAoConluionacontratacaopublica/>



AdC Strategy in Fighting Bid-Rigging

Institutional cooperation

Cooperation with other national public and enforcement authorities

- Duty to inform the AdC of potential infringements by adjudicating bodies
- Referrals and exchanges with Public Prosecutor and Court of Auditors
- Sector regulators

International cooperation – sharing experience and implementing good practice

- ICN, ECN, OECD, UNCTAD

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 forms (2012)	 Office supplies	Private procurement	4 undertakings + 3 individuals	Leniency	€1.8mn
Cartel in the provision of modules for schools (2015)	 Construction	Public procurement	5	Leniency	€0.8mn
Cartel in the provision of envelopes (2016)	 Office supplies	Private procurement	4	Leniency	€1.9mn
Railway maintenance (Ongoing)	 Railway	Public procurement	9	In the scope of the AdC campaign	-

AdC Strategy in Fighting Bid-Rigging

Key points

- Cartels are a priority for the AdC, in particular cartels in public procurement
- Leniency program is the most effective way to detect cartels
- However, its success also depends on the use of other tools
- Destabilize cartels: increased detection risk
- Enhanced investigative skills (e.g. IT, more dawn raids, intelligence)
- Priority to advocacy campaigns that raise awareness on leniency
- Engagement with domestic and international stakeholders



FAIR PLAY.

With competition,
everybody wins.