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**ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN BRAZIL**

-- 2011 --

*This report is submitted by Brazil to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 13-14 June 2012.*

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**ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN BRAZIL****Brazilian Competition Policy System – BCPS \*****Executive Summary**

1. The Brazilian Competition Policy System (BCPS) comprehends three government bodies: the Administrative Council for Economic Defense (CADE), the Secretariat for Economic Law (SDE), both linked to the Ministry of Justice, and the Secretariat of Economic Monitoring (SEAE) of the Ministry of Finance. Those institutions have undergone numerous improvements in the last 20 years with the aim of enhancing and enforcing competition in order to protect the Brazilian consumer market.
2. A remarkable change in the BCPS occurred in 1994 with the approval of the Law nº 8.884, from 11 June 1994. This new legislation modernized national competition policy by creating the three abovementioned bodies that form the BCPS nowadays. Since then, the System has advanced significantly and, in order to continue to improve competition and enforce competition law in Brazil, the BCPS has supported new advances within the System.
3. During 2011, a second extraordinary change occurred by the approval of the Law nº 12.529, from 30 November 2011. This new legislation consolidates the enforcement of competition law into one agency, adopts a pre-merger notification regime and provides BCPS with a larger staff and budget.
4. Investments on staff capacity building continued to be one of the BCPS strengths. The staff has benefited from a wide range of training opportunities, from a permanent training program with graduate courses to participation in international courses and internships.
5. In 2011, the BCPS continued to suffer the same problems of scarcity of financial, human and material resources faced during previous years. Notwithstanding, substantial efforts were made to advance the BCPS's recognition as a transparent and efficient system working in harmony with the Federal Government.
6. CADE's standing before the Judiciary has been strengthened as a response to the increasing judicial review of CADE's decisions. In the past years, CADE's Legal Office has become more proactive, by proposing an increasing number of lawsuits either to require the payment of fines imposed by the Council, or to obtain a judicial order for the compliance of remedies imposed by CADE. Furthermore, the follow-up of judicial procedures involving CADE has become a priority, and frequently CADE's attorneys go personally before courts to explain the merits of the decisions. Such initiatives contribute to strengthen the relationship among judges, the legal community and CADE, as well as to promote increasing recognition and confidence in relation to the work performed by CADE.

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\* *Conselho Administrativo de Defesa Econômica (CADE); Secretaria de Direito Econômico / Ministério da Justiça (SDE/MJ) and Secretaria de Acompanhamento Econômico / Ministério da Fazenda (SEAE/MF).*

7. CADE's Attorney General Office is composed by nine attorneys, including the General Attorney, who is appointed by the Ministry of Justice and commissioned by the President of the Republic after Senate's approval, what assures him certain autonomy before the Council. The Office's main functions are to offer legal opinions to CADE in all cases submitted to the Council, to prepare and follow CADE's defense before Brazilian Courts, and to enforce CADE's decisions administratively. The office remains as one of the best of Brazil due to its utmost qualified staff. This Office's close collaboration with all departments of CADE has guaranteed Brazil to be widely considered the leader in prosecuting cartels in Latin America.

8. During the past years, SDE has been significantly improving its role and functions by concentrating on anticompetitive agreements and abuse of dominance investigations, focusing its resources on cracking cartels. As a consequence, the number of investigations on anticompetitive practices, leniency applications and dawn raids tend to increase every year.

9. SDE has continued to spend its resources to ensure that criminal authorities would enforce Brazil's Economics Crime Law and kept strengthening the cooperation with the Brazilian criminal authorities, in order to increase the impact of its anti-cartel enforcement policy, establishing a close cooperation since 2007 with the Federal Police and the Public Prosecutor's Office of 23 Brazilian States (out of 27).

10. Advocacy also played a major part in the SDE's work as it is deemed especially important in a jurisdiction like Brazil, which only very recently has been introduced to an open market. In the context of the Brazilian Anti-Cartel Enforcement Program, which was designed by SDE for the four-year term of 2007-2010, aimed at continuing four-year term 2011-2014, several actions had been carried out in order to increase the yield of bid-rigging detection, leniency agreements and dawn raids aimed at obtaining evidence of anticompetitive behavior.

11. During the year of 2011, SDE kept its efforts on concluding its investigations and has been focusing its resources in reducing backlog, in despite of the reduced staff and increasing number of reports of anticompetitive conduct.

12. SEAE has continued to consolidate its institutional role, especially in the areas of economic regulation and competition advocacy – particularly in the infrastructure sectors. SEAE also had an importation role in competition policy within MERCOSUR, since it is the main BCPS agency for coordinating the competition discussions in this regional forum, namely as coordinator of the Technical Committee on Competition (CT-05) since 2009.

13. Within the new legislation, SEAE will go through major changes concerning its activities related to the competition field. The agency will no longer be responsible for merger control review nor any kind of competition enforcement. However, it will have the opportunity to improve its competition advocacy role, assisting Brazil's regulatory agencies in its public hearings by issuing opinions that will analyze the competition impact of a specific matter within the government and the society.

#### **1. Changes to competition laws and policies, proposed or adopted**

14. Law 12,529 is the result of a lengthy legislative debate that started formally in 2004, when the Bill 3,937/04 was presented. The new law, which enters into effect by the end of May 2012, is an historical and decisive milestone for the improvement of the Brazilian competition policy and, with its changes, revolutionizes the SBDC as it is known today.

15. The changes introduced are comprehensive: to begin with, the structure of the governmental agencies in charge of competition law enforcement in Brazil. According to the new system, the tasks of

investigation of anticompetitive conducts, analysis of merger filings and the final antitrust decision are joined together into a single independent agency – CADE. Underlying this restructuring is an attempt to correct the deficiencies of the current system, in which there are overlaps of tasks among three different agencies: SDE and SEAE (both entrusted with the collection of evidence and preliminary review of the cases) and CADE (charged of rendering the final decision).

16. Although SBDC has managed, over the past years, to obtain a better allocation of tasks – the SDE, as an authority of the Ministry of Justice, has focused mainly on the investigation of conduct cases, whereas SEAE, of the Ministry of Finance, has engaged mainly in the gathering of evidence in merger filings and competition advocacy –, there is no doubt that the consolidation of tasks into a single agency ensures a faster review of cases, eliminates the overlapping of tasks and promotes higher specialization in the technical areas.

17. As of the date when the law will be effective, SEAE shall become primarily responsible for the competition advocacy actions and the Department of Competition Protection and Economic Defense of SDE will become a part of the technical body of CADE. In this new layout, CADE will be then consolidated as the single agency in charge of analyzing mergers and acquisitions, of investigating violations against the economic order and of adjudicating all of them.

18. The new structure reflects these new responsibilities and already draws the main lines of this recommended separation of roles. Under the new law, CADE is composed of an **Administrative Tribunal of Economic Defense** (to be formed by a chairman and six members, in charge of adjudicating merger filings and anticompetitive conduct cases), a **General Superintendence** (entrusted with the investigation of both merger filings and anticompetitive conduct cases), and a **Department of Economic Studies** (which will help ensure the technical and scientific rigor of CADE decisions and is responsible for the preparation of economic studies and opinions.). Furthermore, CADE's Attorney General's Office shall count on a larger number of attorneys, for the purpose of ensuring greater efficacy to the Council's decisions vis-à-vis the Judiciary.

19. Following the same line, CADE's autonomy – a fundamental aspect for the proper implementation of the Brazilian competition policy – is consolidated by the extension of the term of office of the Tribunal members from the current two years (renewable) to four years (non-renewable) and the maintenance of a specialized federal public prosecutor's Office at CADE, to which is assigned the task of providing advice and defending the agency in the courts.

20. In addition to the structural changes, Law 12.529/11 also brings deep changes to the merger control in Brazil, with the introduction of the pre-merger review system, recommended by international best practices since a long time.

21. Indeed, the introduction of the pre-merger filing system is one of the key aspects of the new law. When the new law comes into force, transactions will only be allowed to be consummated after CADE's approval is granted, whereas the closing of a transaction prior to approval will subject the parties to penalties ranging from BRL 60 thousand to BRL 60 million (approximately USD 32 thousand and USD 32 million, respectively).

22. According to the new law, once the filing is made, CADE will be granted a time period of 240 days to analyze the transaction. This period can be extended only once for additional 60 days, upon the request of the parties involved, or 90 days, based on a duly justified decision of the Tribunal. Once this time period has elapsed without a decision by CADE, the transaction will be considered automatically approved. For simple transactions, which account for the majority of the notifications, a much faster summary procedure will be regulated, similarly to what happens today.

23. Another important innovation in the realm of merger control regards the criteria for notification, which became more objective with the elimination of market share test, in line with the international best practices. According to the new criteria, notification is mandatory for deals in which: (i) one of the economic groups involved in the transaction posted a gross turnover in the Brazil in the preceding financial year of at least BRL 400 million (approximately USD 216 million); and (ii) at least one of the other economic groups involved had a turnover of at least BRL 30 million in the same period (approximately USD 16 million).

24. The inclusion of the minimum turnover for a second party in the transaction is a positive change that is worthy of notice. It aims at eliminating the obligation to notify transactions that are irrelevant from the competition law point of view. In the absence of this second test, transactions were being submitted to CADE for approval only due to the turnover of one of the economic groups involved.

25. The definition of what constitutes a notifiable transaction under the new law is also more straightforward. Instead of an open language, which required the notification of “acts in any manner likely to impair free competition” and “any form of economic concentration”, there is now a list of cases according to which a concentration is deemed to have occurred. The only exception to the filing obligation expressly provided for under the law concerns association contracts, consortia or joint ventures created for the specific purpose of taking part in public tenders. For the acts of concentration carried out for the specific purpose of taking part in other auctions or bids and transactions for the purchase of shares by way of public bids, the law establishes that further rules are to be published in due course.

26. Regarding the control of anticompetitive conducts, there have also been changes that are worthy of mention, with emphasis on the change of the penalty levels. According to the new law, the penalties, which in the current system range from 1% to 30% of the company’s total gross turnover, have been set at 0.1% to 20% of the total gross turnover posted by the company, group or conglomerate in the “branch of activity” affected by the anticompetitive conduct in the year preceding the commencement of investigations.

27. The replacement of the gross turnover criterion with another that supposedly approached the calculation of the penalty to the scope of the violation responds to a demand on the part of the economic agents and the legal community themselves (under the criticism that it made no sense to impose a penalty based on the group’s turnover when, for example, only one of its companies had committed a violation in a certain specific market). However, the final wording of the law, as far as this aspect is concerned, has been the target of criticism. The reason would be precisely the legal uncertainty created by the adoption of the “branch of activity” as a new parameter to calculate the basis for the fine, considering that this is not a technical concept. In response to these critics, the challenge posed to CADE will be to establish a routine around the application of this concept, whether through CADE case law or by way of a resolution establishing definitions on the matter.

28. Lastly, it should be highlighted that the law also introduces positive changes to the leniency program, with emphasis on the increased scope of leniency to include violations provided for in other criminal statutes, such as fraud and bid-rigging and conspiracy. The current rule prohibiting the granting of leniency to the cartel leader - which is of difficult applicability given the problems of characterizing leadership in practice - has been excluded.

### ***1.1 Summary of new legal provisions of competition law and related legislation***

29. In 2011, CADE continued to undertake initiatives to become more efficient and increase the quality of its activities. In August 2011, CADE issued Resolution No. 60, which sets provisions for communication by e-mail between CADE and the companies within a given proceeding. This measure intends to simplify procedures towards more rapid and efficient decisions.

## 1.2 *Other relevant measures, including new guidelines*

### 1.2.1 *Committees and working group units*

30. SDE's representatives have participated in several working groups and committees within the executive government and the Congress in order to disseminate good practices of competition defense.

- **Chamber for the Regulation of Medicines' Market (CMED).** CMED was created by the Decree n° 4.766, of June 26<sup>th</sup>, 2003. CMED aims at implementing and coordinating activities relating to the economic regulation of the market for medicines so as to Foster competition and increase consumer options in this sector. SDE is a member of the executive committee of CMED.
- **Interministerial Group of Intellectual Property (GIPI).** GIPI is aimed at discussing sensitive issues regarding intellectual property policies within the Government. In 2011 SDE was very active in the discussions regarding the proposal of a new copyrights law in Brazil.
- **National Contact Point (PCN).** PCN is an interministerial group coordinated by the Ministry of Finance that is in charge of promoting the efficient implementation of OECD's guidelines for multinational companies.
- **National Strategy to Fight Corruption and Money Laundry (ENCCLA).** ENCCLA is an interinstitutional strategy created to combine efforts in the fight against corruption and money laundry. SDE is one of the 80 agencies that are part of the strategy, and coordinates the discussions in relation to the prevention of bid rigging.
- **Public Procurement Technical Group (GTCOP).** GTCOP is composed of members of the Ministry of Justice, the Ministry of Foreign Relations, the Ministry of Planning and the Staff of the Presidency of the Republic and aims at the harmonization of the legislation relating to public procurement within Mercosur and the improvement of international cooperation in this area.

### 1.2.2 *Participation in events*

31. BCPS has been present in several events, nationally and worldwide, including the active participation of its Chairman, Commissioners, Secretaries, Directors and Coordinators of the staff. Among these events, a special mention should be made to the 10<sup>th</sup> ICN Annual Conference and the OECD meetings.

## 2. **Enforcement of competition laws and policies**

### 2.1 *Action against anticompetitive practices, including agreements and abuses of dominant positions*

#### 2.1.1 *Summary of activities – Competition Authorities*

- **Increased Criminal Prosecution of Cartel Conduct.** In 2011, the SDE continued to spend its resources to ensure that criminal authorities would enforce Brazil's Economics Crime Law. The National Strategy for Cartel Enforcement (ENACC) – a network composed by the prosecution authorities of the administrative, civil and criminal areas in charge of fighting cartels – was also strengthened in 2011. In the third year of its existence, the greatest challenge put to ENACC was to not only proceed with its achievements, but also to increase the active role of all partners. Therefore, with the view to render ENACC more dynamic, the network has started to operate by way of work groups with a defined duration and targeted to the attainment of specific goals. This

new format increases the incentives for the partnered entities to remain in constant contact throughout the year, which potentiates the beneficial effects of this joint action network.

- **Investigative capacity.** Beyond the continuation and reinforcement of cartel enforcement actions, SDE also sought, along the year of 2011, to expand its investigation capacity as a whole. To this effect, based on the assumption that sound and continuous market analysis help reduce the time for review of the cases investigated, one of SDE priorities this year was the structuring of mechanisms for the preparation of these analyses considering the resources available. For this purpose, a survey was carried out to identify the markets with the largest demand for studies, with a partnership being executed with the United Nations Development Program - PNUD, to engage specialty consultancy services for the preparation of these studies.
- **Dawn Raids.** In 2011 SDE, in cooperation with the General-Attorney's Office, State and Federal Police and States' Public Prosecutors, carried out 2 antitrust dawn raids.
- **Leniency Program.** In 2011, SDE has received 90 leniency applications. This is the highest number of applications ever received in one single year.
- **Competition Advocacy.** Advocacy also plays a major part in the SDE's work as it is deemed especially important in a jurisdiction like Brazil, which only very recently has been introduced to an open market. Besides the continuation of previous work in relation to the distribution of brochures, folders, training of public procurement officials, and insertions in the general media, advocacy efforts in 2011 have been mainly focused on the creation of The National School for Competition Defense (ENDEC), the purpose of which is to qualify, update and promote the specialization of the government personnel who work in competition defense agencies. This is an innovative distance learning platform that relies on a team of tutors and content designers among SDE officials. The target audience consists of technical analysts of the Federal Public Prosecution Office, the State Public Prosecution Offices, the Judiciary, the State and Federal Police, as well as interested prosecutors, judges and police chiefs. Course materials are currently being prepared and the school is expected to start operations in 2013.

32. CADE continues to have an active participation in relevant international forums, such as the OECD, ICN and UNCTAD, among others. These international forums have confirmed to be a very useful tool for fomenting debate and lessons to be learned from the exchange of experience with other competition agencies.

33. CADE's efforts to develop and maintain a close and positive interaction with some major foreign competition authorities also propitiates the development of joint projects for capacity building and exchange of experiences.

34. It is noteworthy that CADE has had a leading role, in Latin America, in organizing conferences and traineeship programs in competition policy.

35. On what concerns the cooperation between CADE and Europe we must point out the signature of an understanding for Technical Cooperation between CADE and the French *Autorité de la concurrence*.

36. In regard to CADE's international internship program for representatives from other competition authorities, it must be underlined the signature of an Agreement between CADE and the Brazilian Cooperation Agency of the Ministry of Foreign Affairs, which will enable to foster this capacity building program.

37. CADE's work group on negotiation is responsible for providing support for CADE's negotiation program. The group is responsible for training negotiators and for following and evaluating negotiations. The group's accumulated expertise has shown good results, as the number and value of settlements have both increased considerably in the last year.

38. In the past years, several changes in CADE's Attorney General Office (ProCADE) took place in relation to its role before the Judiciary. CADE started to have a more proactive role in judicial cases brought against its decisions, which contributed significantly to make the coercive measures established by CADE more effective.

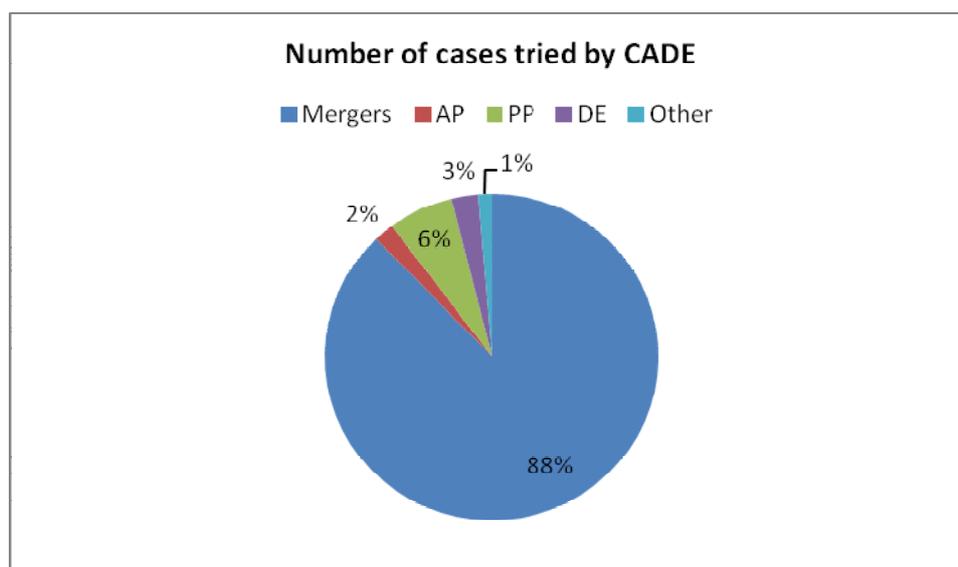
39. In regards to the modification of its role before the Judiciary and of the working structure of the Attorney's Office, two major aspects should be stressed.

40. In the last few years there has been a substantial change in the case law of the Regional Federal Court of the 1<sup>st</sup> Region in regards to the judicial deposit of fines or the offer of a suitable guarantee to suspend CADE's decision until the issuance of a decision by courts. Previously, the Judiciary suspended CADE's decisions through the concession of injunctions, without requesting any counterpart from the interested undertakings. This was in frontal violation of articles 56 and 66 of Law No. 8884/94 (Brazilian Competition Law).

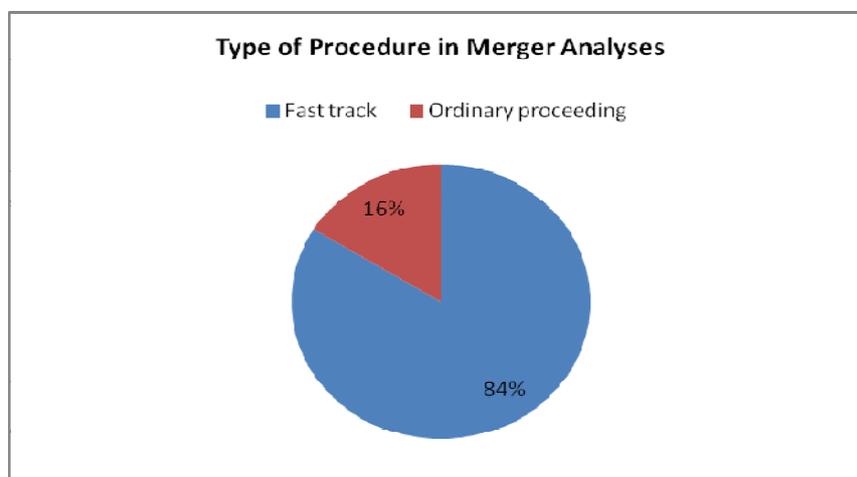
41. Nowadays, as a result of competition advocacy made by ProCADE before judges, injunctions which suspend the liability of the penalties and decisions adopted by CADE are conditioned to the judicial deposit, by the undertaking, of an appropriate amount before courts. This decreases the company's incentive to litigate against CADE, therefore favoring the effectiveness of antitrust policy.

42. **Trials.** CADE had 24 judgment sessions in 2011, in which 814 cases were tried, according to the following chart:

- Mergers: 716;
- Administrative Proceedings: 16;
- Preliminary Proceedings: 51;
- Declaratory Embargoes: 21;
- Other Proceedings: 11.



43. Since 2003, SDE and SEAE formally adopted the fast track procedure to speed up merger review analysis. Afterwards, CADE adopted the same procedure and nowadays around 84% of merger reviews analyzed by CADE are under this instrument.



44. The average time spent on merger analyses has been 45 days at CADE in 2011.

45. In the field of conducts, CADE decided 16 cases and only one of them found the defendants guilty. In this case, CADE applied a fine of R\$ 8.462.340,02 (approximately 3.384.000,00 Euros). Other cases were sent to further investigation or solved through settlements, which has been an important instrument to foster competition enforcement in Brazil.

- Judicial Review of CADE's decisions

73% of judicial decisions regarding appeals to CADE decisions were decided in CADE's favor in 2011.

Among the relevant cases, we may mention the decision in Writ of Mandamus filed by Banco do Brasil. CADE issued a preventive measure aimed at preventing the exclusivity of Banco do Brasil in lending reflected. The judiciary remained unscathed the Council's decision in two instances.

Another important case tried relates to the appeal by Marítima Petróleo e Engenharia Ltda. The courts upheld the decision of the CADE condemned the company by international cartel that had as its object the reform of a Petrobras platform.

Due to the peculiarities of Brazil's judicial system and the number of distinct instances an appeal may be made to, appeals to CADE's decisions may take several years to be finally decided by a court of law.

The data provided includes court decisions that may still be subject to further appeal to higher Brazilian courts and is representative of the current trends in judicial review of CADE's decisions.

- PinCADE

CADE's Exchange Program – PINCADE continued and it brings undergraduate and graduate (master and PhD) students from different fields and from all parts of Brazil to a four week internship in CADE's headquarters. The students get to work directly with Commissioners and

their staffs in handling real cases. CADE also brings several distinguished professionals in the field to lecture the students on novel issues in antitrust enforcement. The students are required to be at CADE in a full time basis and to assist the staff with cases.

The program has been enormously successful in its goals. Hundreds of students have been hosted by CADE through the years. One measure of how effectively our message was spread is the amount of new candidates for the program every year. A great number of candidates heard of the program through former exchange students. CADE believes that every new program multiplies the number of Brazilians that acknowledge the importance of competition in the markets.

### 2.1.2 *Description of significant cases, including those with international implications.*

46. During the year of 2011, SDE opened 30 administrative proceedings and closed 25 administrative proceedings.

#### 2.1.2.1 *Main Administrative Proceedings opened by SDE in 2011*

- Administrative Proceeding nº 08012.001395/2011-00

**Complaint:** SDE *ex-officio*

**Defendants:** Hitachi LG Data Storage; Toshiba Samsung Storage; Sony Optiarc Inc.; Philips & Lite-on Digital Solutions Corp., Royal Philips Electronics N.V; Lite-On IT Corporation; Teac Corporation; BenQ Corporation; Quanta Storage Inc. and others

**Summary:** Administrative proceeding opened to investigate the effects and implications of an international cartel in Brazil, involving the sales of optical disk drives (ODD).

- Administrative Proceeding nº 08012.009611/2008-51

**Complaint:** SDE *ex-officio*

**Defendants:** ATTO Indústria e Comércio de Equipamentos de Segurança Ltda., Beringsh Indústria e Comércio, IECO Desenvolvimento e Indústria de Máquinas e Aparelhos Ltda., Mineoro Indústria Eletrônica Ltda., MPCPI Metal Protector Ltda., Preserv Manutenção Eletrônica Ltda., SDM Sistemas de Detectores de Metais Ltda., Carlos Alberto Kapper Damásio, Cléber Francisco Rizzo, José Diogo Fernandes Damásio, Juliano Paviani, Ledair Malheiro Bogado, Luiz Moacir Zermiani, Michel Joseph Stephanie Simon, Nathalie Simon, Patrícia Alves de Jesus, Rochele Rhoden Maldonado.

**Summary:** Administrative Proceeding opened to investigate the existence of a cartel in the market of security doors with metal detectors. The alleged cartel supposedly engaged in bid-rigging practices that harmed both public and private financial institutions.

- Administrative Proceeding nº 08012.011791/2010-56

**Complaint:** Public Prosecutor's Office of the State of São Paulo

**Defendants:** de Formação de Condutores Estrela Ltda., Auto Escola e Despachante Helly, Auto Escola e Despachante Mundial, Auto Escola e Despachante Santa Bárbara, Auto Escola Sinal Verde, Auto Escola Pérola, Auto Escola Blitz, Auto Escola Brasil, Auto Escola e Despachante Reis, Auto Escola e Despachante União, Auto Escola Brasil, Despachante Excelsior, Despachante Central, Despachante Veloz, Despachante Avenida, Despachante Europa, Despachante Expresso, Despachante Pontual, Auto Escola Santa Rita, Auto Escola VIP, Auto Escola Quatro Rodas, Auto Escola Brasil, M3 Despachante, Associação dos Despachantes e Auto

Escolas de Santa Bárbara D'Oeste - ADESB0, Criar Prestadora de Serviços Internet Ltda e os Srs. José Carlos dos Reis and Claudionor Nivaldo Theodoro

**Summary:** Administrative Proceeding opened to investigate alleged meetings held between representatives of driving instruction schools aimed at fixing prices, and the implementation of monitoring mechanisms of such prices. Interim measures were adopted in order to avoid irreversible damages.

- Administrative Proceeding n° 08012.000774/2011-74

**Complaint:** SDE ex-officio

**Defendants:** LG Chem Ltd., Cheil Industries Inc., Hyosung BASF Co. Ltd., Korea Kumho Petrochemical Co. Ltd., Grand Pacific Petrochemical Corporation, Formosa Chemical and Fibre Corporation, Taita Chemical Co. Ltd., Kaofu Chemical Corporation, Ube Cycon Ltd., Asahi Kasei Corporation, Toray Malaysia Sdn. Bhd., Techno Polymer Co. Ltd., Hong Kong Petrochemical Co. Ltd. and others.

**Summary:** Administrative Proceeding opened to investigate the effects and implications in Brazil of an alleged international cartel, involving the sales of plastic products ABS, PS, AS and PMMA.

- Administrative Proceeding n° 08012.000773/2011-20

**Complaint:** SDE ex-officio

**Defendants:** LG Chem Ltd., Korea Kumho Petrochemical Co. Ltd., Lee Chang Yung Chemical Industry Corporation, Em Chuan Chemical Industries Co. Ltd., Taiwan Syntethic Rubber Corporation, Shou-Ren Wang and others..

**Summary:** Administrative Proceeding opened to investigate the effects and implications in Brazil of an alleged international cartel, involving the sales of plastic products TPE.

#### 2.1.2.2 *Main Administrative Proceedings closed by SDE in 2011:*

- Administrative Proceeding n° 08012.011142/2006-79

**Complaint:** SDE ex-officio

**Defendants:** Votorantim Cimentos S.A., Camargo Corrêa Cimentos S.A., Holcim do Brasil S.A., Cimpor Cimentos do Brasil LTDA., Lafarge Brasil S.A., Itabira Agro Industrial S.A., Empresa de Cimentos Liz S.A., Companhia de Cimento Itambé, Associação Brasileira das Empresas de Serviços de Concretagem (ABESC), Associação Brasileira de Cimento Portland (ABCP), Sindicato Nacional da Indústria do Cimento (SNIC), Anor Pinto Filipi, Renato José Giusti, Marcelo Chamma, Sérgio Bandeira, Sérgio Mações, Karl Franz Bühler.

**Summary:** SDE recommended that CADE impose sanctions. against several cement makers, two industry associations, one trade union and 6 individuals for their participation in a cartel in the market for cement and concrete. Investigations provided substantive evidence that through meetings and e-mail exchanges the participants in the cartel managed to fix prices, establish production quotas, allocate markets and customers, coordinate the control of the sources of raw material and implement asset deals in order to harm companies that did not participate in the agreement.

- Administrative Proceeding n° 08012.003745/2010-83

**Complaint:** Associação Brasileira de Televisão por Assinatura

**Defendants:** Escritório Central de Arrecadação e Distribuição (ECAD), União Brasileira de Compositores, Sociedade Brasileira de Administração e Proteção de Direitos Intelectuais, Associação Brasileira de Música e Artes, Associação de Músicos, Arranjadores e Regentes, Sociedade Brasileira de Autores, Compositores e Escritores de Música and Sociedade Independente de Compositores e Autores Musicais.

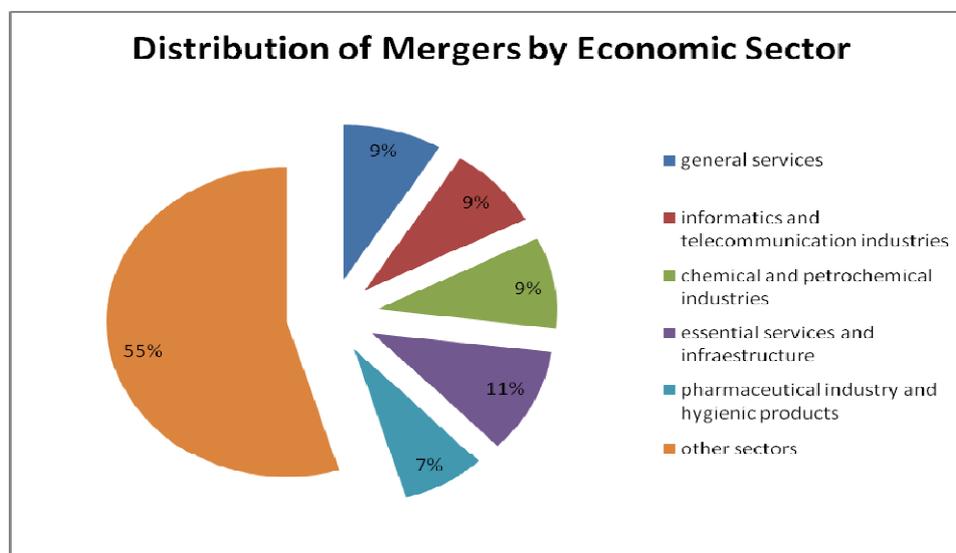
**Summary:** SDE recommended that CADE impose sanctions against the defendants for cartel practices in setting copyrights payments. Investigations also showed that ECAD infringed competition laws by imposing abusive conditions to the entry of new associations in the system of collective management of copyrights established by the Brazilian copyright law. Although the Brazilian copyright law establishes a monopoly for the collection and distribution of copyrights, this monopoly does not cover the power to set prices unilaterally nor allows for this exclusionary behaviour of ECAD.

## 2.2 Mergers and acquisitions

### 2.2.1 Statistics on number, size and type of merger notified and/or controlled under competition laws.

47. In 2011, 684 new mergers were submitted for analysis at SEAE, which is practically the same number of 2010 (691 mergers). In addition, 653 cases were expedited, being 145 cases from 2008, 2009 and 2010, what totalizes a rate of 78% of cases dispatched in the same year of its submission, and 96 % of total dispatches.

48. The figure below illustrates the distribution of these cases by economic filed, where there are a strong presence of essential services and infrastructure markets, especially those concerning hydroelectric plants.



49. There are other relevant sectors that can be mentioned: chemical and petrochemical industries, informatics and telecommunications industries, pharmaceutical industry and hygienic products. Together, these sectors represent 45, 33% of all cases submitted to SEAE analyses and 54,67% of these correspond to other 24 sectors classified by SEAE.

50. These 24 sectors embody several markets, such as: metallurgy, electronics, financial, non-metallic minerals, alimentary, fuels, education, plastics and rubbers, health (hospitals and health care

insurances), agriculture, air transportation, oil and gas, textile, retail, sanitation, fertilizer, mining, insurances, beverages, drugstores, seeds and wood.

51. In 2011, some cases that were analyzed through the regular proceeding involved additional complexity. For these cases, SEAE turned to more sophisticated economic methods and studies, in order to support its opinions. This was the tone adopted for the merger filings analysis involving companies of the following sectors: retail of durable goods, food, air transportation, health care and cement.

#### 2.2.2. *Summary of significant cases:*

- Retail of Consumer Durable Goods: Department Stores (CBD/ Casas Bahia e CBD/ Globex)

These two operations represented the acquisition of Ponto Frio and Casas Bahia by the Pão de Açúcar group, which resulted in a significant concentration within the retail sector of consumer durable goods. There were 162 municipal relevant markets of department stores affected, with a portfolio of products such as domestic appliances and furniture. While analyzing these markets, it was concluded that the entry and rivalry conditions would not be enough to avoid an eventual market power practice in 12 markets: Ceilândia/ DF; Planaltina/DF; Recanto das Emas/DF; Novo Gama/ GO; Campos dos Goytacazes/RJ; Nova Iguaçu/ RJ; São João do Meriti/RJ; Garulhos/SP; Jandira/SP; Jundiaí/RP; Praia Grande/SP and Taboão da Serra/SP.

Therefore, SEAE recommended the operation's approval with the following remedies:

- (i) Divestiture of a set of assets that contemplates, the following, in each one of the 12 relevant markets: stores, installations, clients' portfolio and database at Casas Bahia or Ponto Frio in the aforementioned localities. It would be admitted, at least, the divestiture of assets of the plaintiff that detained the smallest participation in that market in 2009;
- (ii) Due to the superposition in the plaintiffs' distribution centers (DC), concerning the 12 relevant markets analyzed, it was suggested that CADE's decisions should contemplate a solution that would implicate the DC's divestiture or the formulation of an equivalent alternative to the divestiture, for each of the Brazilian states involved: Rio de Janeiro, São Paulo e Distrito Federal.

The divestitures of the set of assets regarding the physical stores and the distribution centers will only be carried out for the new entrances or, in the case of the companies already installed in the 12 mentioned towns, for those that detained least than 20% of the respective relevant markets in 2009.

The case still awaits final judgment from CADE, which has requested some additional information for complementary analysis.

- Air Transport (TAM/LAN)

This is a merger between two airline companies that resulted in expressive horizontal concentrations within the regular air transportation of passengers in the following routes: São Paulo – Santiago; São Paulo – Buenos Aires; São Paulo – Lima. Furthermore, the operation resulted in a horizontal concentration in the following routes of freight transport: Brazil – Europe; Brazil – United States; Brazil – Venezuela; Brazil – Chile; Brazil – Peru; Brazil – Argentina; Brazil – Uruguay; São Paulo – Manaus; São Paulo – Recife; São Paulo – Fortaleza.

The rivalry conditions and the probability of a well-timed entry, by means of alterations in the air meshes of other enterprises – such as to GOL, indicated that the exercise of market power would not be probable. Thus, SEAE recommended the approval without remedies.

The case was decided by CADE during December 2011. The Council understood that competition concerns existed in the airline route that linked the city of São Paulo to the city of Santiago and imposed thus the transfer of a couple of daily flights routes to a competitor as a condition to approve the merger. The conditions applied by the Chilean Competition Tribunal were also confirmed, including the need to choose one of the two international airline alliances.

- Cement (Votorantim/Cimpor e Camargo Corrêa/Cimpor)

SEAE analysed the effects of the acquisitions made by the enterprises Votorantim Cimentos S/A and Camargo Corrêa S/A of 53 % of the share capital of Cimentos of Portugal S/A (Cimpor).

The three companies involved have operations in the markets of cement, pebble and paving services. Horizontal superposition and vertical integrations were identified in several geographical markets. As for Votorantim, there were noticed concentrations that raise concern regarding the Brazilian states of Sergipe, Bahia, Rio Grande do Norte, Pernambuco, Goiás, Distrito Federal, São Paulo, Rio Grande do Sul and Santa Catarina. In case of Camargo Corrêa, the markets in which damages to competition could be identified were located in the states of Paraíba, Pernambuco, Rio Grande do Norte, Alagoas e Sergipe.

SEAE issued an opinion recommending to CADE the approval of this merger with remedies: divestiture of productive assets (cement plants and concreting) in the relevant markets where horizontal superposition could be identified, between the group seller and buyer, superior to 20 %. The recommendation of divestituring assets aims to preserve the structure of market previous to the operation. Alternatively, it admitted the adoption of a measure of corporate character that makes possible to preserve the effective independence between the economical agents involved in the operation, especially in the domestic market. In SEAE's understanding, Votorantim and Camargo Corrêa will be able to maintain his participations in the Cimpor, as long as limited by the international markets.

The case still awaits final judgment from CADE, which has requested some additional information for complementary analysis.

### **3. The role of competition authorities in the formulation and implementation of other policies**

52. SEAE plays an important role dealing with issues that approach the interface between the enforcement of the Brazilian Antitrust Law, in all sectors of Brazilian economy, and the application of proposed rules by regulatory agencies, as well as governmental measures related to trade and industrial policies. Also, SEAE has a great reputation as an expert analyst of public policy. SEAE is respected at the main political arenas within the federal government, and its reports have a great impact while defining policies at the higher government levels including the Presidency of Republic. In 2011, SEAE maintained its intensive participation as public analyst by issuing its technical opinions on regulatory rules, especially in the following sectors:

#### **3.1 Network Industries and Financial Market**

53. Since 2006, SEAE is dedicated to competition advocacy within the telecommunications, media and postal sectors, and also in the financial economy of health sectors. In the beginning of 2011, biodiversity also started to integrate SEAE's roll of subjects, especially regarding genetic inheritance and traditional knowledge.

54. In the telecommunications sector, SEAE monitors the innovation proposals – especially regarding the new emphasis granted to the diffusion of wideband in Brazil – and the modifications that

may occur in its regulations. In this sector, SEAE greatly contributed to several public hearings of the Brazilian Agency of Telecommunications (ANATEL).

55. Also, in media and culture incentive sector, SEAE contributed in a public hearing promoted by the National Agency of Cinema (Ancine) regarding a normative ruling that regulates the register of publicity audiovisual works. SEAE also issued opinions on proposals of provisional measure and decree made by the Ministry of Culture that aimed to reinforce the incentives to the modernization and expansion of cinematographic complexes of exhibition (Programa Cinema Perto de Você and Projeto Cinema da Cidade).

56. In 2011, SEAE monitored the implementation of tariffs related to credit cards that were the result of a regulation approved by the National Monetary Council (CNM) in November 25 (Ordinance CMN # 3.919/2010 and Release 3.512). In regard to the postal sector, the taxonomy of public prices and tariffs readjustment of the postal services, which are executed in a monopoly regime, was used for the first time (Ordinance # 244 of March 25, 2010).

57. SEAE also actuates in the health sector, especially in the pharmaceutical and health insurance markets, with the aim of contributing to a better regulatory environment in these markets by means of competition advocacy. SEAE has participated in several meetings of the Health Insurance Chamber (CSS) and also meetings of the Pharmaceuticals Regulatory Chamber (CMED).

#### *3.1.1 SEAE's contributions to public hearings of the National Agency of Supplementary Health (ANS)*

58. Public Hearing nº 40, in regard to the Normative Resolution that will update the roll of proceedings and events in the health sector, suggesting the adoption of mensuration mechanisms for cost/benefit in the roll's evaluation.

59. Public Hearing nº 42, about the creation of active ageing promotion programs, and bonus concession to the beneficiary of private health insurances by their participation in programs of active ageing and the reward for their participation in programs of risks and diseases prevention. Thus, it was suggested to the National Agency of Supplementary Health (ANS) to make more flexible reward mechanisms, given more freedom to the enterprises to choose on nature of the granted benefit.

### **3.2 Energy Sector**

60. SEAE has carried out many important activities in the Energy Sector through the monitoring of discussions concerning regulatory models within regulatory agencies, ministries and other agencies that follow the debates on the thematic of energy and climate change. In 2011, SEAE produced a total of 74 documents on this matter, being those opinions, technical reports, informative bulletins, among others.

61. In 2011, SEAE consolidated the use of the Regulatory Impact Analysis Methodology (RIA) in its opinions related to draft laws current under consideration by the Brazilian National Congress and also in the opinions issued in response to the public hearings made by the Brazilian Electricity Regulatory Agency (Aneel) and by the Brazil's National Agency of Petroleum, Natural Gas and Biofuels (ANP). Therefore, SEAE intensified its efforts in order to increase its contribution on regulatory rules submitted to public hearings of the Brazilian regulatory agencies.

62. One of the main themes within the energy sector that has received special attention by SEAE is the one concerning the renewal of electricity concessions: generation, transmission and distribution.

63. SEAE also participated in the “Tripartite Meeting”, where several meetings between the government, ANP and representatives from the ethanol chain, took place in order to monitor the fuel’s offer and production, aiming to mitigate the risks of domestic shortage.

64. It is noteworthy to mention SEAE’s work regarding the elaboration of fortnightly reports on markets of energy and fuels, which aims to monitor the principal variables related to electricity and fuels, such as prices, electricity consumption, reservoirs levels and the impact of readjustments and revisions of electricity tariffs in the Extended National Consumer Price Index of the Brazilian Institute of Geography and Statistics (IPCA/IBGE).

### 3.3 *Transport and Logistics*

65. In the transport and logistics sector, SEAE attended discussions regarding the development of priority sectional guidelines and issued opinions on proposed rules by the Brazilian regulatory agencies and also by the Brazilian National Congress. SEAE also contributed to the Brazil’s Growth Acceleration Program (PAC) discussions and public hearings made in this sector.

66. In regard to the port and waterway transportation sectors, it can be highlighted the advances made in Brazil’s port infrastructure that is being modernized, recovered and amplified. The National Dredging Programme (PND) has also made great advances. In what concerns to PAC, SEAE monitored the investments made in the Brazilian waterway system, by means of adequacy works of navigable ways and fluvial ports.

- Public Hearing N° 1/2011 of the National Agency of Maritime Transportation (Antaq)

Antaq submitted a draft rule to a public hearing, which establishes the regulatory parameters to be followed during the service agreement of movement and storage of containers and volumes - in facilities of public use - in the ports.

SEAE’s contributions were forwarded by means of an Analytical Opinion on Regulatory Rules n° 15/2011/COGTL/SEAE/MF, of May 23, 2011. SEAE’s opinion was against the lines proposed by Antaq, because it would give to some concepts a positive feature that may negatively impact the relations established a long the chain of service agreements and promote anticompetitive conducts.

67. In regard to the Air Sector, it demanded a growing attention from SEAE during 2011. There was an intensive process of institutional restructuring of the Air Sector, in part due to the result of the report “Study of the Brazilian Air Sector” that was finalized by McKinsey & Company with contributions made by SEAE. In this line, it can be highlighted the creation of the Secretariat of Civil Aviation which is entailed by the Presidency of Republic, by means of the edition of the provisional measure – MP n° 527, of March 2011 (converted than in the Law # 12.462, of August 5, 2011), that relied on SEAE’s active contribution during its elaboration.

- Analysis of the Amendments to the Provisional Measure n° 527/2011

SEAE analyzed the 44 amendments to the MP n° 527 and issued an opinion on March 8, 2011, which approached relevant themes, being the limits to foreign capital in air companies, to the airports infrastructure exploitation and the creation of an Airport Authority.

In some issues, SEAE evaluated that the subject should not prosper due to the complexity of the matters involved, which lacked a broader discussion. As an example, we can mention the issue concerning the participation of the private initiative in the exploitation of airports infrastructure.

68. In the Air Sector there was also a deepening in the discussions regarding the amendment proposals to the Brazilian Code of Aeronautics, which relied on SEAE's contributions in meetings that took place with the government and the National Congress.

69. In what concerns to the Railway Sector, SEAE monitored PAC's actions, attending rooms of situation conducted by the Civil House of Brazil's Presidency of Republic, where problems and solutions concerning the sector's improvement were debated. SEAE also continued to monitor the implementation of the High Speed Train (TAV) that will connect Rio de Janeiro, São Paulo and Campinas. The TAV is expected to bring great economic changes in its area of functioning, such as: regional development, reduction of bottlenecks and the postponement of investments in other transportation modes, the reduction of environmental impacts and the generation of direct jobs are some of the improvements to be expected.

- New Transnordestina Railway

It is important to highlight the developments achieved in the works of the South-northern Railroad, in the passage between Palmas /TO it and Estrela D'Oeste; of the Railroad of Western Integration – Eastern, between Ilhéus/BA and Barreiras/BA; the Railroad New Transnordestina, that interconnects Eliseu Martins/PI to Suape/PE and Pecém/ CE; and the extension of Ferronorte, between Alto Araguaia/MT and Rondonópolis/MT. These endeavours are promoting the structuring of a modern railway system, integrated and of high capability, connecting areas of agricultural and mineral production to ports and zones of intern consumption and processing, and it is expected to attend the moving of containers and freights.

70. SEAE also kept its efforts in the highway sector, by means of its participation in the meetings of the Brazil's Growth Acceleration Program (PAC). With regard to the highway concessions, SEAE analysed the proposal of resolution regarding the methodology of recomposition of the financial-economic balance of the concession contracts of federal highways of 1st Stage, 2nd Stage – Phase I and of the Pólo de Pelotas, as a result of new investments and services. The opinion issued in this matter made a few suggestions on the proposal's improvement.

71. Finally, in what it concerns to the road transportation of passengers, SEAE participated on the public hearing nº120/2011, promoted by the ANTT, which treats the proposal of the Plan of Road Interstate Transportation Passengers Services Granting, operated by bus of the road type. In this context, SEAE presented some suggestions in regard to the sector's enhancement.

### **3.4 *Urban Infrastructure and Natural Resources***

72. In regard to these two areas, SEAE actions were oriented to promote a better regulatory environment and enforce its competition advocacy role in sectors related to urban infrastructure, such as: cabs market, basic sanitation, habitation and urban transportation, and also natural resources (hydric resources, mining and others). SEAE issued technical reports in these areas, having a prominent performance within PAC's discussion.

73. One example of SEAE's pronouncement concerning draft laws is SEAE's opinion on the Bill # 2.607/2007 where it was used the Regulatory Impact Analysis Methodology (RIA). This draft law intended to allow to the insured, in automobiles insurance contracts, the possibility of choosing the garage that would provide the repair of its damaged vehicle. The analysis identified that the draft would not be necessary, because there were non-statutory rules of the Superintendence of Private Insurances (SUSEP) allowing to the insured the use non-accredited garages in case of accident. For this reason, gains to the economic welfare could not be expected. However, the proposition might produce relative problems to the use of non-accredited repair which the bill was not approaching, knowing: the costs of transaction to use

the non-accredited repair and the uncertainties on the cost of this repair. In this context, SEAE understood that the bill should not prosper. Although, SEAE suggested that SUSEP should improve its normative rulings making possible the offer of different insurances that would contemplate the possibility or not of hiring a non-accredited repair.

### 3.5 *International Trade and Competition*

74. SEAE plays an important role while assuring coherency between trade policy instruments and competition policy principles through its participation in: (i) MERCOSUR's fora of analysis on tariff changes; (ii) technical fora of discussion which give support to the Chamber of Foreign Trade (CAMEX) decisions concerning the application of antidumping measures.

75. In the last five years, SEAE has actively participated in the forums of tariff change of the Mercado Comum do Sul (Southern Common Market) – MERCOSUR, namely: a) the Technical Interministerial Group for discussing the Tarifa Externa Comum (Common External Tariff) – TEC's Exception List; b) the Committee on Tariffs, Nomenclature and Classification of Goods – CT-01, responsible for definitive changes of TEC; c) the Technical Group for applying the GMC Resolution N° 08/2008 – GTAR-08, which allows temporary reductions of TEC due to supply shortages in the common market, and whose executive secretariat is currently held by SEAE.

76. In 2011, SEAE produced 45 technical reports in the field of GTAR-08 group (versus 31 in 2010), regarding petitions on temporary tariff reduction based on GMC Resolution N° 08/2008 (cases involving supply shortages). The petitions' adequacies were analyzed concerning their matters, quotas and time frames. The main petitioners were metallurgy industry (10 requests), and pharmaceutical and hygiene industry (8 requests), but it was observed an increasing use of the measure by the health sector (Box 3), in which were subject to tariff reduction: proteins to treat haemophilia, plasma freezers for Hemobrás, rabies vaccine, and hepatitis B and proteins for cancer treatment.

77. Furthermore, 14 technical reports were produced regarding the inclusion and/or exclusion of various products to the TEC's Exception List in 2011, among which: nitrile rubber (NBR), gondola wagons for transportation of goods by rail, rail and vehicle parts, air conditioning and porcelain tile.

- Tariff reduction of health products

In 2004, in order to comply with the goal of Brazilian Program of Hematology, meaning to achieve self-sufficiency in blood products, the Ministry of Health decided to propose the creation of a Brazilian state-owned corporation to fractionate the plasma and produce blood products. Thus, the Law N° 10.972/2004 created the Empresa Brasileira de Hemoderivados e Biotecnologia (Brazilian and Blood Products Biotechnology) – Hemobrás, which began construction of an industrial plant in the city of Goiana, state of Pernambuco and is planned to begin operations in mid-2014.

Meanwhile, Hemobrás sends the plasma collected in Brazil for fractionation and production of medicines to the Laboratoire Français du Fractionnement et des Biotechnologies (LFB SA), with which it has signed a technology partnership. Subsequently, the final products (blood products, medications which are object of tariff reduction under the Resolution GMC N° 08/2008) are imported from France by Hemobrás. When the plant is completed, production will take place entirely in Brazil.

In 2011, the following products had their import tax reduced to 0%: concentrate of Factor VIII, concentrate of Factor VII recombinant, concentrate of Factor IX, concentrate of Von Willebrand

Factor and human albumin serum. Furthermore, it was also reduced the rate for the Blast Freezer, for freezing the plasma.

78. In 2011 was observed in the trade defense field an increase of requests for suspension of antidumping duties based on the public interest clause. Three analyses performed by SEAE are highlighted: supercalendered paper, PVC-s and polypropylene resins (Box 4). It should be emphasized that the CAMEX Resolution N° 13/2012 established the Grupo Técnico de Avaliação de Interesse Público (Technical Group for the Evaluation of Public Interest) - GTIP with the aim of analyzing the suspension or amendment of peremptory antidumping and countervailing measures, as well as the non-application of temporary antidumping and countervailing measures, for reasons of public interest. SEAE will be the Executive Secretariat of GTIP.

- Trade Defense

The supercalendered paper (NCM 4806.40.00) was subjected to antidumping duty against France, Italy and Hungary, but also has had this measure on imports from the United States and Finland. It raised SEAE's concern because: (i) it represented between 23% and 38% of the costs of self-adhesive paper and self-adhesive films; and (ii) in Brazil, there was only one manufacturer. SEAE concluded that there was an increase in imports of final goods (as labels) that use the supercalendered paper as input, which might be due not only to dumping, but also to changes in the quantity consumed or in the exchange rate.

As for PVC-S (NCM 3904.10.10), the antidumping measure applies to China, South Korea, the United States and Mexico (since 1992 is in force for these two sources). The companies benefited by the measure were the subject of recent transactions analyzed by the Brazilian Competition Policy System, which led to the analysis of this Secretaria on the antidumping measure. It was found that imports were covered by preferential agreements (Argentina and Colombia) – thus allowing some contestability to the domestic market – and that domestic prices of PVC-S followed the trend of international markets. There was no increase of prices (in the price indexes IPA and IPCA) of the products that use the PVC-S as raw material (plastic laminated, pipes and hoses).

Finally, polypropylene (NCM 3902.10.20 and 3902.30.00) is an input used for a wide range of products, especially consumer goods and food (packaging). It was applied antidumping duty on imports from the United States. SEAE's analysis was motivated by the fact that there were only one domestic producer and the prices in Brazil were structurally higher than the international ones. SEAE's observed an increase of this item in inflation rates, which could be explained, among others, by the higher costs of its inputs, such as naphtha and propylene.

79. SEAE also made on-request studies, as the study on the MERCOSUR Origin Regime – ROM for PET preform, a demand of the private sector which was also sent to the Comitê de Normas e Disciplinas Comerciais (Committee on Standards and Trade Rules) of the MERCOSUR – CT-03, and a study on the market of aluminum plate, which was requested by the Conselho Administrativo de Defesa Econômica (Administrative Council for Economic Defense) – CADE. Once sent to its solicitants, SEAE has no way to assess the effects of its recommendations.

- Sectoral Market Overview - Fertilizers

The structure of the fertilizer industry in the domestic market is characterized, as in most countries, by the high market concentration and vertical integration, since the production requires high initial investment costs, is capital intensive and involves high scale production. In fact, few countries worldwide have high production capacity of nitrogen, phosphorus and potassium together, namely the United States, China, India, Russia, and Canada. In Brazil the industry has

changed as a result of the process of privatization and mergers and acquisitions in the 90s. Recently, the entry of Vale's Fertilizers (a branch of Vale S.A – Vale) strengthened the concentration trend. Vale acquired control of the two largest companies in the country – Fosfértil and Ultrafértil – which work with nitrogen and phosphate products, respectively. Vale also acquired shares in Yara, and total control of the fertilizer activities in Mosaic and Bunge, becoming the largest producer in Brazil. Companies consolidate themselves both as producers and mixers.

Between 2000 and 2007, fertilizer consumption in Brazil increased 6.2% per year, while domestic production increased by only 2.9%. The period from 1998 to 2007 was characterized by a strong increase in demand: consumption has almost doubled, from 14 million to 27 million tons. While it increased 30% between 1998 and 2007, domestic production was not sufficient to meet domestic demand. As a result, imports increased by 135%, between 1998-2007, and 70% between 2000 and 2007. In 2008, the fall in domestic consumption relative to 2007 was 11%, figuring 24 million tons. In 2009, consumption fell further to 19 million tons, reflecting the international financial crisis. In 2010, there was a scenario of demand recovery, with a strong increase in imports and reduction of inventories accumulated in previous years due to the crisis: domestic consumption reached 24.61 thousand tons. The production, however, recovered more slowly, reflecting the heavy dependence on imports and the difficulties of investing in this sector.

- Sectoral Market Overview – Wheat Cropping

Wheat is the main winter crop in Brazil and is cultivated in rotation with soybean in major producing states. Historically concentrated in the extreme south of the country, since the 80s the culture has shifted from the Rio Grande do Sul state toward the states of Paraná, São Paulo, Minas Gerais and Mato Grosso do Sul. Due to this process of displacement, the grain is being gradually introduced in the cerrado region, by irrigation dry farming.

Traditionally, Brazil is an importer of wheat in order to assist the needs of the domestic market. The external dependence wheat varied over time. In the last ten seasons, for example, the share of imports in service consumption varied from 75% (2000/2001 harvest) to 51% (2004/2005). According to estimates from the Companhia Nacional de Abastecimento (National Supply Company) – CONAB, for the 2010/2011 crop would need to import 54% of expected consumption in the business year started in August 2010 and extending through July 2011. It is observed that MERCOSUR is the main supplier of wheat to the market, accounting for 84% to 99% of total purchases between 2002 and 2010. The high share of MERCOSUR is due to the leadership of Argentina, which has historically been our largest supplier of grain.

80. SEAE also recognizes as competition advocacy activity the follow-up studies of markets and prices. Regarding to this, the agency kept issuing the monthly newsletter of price monitoring, which shows the changes in the Índice Geral de Preços (General Price Index) – IGP and the Índice de Preços ao Consumidor Amplo (Broad Consumer Price Index) – IPCA for the sectors of household appliances (white goods), building materials, metallurgy, petrochemical, agricultural and wood and furniture. In 2011, the monitoring of regulated prices was extended to the group of regulated prices (utilities and residential services, public transportation, gasoline and diesel fuel, health care, pharmaceuticals, tolls, licensing) and the auto industry.

81. The new Brazilian Antitrust Law attributes to SEAE the duty of developing “studies evaluating the competitive situation of specific sectors of national economic activity, ex officio or upon request by Cade by the Board of Trade or the Department of Consumer Protection and the Ministry of Justice or body as may succeed him”. Actually, SEAE has also developed few studies that have been used by SEAE in

advising regulatory agencies. For example, both studies “On the Efficient Use of the Spectrum” and “Network Neutrality: the Future of the Internet and the Institutional Mix”, from 2007, have been used in advising the rulemaking process of the Brazilian Telecommunications Regulatory Agency (Anatel) and the Ministry of Justice.

82. The Sistema Nacional de Metrologia, Padronização e Qualidade Industrial (Brazilian National System of Metrology, Standardization and Industrial Quality – SINMETRO) is composed of government and private entities. Among government entities there can be highlighted the Conselho Nacional de Metrologia, Padronização e Qualidade Industrial (Brazilian National Council of Metrology, Standardization and Industrial Quality) – CONMETRO and the Instituto Nacional de Metrologia, Padronização e Qualidade Industrial (Brazilian National Institute of Metrology, Standardization and Industrial Quality) – INMETRO, both connected to the Ministério do Desenvolvimento, Indústria e Comércio Exterior (Brazilian Ministry of Development, Industry and Foreign Trade) – MDIC. In SINMETRO there are also a lot of private entities, responsible for inspection, accreditation, testing and training, under the supervision of governmental entities. The most important private entity is the Associação Brasileira de Normas Técnicas (Brazilian Association of Technical Rules) – ABNT, a nonprofit entity declared by INMETRO to be the only National Forum for Standardization, being responsible legally for the coordination and management of the Brazilian standardization process as well as the elaboration and publishing of all the national technical standards.

83. In Brazil, the standardization process can originate from a demand made by society, the private sector or the regulatory bodies. ABNT coordinates the participation of the interested parts in the discussion as well as elaborates the draft standards that will be submitted for public consultation. If approved, the draft receives the ABNT NBR number and seal. If not, it can be submitted again for public consultation as a second draft and, if not approved again, either to be cancelled or to continue in discussion.

84. In order to prevent technical barriers that can cause distortions in the market and harm small manufacturers, SEAE has been participating, since 2005, in the revision of technical standards, sponsored by ABNT, for several products, such as cement (ABNT NBR 12655), concrete reinforcing bars (ABNT NBR 7480), steel wire ropes (ABNT NBR 6327), steel lattices (ABNT NBR 14962), and concrete slabs (ABNT NBR 14859 and ABNT NBR 14860). Only these two last revisions are currently ongoing. Although there are still few cases to reach better assessment, SEAE’s recommendations seems to be more successful if participation is ensured since the beginning of the revision work.

#### 4. Resources of competition authorities

##### 4.1 Resources overall

###### Annual Budget (in Reais and USD)

	<b>Council for Economic Defense CADE</b>	<b>Secretariat for Economic Monitoring - SEAE</b>	<b>Secretariat of Economic Law - SDE</b>
Brazilian Real (BRL)	BRL 13.779.775,00	BRL 2.247,067,00	App. BRL 2.500.000,00
U.S Dollars (USD)	USD 6.959.482,32	USD 1.151.574,34	App. USD 1.700.000,00

**Number of Employees**

	<b>Council for Economic Defense - CADE</b>	<b>Secretariat for Economic Monitoring - SEAE</b>	<b>Secretariat of Economic Law- SDE</b>
Economists	14	36	08
Lawyers	34	13	20
Other Professionals	6	11	11 (including trainees)
Total Technical Staff (working on Competition Enforcement)	54	30	39
Support Staff	130	72	21
All staff combined	184	127	70 (working on competition enforcement)

#### **4.2 Human Resources**

	<b>Council for Economic Defense - CADE</b>	<b>Secretariat for Economic Monitoring - SEAE</b>	<b>Secretariat of Economic Law - SDE</b>
Enforcement against anticompetitive practices	CADE does not assign a separate staff for enforcement activities	0	39 (all)
Merger review and enforcement	CADE does not assign a separate staff for merger analysis and enforcement	25	0
Advocacy Efforts	CADE does not assign a separate staff for advocacy efforts	60	39 (all)

#### **4.3 Period Covered by the above information**

1 January 2011 – 31 December 2011

### **5. References to new reports and studies on competition policy issues in 2011**

#### **5.1 Brazilian Papers on Competition submitted to the OECD**

<b>Title</b>	<b>Year</b>	<b>Committee</b>	<b>Code</b>
Excessive Prices	2011	WP2	DAF/COMP/WP2/WD(2011)55
Institutional and procedural aspects of the relationship between Competition authorities and courts, and update on developments in Procedural fairness and transparency	2011	WP3	DAF/COMP/WP3/WD(2011)90
Economic Evidence in Merger Analysis	2011	WP3	DAF/COMP/WP3/WD(2011)17
Impact Evaluation of Merger Decisions	2011	CC	DAF/COMP/WD(2011)64
Cross-Border Merger Control in Brazil	2011	GFC	DAF/COMP/GF(2011)13
Air Transport Sector in Brazil	2011	LACF	

#### **5.2 Articles and Books published by CADE's Chairman and Commissioners**

CALIARI, T.; RUIZ, R. M.. Uma Avaliação Exploratória do Fundo Setorial da Saúde. Revista Brasileira de Inovação. v. 10, 2011.

CANÇADO, V. L. ; NASCIMENTO, N. O. ; BARRAUD, S. ; RUIZ, R. M. . Case study 1: Flood vulnerability assessment, Belo Horizonte (Brazil). In: Zoran Vojinovic; Michael B. Abbott. (Org.). Flood Risk and Social Justice: From Quantitative to Qualitative Flood Risk Assessment and Mitigation. 1 ed. Londres: IWA Publishing, 2011, v. 1, p. 503-507.

- CARVALHO, Vinícius Marques de . "Poder Econômico e Defesa da Concorrência: reflexões sobre a realidade brasileira." . Publicações da Escola da Agu - Debates em Direito da Concorrência, v. 07, p. 295-315, 2011.
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