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ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN BRAZIL

-- 2015 --

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ANNUAL REPORT ON COMPETITION LAW AND POLICY DEVELOPMENT IN BRAZIL

-- 2015¹ --

INTRODUCTION

1. By celebrating the 53 years of the Brazilian Competition Defense System and the third anniversary of the new Brazilian Competition Law, 2015 was a fruitful year to the Brazil's Administrative Council for Economic Defense – CADE. The agency was able to consolidate initiatives from previous years while engaging new endeavors.

2. In 2015, CADE accomplished the implementation of the Electronic Information System – SEI, with more functions and support. Moving ahead to the second phase of the Project Paperless CADE, the implementation of the SEI allows for more efficiency and transparency in proceedings.

3. CADE's normative agenda also had developments in 2015, with the publication of Guidelines on gun jumping and compliance, as well as of the draft Guidelines on the agency's leniency and settlement programs. In addition to the normative agenda, CADE's efforts to provide transparency and predictability to the agency's activities were also based on important economic studies in the market of individual transportation affected by disruptive innovations.

4. The agency's enforcement activities were also strengthened with reinforced leniency, leniency plus and settlements programs; intelligence efforts, mainly by using economic screens for *ex officio* cartel detection; and efforts to reduce analysis time while caring for robust, transparent decisions.

5. Finally, CADE consolidated its recognition as one of the most respected public bodies in Brazil and its international position as one of the most acknowledged competition agencies in the world.

6. In light of these accomplishments, this Annual Report presents the competition enforcement and advocacy activities carried out by CADE and SEAE in the year of 2015. The Report is organized in five sections: (i) main changes in competition law and policies; (ii) enforcement of competition law and policy; (iii) activities carried out on competition advocacy and institutional cooperation; (iv) financial and human resources; (v) publications by CADE.

¹ Submitted on May 2016 by the Administrative Council for Economic Defense – CADE and the Secretariat for Economic Monitoring – SEAE to the OCDE Competition Committee.

1. Changes to competition law and policy

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

1.1.1 Consultations proceedings (Resolution No. 12)

7. Resolution No. 12, approved on March 2015, regulates the proceeding for consultation to CADE's Administrative Tribunal. The resolution establishes and describes (a) the admissibility of consultations; (b) request procedures and requirements; (c) application process and (d) Tribunal's decisions and effects.

1.1.2 Administrative Proceedings for Merger Assessment (Resolution No. 13)

8. Resolution No. 13, approved on June 2015, establishes the administrative proceedings for Merger Assessment (APAC). The resolution determines (a) the subject of the regulation and the authority responsible for its implementation; (b) APAC procedures for notified mergers consummated prior to CADE's approval; (c) APAC procedures for non-notified mergers consummated prior to CADE's assessment; (d) APAC procedures for non-notifiable mergers whose submission may be requested by CADE; and (e) incidental measures.

1.1.3 Electronic protocol (Resolution No. 14)

9. Resolution No. 14, approved on October 2015, institutes the Electronic Protocol, which is integrated to the Electronic Information System (SEI). The resolution determines (a) the responsibilities of external users and (b) the system's availability. The resolution also describes the electronic protocol's operational features, defines its progressive implementation, establishes that the electronic protocol does not suppress other means of communication, namely, document handover on-site or via post service.

1.2 Other relevant measures, including new guidelines

1.2.1 Guidelines on gun jumping

10. CADE published *Guidelines for Analysis of Previous Consummation of Merger Transactions* in May 2015. The document is divided in three sections – (a) definition of gun jumping; (b) guidelines for companies, (c) penalties for non-compliance – and aims at establishing standards to be used as benchmarks for companies in their negotiations and evaluations in merger transactions in order to avoid gun jumping. The value of the fine imposed, which ranges from BRL 60,000 to BRL 60 million, takes into consideration the status of the transaction, the nature of CADE's decision, the period of time, and the size of the infringer.

1.2.2 Guidelines on compliance programs

11. CADE presented the preliminary version of the *Guidelines for Compliance Programs* – a set of internal measures adopted by an economic agent allowing it to prevent or minimize risks law infringements related to its activity, or to detect them more quickly if occurred. The guidelines are directed to the creation of an internal program in companies in order to avoid Competition Law infringements. The guidelines do not present a comprehensive or prescriptive list of what a compliance program must contain, but are suggestions that each company should assess, considering its specific needs and the particular antitrust risks it faces. In line with the recognition that there can be no “one-size-fits-all” approach, CADE's assessment on the adoption of compliance programs will happen on a case-by-case basis.

1.2.3 *Guidelines on leniency program*

12. CADE launched, in December 2015, the English version of the draft guidelines structured as Frequently Asked Questions on the agency's Antitrust Leniency Program, comprehending the best practices and proceedings usually adopted by CADE's General Superintendence when negotiating and signing leniency agreements. Although the document is not binding, a significant part of its content stems directly from Law No. 12.529/2011 and CADE's Internal Statute (*Regimento Interno do CADE – RICADE*), which are both binding. The guidelines represent a milestone in the history of the Leniency Program in Brazil, reflecting CADE's experience with leniency agreements negotiations built in the past 15 years and in line with the international best practices.

1.2.4 *Studies on public transportation market*

13. CADE's Department of Economic Studies – DEE has conducted two studies concerning the market of individual passenger transportation.

14. The first one, released in September 2015 and entitled *The market of individual passenger transportation: regulation, externalities and urban equilibrium*, approaches the analysis of "partial equilibrium", encompassing issues more directly related to the consumer's well-being provided by the new "ride-share" services and analyses the "urban equilibrium", comprising the issue of individual transportation in the context of the urban economy. The study concluded that the services of rideshare apps provide a satisfactory mechanism of self-regulation and supply a market not reached – or supplied unsatisfactorily – by taxis, besides creating additional rivalry to the market of individual passengers transportation.

15. The second study, released in December 2015 and named *Post-entry rivalry: the immediate impact of the Uber app on the taxi booking rides*, concluded that the evidence observed suggests the creation of a new market.

1.3 *Government proposals for new legislation*

1.3.1 *Law n° 13.196/2015*

16. In the current context of budgetary restrictions, Law n° 13.196/2015 (former Provisional Measure n° 687) was issued on December 2015, increasing the fee for submitting merger notifications to BRL 85,000.00. The bill aims to ensure the defrayal of CADE's activities exclusively on its own revenues, thereby avoiding expenditures from the National Treasury.

1.3.2 *Project of Law No. 4.252/2015*

17. Chapter X of the Project of Law No. 4.252/2015, which is currently under analysis of the Brazilian Congress, creates the careers of Economic Defense Analyst and Administrative Analyst within CADE's personnel, regulating the public admission's procedures, duties and rights. The bill aims at consolidating CADE's workforce through the development of a career plan.

2. Enforcement of competition law and policy

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

2.1.1 *Numbers and statistics*

18. In 2015, CADE opened 244 new cases in anticompetitive conducts, and accomplished a rationalization of the stock of cases under analysis, reaching a balance between new cases and final decisions. The General Superintendence issued 27 opinions for condemnation, 12 for closing, and engaged on 25 settlement negotiations.

19. CADE's Leniency Program was also reinforced with the publication of the Guidelines, with a record of markers granted and agreements signed. CADE is also strengthening its interface with criminal prosecution by the Federal and State Prosecution Services in order to grant even more robustness to the program.

20. In the overall trend, CADE is reducing the length of proceedings, with a considerable reduction in the stock of cases with more than 5 years in duration.

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

2.1.2.1 Rede D'Or

21. CADE signed a Cease and Desist Agreement (TCC for its acronym in Portuguese) with *Rede D'Or São Luiz S/A* (the current owner of *Hospital Santa Luzia S/A*) in the proceeding that investigates a cartel formed by private hospitals of the Federal District to impose price increases in medical and hospital services (Administrative Proceeding No. 08012.006969/2000-75). According to the investigations, in 2000 the hospitals *Santa Luzia*, *Santa Lúcia*, and *Anchieta* tried to jointly negotiate with healthcare plan operators to raise prices charged for the provision of medical and hospital services to practically identical levels. Facing the operators' refusal to accept the price increases claimed, the competing hospitals communicated, in parallel, the termination of contracts or the suspension of services to beneficiaries of the health plans. The conduct would have caused the raise of prices of health care plans to a competition level higher than what is considered fair, which harmed the market and final consumers. As stated in the TCC signed with CADE, *Rede D'Or* must collect approximately BRL 4 million as pecuniary contribution.

2.1.2.2 Marine hoses cartel

22. CADE condemned the companies *Flexomarine S/A*, *Flexomarine Empreendimentos e Participações Ltda.*, *Pagé Indústria de Artefatos de Borracha Ltda* and an individual for participating in an international cartel in the marine hoses' market. All together, the fines imposed amount to BRL 13.5 million (Administrative Proceeding No. 08012.010932/2007). The collusion involved price fixing and allocation of markets, customers and volumes of marine hoses, including a formal coordination of specialized consultancy, PW Consulting. The cartel practices were held, at least, between 1985 and 2007. During the investigation, it was found that the participants met regularly and communicated on a regular basis by fax, e-mail and phone with the cartel coordinator, which was responsible to decide who was going to win public procurements and to stipulate prices charged. In return, the participants paid PW Consulting USD 50,000 for the coordination services through a consultancy contract. The estimated damage resulting from the cartel activities for public and private companies that consume marine hoses is, at least, of BRL 40 million – considering the 20% calculations of overcharged cartelized products.

2.1.2.3 Price fixing in medical services

23. CADE sentenced the *Regional Medical Council of São Paulo* (CREMESP), the *São Paulo Medicine Association* (APM) and the *Medical Doctors Union of São Paulo* (SIMESP) for fixing prices of medical and hospital services in the healthcare market. In total, the imposed fines totalize approximately BRL 383,000 (Administrative Proceeding No. 08012.006647/2004-50). The unlawful conduct was held in 2004, when CREMESP, APM, and SIMESP imposed healthcare plan operators a minimum price list for healthcare related services. In addition to the fines, CADE determined the suspension of the aforementioned lists and a daily fine of BRL 5,300 in case of failure to comply with the sentence. CADE's Tribunal also sentenced the *Medical Association of Divinópolis – AMD*, and *Unimed Divinópolis* for fixing a pricing list for doctor's fees. Each organization was fined BRL 63,800 (Administrative Proceeding No. 08012.00432/2005-14).

2.1.2.4 Telemar

24. CADE fined Telemar Norte Leste S/A in BRL 26.5 million for abuse of dominant position in the telecommunications market in the beginning of the 2000s, when Telemar controlled more than 90% of the fixed telephony market in the denominated Region I of General Concession Plan, accounting for 16 Brazilian states. (Administrative Proceeding No. 08012.003918/2005-04). According to CADE's investigation, Telemar conducted the monitoring of its customers' calls to the call center of its recent incoming competitor *Vésper*. By monitoring the calls, Telemar offered specific service plans to avoid customers' migration to its competitor, thus impeding, by unlawful means, the entrance of new players in the market.

2.1.2.5 Sabesp

25. CADE sentenced the companies *Saenge Engenharia de Saneamento e Edificações Ltda.*, *Ônix Construções S/A* (currently *Concic Construções Especiais S/A*) and five individuals for cartel formation in bidding processes held by the Basic Sanitation Company of the state of *São Paulo* (Sabesp, for its acronym in Portuguese), for the execution of constructions in the *Santos* Metropolitan Region (Administrative Proceeding No. 08012.009885/2009-21). Both companies engaged in the practice of suppression of proposals, by signing a private agreement through which *Concic*, ranked first place in the bid, withdrew its proposal in favor of *Saenge's bid* and shared 50% of the execution of works as a hidden partner, which led to overpricing. The sentenced companies and individuals were fined the total amount of BRL 19.6 million.

2.1.2.6 Fuel cartel in the state of Espírito Santo

26. CADE sentenced 27 gas stations and nine individuals for cartel formation in the fuel market in the metropolitan area of *Vitória*, in the state of *Espírito Santo*, for anticompetitive practices during the years of 2006 and 2007. (Administrative Proceeding No. 08012.008847/2006-17). The colluded companies organized themselves in order to discuss their business strategies before implementing any innovations in the region's competition market. In this sense, the condemnation was based on both the economic evidence demonstrating the parallelism of fuel resale prices in the region, and the evidence of coordinated action among competitors to fix prices and share sensitive information. Telephone interceptions required by the Public Prosecution Service of the State of Espírito Santo and shared with CADE were used, among other proofs collected during the investigatory stage of the case at CADE. The recorded conversations demonstrated the coordination among the competitors to charge equal or almost equal prices. The 27 gas stations condemned by CADE shall pay a total amount of approximately BRL 60.5 million and the nine individuals a total amount of approximately BRL 5.2 million.

2.1.2.7 Eli Lilly

27. CADE condemned the companies *Eli Lilly do Brasil Ltda.* and *Eli Lilly & Co.* for sham litigation (Administrative Proceeding No. 08012.011508/2007-91). The fine imposed, reaching the sum of BRL 36.6 million, is due to contradictory and misleading law suits filed in the Federal Courts of Rio de Janeiro, the Federal District and São Paulo with the alleged purpose of gaining the exclusive rights to trade the medicine *Gemzar*, whose active principle is the gemcitabine hydrochloride, used in cancer treatment. According to CADE's Tribunal, by obtaining the undue monopoly of the gemcitabine hydrochloride based on a judicial decision that was favorable due to strategies that involved the omission of relevant data, Eli Lilly's conduct produced serious damages to competition.

2.1.2.8 Ambev

28. CADE signed a Cease and Desist Agreement with *Ambev* in a proceeding assessing an alleged infringement to competition stemming from sales exclusivity practices and from the company's refrigeration policies. (Administrative Proceeding No. 08012.002608/2007-26). According to the TCC, Ambev agreed to change its refrigeration policy, limit the amount of beer sales points to 8% and limit to 10% the sales volume of the points with which the company holds a relationship of exclusivity. Furthermore, the company is prohibited to demand exclusivity from the sales points in exchange for lending the refrigerator.

2.1.2.9 Cement cartel (uphold of fines)

29. CADE clarified omissions and contradictions of the decision rendered on the judgment of so-called cement cartel (Proceeding No. 08012.011142/2006-79), in May 2014, and modified one of the foreseen sanctions. The Tribunal kept the fines applied to six companies, three associations and six individuals, which sum BRL 3.1 billion. The revision resulted in the modification of the obligation to publicize the extract of CADE's decision in mass circulation newspapers. The Tribunal reduced the number of media channels needed to disseminate the decision to only one newspaper, which must be among the biggest national periodicals, and decided that the aliquots used to calculate the imposed fines must be disclosed to the parties, enabling the assessment of the proportionality of the applied sentence to each one of them. This obligation is applied only to the legal entities condemned.

2.1.2.10 Abrinq

30. CADE condemned the Brazilian Association of Toy Manufacturers (*Abrinq* for its acronym in Portuguese) and its chairman, Mr. Synésio Batista da Costa, for infringements against the economic order (Administrative Proceeding No. 08012.009462/2006-69). In September 2006, *Abrinq* held a meeting with its associates and other representatives of the sector aiming at discussing minimum price fixing for toys imports; the establishment of fixed individual quotas for importers; the creation of barriers and obstacles for specific agents in order to prevent competition. Both *Abrinq* and Mr. da Costa were fined BRL 6,300.

2.1.2.11 Warehousing facilities

31. CADE signed a Cease and Desist Agreement with the port operator *Rodrimar S/A Transportes, Equipamentos Industriais e Armazéns Gerais*, (Administrative Proceeding No. 08012.009690/2006-39) which assesses alleged abuse of dominant position in the market of warehousing facilities in the area of influence of the Port de Santos, in the state of São Paulo. Between 2004 and 2005, *Rodrimar* charged warehousing facilities and importers an illegal additional fee for cargo clearance, claiming costs related to the implementation of the International Ship and Port Facility Security Code (ISPS Code). By the TCC, *Rodrimar* agreed to collect BRL 150,000 as pecuniary contribution, adopt a compliance program for the fulfillment of antitrust rules and inform its clients about the terms of the agreement signed with CADE, among other obligations. These commitments shall be implemented following deadlines and conditions foreseen in the TCC.

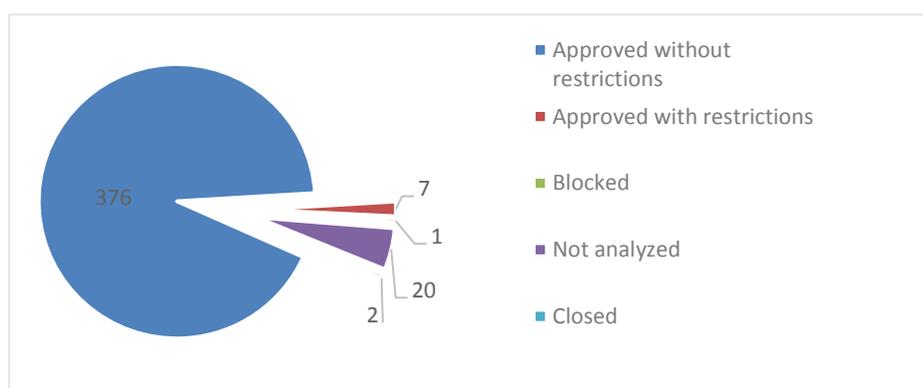
2.1.2.12 Solar heaters

32. CADE sentenced six companies for cartel conduct on the market of solar heaters. Bid rigging practices reached public procurements to build houses to low-income families by the Housing and Urban Development Company of the state of São Paulo (*CDHU in its acronym in Portuguese*), affecting several cities/regions of the state of São Paulo. The infringements occurred in two public bids, conducted in 2009 and 2010, and are evidenced by identical offers, lack of competition in the second phase of the public bids, lot division and sub hiring of one competitor by the other. The fines sum BRL 21.4 million (Administrative Proceeding No. 08012.001273/2010-24). The accusations against the Brazilian Association of Refrigeration, Air Conditioning, Ventilation and Heating (ABRAVA in its Portuguese acronym) and against two individuals were filed. Wendlitz Bernardo ME, which allegedly acted together with the sentenced parties, will be investigated by CADE's General Superintendence.

2.2 *Mergers and acquisitions*

2.2.1 *Numbers and statistics*

33. In 2015, CADE reviewed 386 merger cases. 368 mergers approved without restrictions, 368 by the General Superintendence and 8 by the Tribunal. 7 mergers were approved with restrictions, all of them by Merger Control Agreement with the parties. 1 merger was blocked by the Tribunal. The average time of analysis was of 82 days for in-depth review and 18 days for fast-track cases. The overall average was of 27.6 days.



2.2.2 *Summary of significant cases*

2.2.2.1 Continental/Veyance

34. CADE approved with restrictions the control over *Veyance Technologies Inc.* by *Continental Aktiengesellschaft*. The approval of the transaction (Merger File No. 08700.004185/2014-50) is conditioned to the fulfillment of measures foreseen in a Merger Control Agreement (ACC in its acronym in Portuguese) signed between CADE and the parties. On both the heavyweight steel conveyor belts sector and the air springs market, the acquisition of *Veyance* by *Continental* represents the merger between the leader company and its third major competitor, totaling more than 50% of the market share. In order to ensure the divested business' feasibility, the agreement signed with CADE not only covers the plants, but it also includes intangible assets, such as brands, customer contracts, software, etc. As determined in Canada and Mexico in regards to the air springs market, the ACC foresees the same commitments made with the United States as a requirement to the approval of the transaction in Brazil. The maximum deadline to the plants' divestment is confidential. During this period, the businesses must be managed by independent trustees in order to assure competitiveness and feasibility until the conclusion of the divestment to a third-party.

2.2.2.2 ALL/Rumo

35. CADE approved the acquisition of *America Latina Logística – ALL by Rumo Logística Operadora Multimodal S/A*. Rumo is part of *Grupo Cosan*, which is a producer and distributor of sugar and ethanol for national and international markets, among other activities. ALL owns railroad concessions in six Brazilian states. The approval of the merger (Merger File No. 08700.005719/2014-65) was conditioned to the implementation of a series of measures imposed by a Merger Control Agreement, signed between the companies and CADE. The agreement foresees guaranteed access to the company's terminals in the Port of Santos for competitors; long-term contracts for railway users that commit to the volume of cargo transportation; objective parameters for pricing the services provided to competitors; limited use of logistical assets by companies related to *Grupo Cosan* and total separation of the contracts for the provision of each service by the new company. Furthermore, if competitors feel discriminated, they will be able to formally report their complaints and receive a reasoned reply as foreseen by the ACC. The agreement also forbids board positions in the new company and in companies of *Grupo Cosan* to be occupied by the same person.

2.2.2.3 GSK/Novartis

36. CADE approved the creation of a joint venture between GlaxoSmithKline PLC. - GSK - and Novartis AG (Merger File No. 08700.008607/2014-66), conditioned to the signature of a Merger Control Agreement, in which the companies commit to divest a package of assets related to its main antismoking product. The package of assets to be divested includes tangible and intangible assets, such as intellectual property rights, licenses and contracts. Furthermore, the parties commit to adopt various measures to guarantee that undue information exchanges between the joint venture and Novartis will not happen. With the transaction, GSK will own 63.5% and Novartis 35.5% of the joint venture's shares.

2.2.2.4 Telefónica Group

37. CADE approved two mergers involving the Spanish telecommunications group *Telefónica S/A*. The transactions were approved conditioned to the signature of Merger Control Agreements (ACC), which were proposed to the parties.

38. The first transaction concerns the acquisition by *Telefônica Brasil* of *GVT Participações S/A*, owned by the *Vivendi Group* (Merger File No. 08700.009732/2014-93). The ACC related to this transaction foresees measures to effectively ensure the supply, quality and competitive prices of the companies' products, the maintenance of offers and services currently provided and divestment measures aimed at reducing competition problems.

39. The second transaction consists in the division of *Telco S.p.A.*, holding company with interest in Telecom Italia, of which *Telefónica* and the Italian companies *Assecuriazioni Generali S.p.A.*, *Intesa Sanpaolo S.p.A.*, and *Mediobanca S.p.A.* are shareholders (Merger File No. 08700.009731/2014-49). In order to mitigate the competition concerns arising from the spin-off of *Telco*, the agreement with Telefónica states that it must divest 6.5% of the voting shares the company will still hold in Telecom Italia after the transaction.

2.2.2.5 Brasfrigo/Goiás Verde

40. By means of a Merger Control Agreement, CADE has determined the companies *Brasfrigo Ltda.*, *Brasfrigo S/A*, and *Goiás Verde Ltda.* to pay BRL 3 million and refrain from using the brand *Jurema* within the Brazilian territory for two years due to the practice of gun jumping. CADE understood that there was gun jumping in the merger related to the acquisition of assets of *Brasfrigo* by *Goiás Verde*, described on the "Assets and Other Adjustments Buy and Sell Contract" signed by the parts in October

2012 (Merger File No. 08700.010394/2014-32). In January 2015, the companies signed an Agreement to Preserve the Reversibility of the Transaction with CADE. In this agreement, the buyer committed to maintain the productive unit that is the object of the contract fully working, as well as the full use, the integrity and the reputation of the brands bought from *Brasfrigo*. Since there are no competition concerns regarding the market structure, the parties' proposal does not suggest any remedies to fix anticompetitive effects derived from the transaction. The merger was approved without any restrictions.

2.2.2.6 Condor/Tigre

41. CADE, blocked the acquisition of all the quotas of *Condor Pincéis Ltda.* by *Tigre S/A – Tubos e Conexões* (Merger File No. 08700.009988/2014-09). The companies have negotiated a Merger Control Agreement, but they considered unfeasible the behavioral and structural measures imposed by the antitrust agency regarding the sale of assets for paint brushes production, sale of wholesale centers and licensing of the brand Condor to third parties.

2.2.2.7 Dabi Atlante/Gnatus

42. CADE approved the merger of the companies *Dabi Atlante S/A Indústrias Médico-Odontológicas* and *Gnatus Equipamentos Médico-Odontológicos Ltda*, which was conditioned to the signature of a Merger Control Agreement (ACC) proposed by the parties (Merger File No. 08700.001437/2015-70). By the ACC, the parties agreed to adopt structural and behavioral remedies that will solve competition problems identified in a series of dental products. One of the foreseen remedies will be the divestment of the brand “*Gnatus*” in favor of an economic agent with the needed conditions to be a rival of the new company. The companies also proposed the end of exclusivity on the distribution of the products and the technical assistance services supply, besides not signing any new exclusivity contract of this nature during the period established by the ACC. The remedies proposed by the ACC were considered after the merger was challenged before CADE's Tribunal by technical opinion of the General Superintendence, in August 2015.

2.2.2.8 Ball/Rexam

43. CADE approved the acquisition of Rexam PLC by Ball Corporation (Merger File No. 08700.006567/2015-07). The approval of the merger file was conditioned to the adoption of structural and behavioral measures settled in a Merger Control Agreement, which included divestiture of plants, tangible and intangible assets related to the companies and the transfer of current contracts related to the unities to be sold to the eventual plants' buyer. Furthermore, Ball and Rexam will have to sign contracts for can ends supply with the assets buyer.

2.3 *Overall considerations on cases and investigations*

44. The results of CADE's initiatives towards bolstering competition enforcement are reflected not only in the relevant decisions CADE's Tribunal issued in 2015, but also in the high-profile, complex cartel investigations the agency initiated this year. The opening of Administrative Proceedings on Petrobras alleged public bid cartel and on an alleged cartel in the manipulation of foreign exchange rates evidence that the authority is on top of and in line with landmark cases that deeply and directly affect society.

3. Activities carried out on competition advocacy and institutional cooperation

3.1 *The role of competition authorities in formulation and implementation of other policies, e.g. regulatory reform, trade and industrial policies.*

45. SEAE has an important role on issues that arise from the interface between the enforcement of the Brazilian Competition Law and the application of rules issued by regulatory agencies, as well as the measures related to trade and industrial policies.

46. In 2015, SEAE – as a Secretariat solely dedicated to competition advocacy – had an intensive performance and issued over 300 opinions on public hearings about regulatory rules. The Secretariat had an intensive participation in the following key sectors: highway, railway, air and waterway transportation, ports, energy, telecommunications, health and sanitary surveillance, urban infrastructure and natural resources, international trade and competition.

47. Therefore, through its opinions the Secretariat promoted the awareness on the importance of promoting the principles of free competition, within the Brazilian public administration, in line with its new role stated in the Law n° 12.529/2011.

48. It is important to highlight SEAE's work in urban mobility projects of Brazil's Growth Acceleration Program (PAC), where the construction works have resources from the General Budget of the Federal Government (OGU), as well as financing resources from federal financial institutions, according to the Ordinance n° 184 of 2012. The investment in the urban mobility PAC is estimated in R\$ 153.7 billion, being R\$ 32.9 billion from OGU resources, R\$ 66.8 billion from financing and R\$ 54 billion as counterpart from Brazilian states and municipalities. The resources are applied in different modal transportations, as well as trains, light rail vehicles (VLT), aeromovel, monorail, bus rapid trans (BRTs) and bus corridors.

49. SEAE was also present in meetings related to urban mobility in the South, Southwest, North and Midwest regions of Brazil, to discuss the World Cup construction works that have not been concluded and that are at standstill or in a very slow execution rhythm.

50. Concerning the environment, SEAE promoted, alongside with regulatory bodies, the monetary update of products and prices, and also of the Tax of Control and Environmental Supervision (TCFA) of the Brazilian Institute of the Environment and Renewable Natural Resource (IBAMA), as authorized in the Provisional Measure (MP) n° 68/2015.

51. SEAE also plays an important role in assuring coherence between trade policy instruments and competition policy principles through its participation in: (i) MERCOSUL's *fora* for analysis on tariff changes; and (ii) technical *fora* of discussions, which gives support to the Chamber for Foreign Trade (CAMEX).

52. Therefore, SEAE conducted analysis on import tariffs changes in the scope of MERCOSUL's list of exemptions to the Common External Tariff (LETEC) on the following products: capsules of toasted and grind coffee; devices for the preparation of coffee capsules; electrical vehicles; acrylic acid; sodium polyacrylate; preservatives and equipment for thematic parks. Nevertheless, after some discussions on procedures and revision criteria of LETEC, a formal review was carried out in 2015, through the Decision CMC n°26/15.

53. In 2015, SEAE, jointly with the Brazilian Federal Public Debt (STN), reviewed the Internal Rate of Return (IRR) used in auctions of Brazil's Infrastructure and Logistics Program 2 (PIL 2), which encompasses concession areas of airports, railways, roads, besides ports leaseholds.

54. About the ports sector, SEAE issued opinions on public hearings promoted by the National Waterway Transportation Agency (Antaq) and presented suggestions in order to improve the proposals and procedures of regulatory impact analysis done by the agency. The suggestions made were related to: (i) the identification of the facts that motivated the regulatory proposal; (ii) the presentation of justifications to the proposal; and (iii) the proposition evaluation impact.

55. SEAE has an important mission in the health sector, especially in the pharmaceutical and health plan markets and greatly contributes to the regulatory improvement of these markets through its competition advocacy efforts. In 2015, SEAE participated in several meetings of the Health Insurance Chamber (CSS) and the Pharmaceuticals Regulatory Chamber (CMED), which are cross-ministerial bodies that provide stewardship to regulatory agencies.

56. The Secretariat participation in CMED involves the elaboration of votes on administrative appeals about questions related to the establishment of medicaments entry price and fines for sales made to the government that were over the legal standard. In addition, SEAE contributed to the review of the Factor X calculation methodology.

57. In the energy sector, the Secretariat participated of the Situation Rooms of PAC and monitored the infrastructure actions in the electricity sector – generation and transmission –, and in the oil and natural gas sector. Furthermore, SEAE joined technical meetings with sectionals: Interministerial Executive Commission of Biodiesel (CEIB), Interministerial Council of Sugar and Alcohol (CIMA) and the Tripartite Roundtable for monitoring the ethanol supply within the domestic market.

58. SEAE also monitors markets and elaborates technical reports and studies in important areas like commodities, machines and equipment, metallurgical, automobilistic and chemical. The Secretariat also issued its opinion on the bidding process of the Casa da Moeda do Brasil (CMB) as describe in the box bellow.

Box1. SICOBE and SCORPIONS

The Casa da Moeda do Brasil (CMB) is a public company that is the Brazilian Mint, and is subordinated to the Ministry of Finance. It is exclusively responsible for the federal revenue stamps printing and fiscal control activities as stated in Laws N# 11.488/2007 (SICOBE) and N# 10.833 (SCORPIONS). The stamps were printed in paper in CMB's own manufacturing.

With the advance of new technologies, this printing started to be made directly in the products, in its manufactures industrial park. It is important to highlight that we are addressing to the Beverages Control System (SICOBE). As the CMB did not hold expertise with this new technology, they had to subcontract a company. Later, a market research was made and suppliers were found.

After this research, an invitation to bid was published by the CMB and a public tender started. In the last phase that concerned to price presentation, only one company remained and since then, it has been directly hired. Therefore, given the lack of competition the CMB decided to cancel the public tender and started a new one.

On May 2015, the CMB requested the Secretariat of Economic Monitoring of the Ministry of Finance (SEAE) to issue a note on the tender modeling, so that the next tender could promote competition and effectiveness among the competitors. The company contract can reach U\$ 1.5 billion.

Thereby, SEAE made an analysis of its public tender process and issued a series of recommendations in order to increase to competition of the bid:

- Do not fragment the bid process, with the simultaneous delivery of the commercial proposals and of the habilitation documents;
- To withdraw the focus on the production process, suppressing the delimitation of technologies;
- To adjust the quality criteria of the service to the real necessities of Brazil's Department of Revenue;
- Reevaluate the deadlines for the knowledge of ambient tests and do not impose unnecessary exigencies to the equipment's guarantee.

59. In regard to SEAE's competition advocacy efforts, it is important to mention a case concerning the National Council of Transit (Contran) where CADE notified SEAE about possible anticompetitive provisions on Contran's Resolution nº 517/2015. This resolution is about the physical and mental aptitude exams, psychological evaluation and the accreditation of public and private entities. This norm stated that laboratories, while making toxicological exams of "large window detection" – which are used to detect the use of licit or illicit psychoactive substances – should have the accreditation certificate of the College of American Pathologists – Foresing Drug Testing (CAP-FDT). This exigency was also restricting the performance of national laboratories that owned the certification of the International Organization of Standardization (ISO) jointly with the International Eletrotechnical Commission (IEC) – ISO/IEC 17025, which tests for accreditation are made by the National Institute of Metrology, Quality and Technology (Inmetro).

60. SEAE'S analysis identified that Contran's resolution had anticompetitive disposals: (i) could generate anticompetitive discrimination for market access by laboratories; (ii) increase the entry costs and restrict the amount of laboratories in the market of toxicological exams that are required when requesting our renewing the driver's license; (iv) negatively contribute to the objective of promoting a safe traffic for the population. Thus, SEAE suggested that Contran should review its resolution with the aim of providing a competitive environment, as well as to grant a bigger transparency in the process of regulatory norms expedition, because the regulatory body should preserve the principles and good regulatory practices in process and elaboration of these norms and resolutions.

3.2 Relationship with other institutions and stake holders in general

61. CADE has been investing in the collaboration with stakeholders to better understand their perspective on CADE's procedures. One example of that is the channel of dialogue established between CADE and IBRAC, an important Brazilian think tank, dedicated to competition law.

62. Through the channel in question, IBRAC's working group responsible for studying and discussing competition law should share and debate with CADE the suggestions it receives from stakeholders in general. With this feedback, the agency expects to constantly evaluate and improve its practices.

63. CADE also participated in 4 public hearings in the Brazilian Congress, discussing topics such as Uber, exchange rates, HSBC selling, complaints from Braztoa, and increase of the rate of notifications to CADE.

64. In light of the Brazilian Information Access Law, CADE also responded to 159 requests for information, within an average period of 7 days. CADE's commitment to provide complete responses to the extent required and allowed by the law is quite important when it comes to transparency.

3.3 International cooperation

65. International cooperation is an important feature of competition law and policy. In a globalized economy, the existence of multijurisdictional mergers and antitrust violations require competition authorities around the world to close their dialogue and coordinate their work for more effective enforcement.

66. In 2015, CADE signed 2 new Cooperation Agreements. Moreover, 16 mergers implied 24 international cooperation engagements and 15 alleged anticompetitive conducts resulted in 19 different cooperation initiatives, therefore totaling 43 cooperation engagements with sister agencies. Furthermore, 7 benchmarking studies conducted by CADE entailed 22 consultations to foreign authorities.

3.4 National events

67. CADE also organized various national events, including the 35th edition of CADE's Student Exchange Program, with activities to 25 students from 11 Brazilian states and the Federal District; 4 editions of the Competition Observatory; Seminar on Competition Compliance; and Seminar on the challenges of Judicialization of Competition, Regulation and Foreign Trade matters.

3.5 International events

68. In 2015, CADE organized 3 international events, namely the 61st Meeting of the Technical Committee on Competition Defense of the MERCOSUR; the 3rd Workshop on Competition Enforcement and International Cooperation, gathering representatives from the European Union, the United States and Mexico; and the OECD-CADE Competition Summit on Public Procurement and Fighting Bid Rigging.

3.6 The Brazilian Competition Journal

69. In 2012, CADE decided to re-launch a new edition of the Journal, entitled *Revista Brasileira de Defesa da Concorrência*. Since then, CADE has been publishing two editions a year, in May and November. The aim of the journal is to provide a platform for academic discussion of relevant topics in competition policy and enforcement in Brazil. Academic journals in Brazil are periodically reviewed and graded by the Coordination for Improvement of High Education Personnel – CAPES, from the Ministry of Education, by the evaluation and rank "Qualis". In 2015, the Brazilian Competition Journal had its Qualis classification improved from C to B2. The journal's webpage is www.cade.gov.br/revista.

3.7 Acknowledgement and Awards

70. Finally, the national and international acknowledgment is indicative of CADE's achievements in a wide array of issue-areas and represents the recognition of all the accomplishments aforementioned. In 2015, CADE won the III Good Practices Award sponsored by the Brazil's General Comptroller's Office, in the category Promotion of Transparency. Also in 2015, CADE received the GCR Awards Agency of the Year – Americas. In the same year, CADE rated 4 stars in GCR Rating Enforcement, being among the top-10 enforcers in the world.

4. Resources of competition authority

4.1 Resources overall

4.1.1 Financial resources

71. In 2015, SEAE budget totalized BRL 2,345,073.00 and the budget execution was of 99% of the resources provided. In the same year, CADE had a total budget of BRL 36,248,219.00, as approved by the annual budget. In 2015, CADE's total approved budget was 5.75% lower when compared to 2014. Approximately 80% of CADE's case handlers are not included in CADE's budget, as they are career civil servants.

4.1.2 Human resources

72. In 2015, SEAE had a total staff of 89 employees. Among them, 31 economists, 11 lawyers and 47 graduated in other areas. In the same year, CADE had a total staff of 349 people. CADE currently has 67 lawyers, 21 economists, and 33 other professionals working on competition matters and 228 support staff. CADE has 101 people working on mergers and unilateral conduct issues and 88 people working in anti-cartel issues.

PUBLICATIONS BY CADE

Studies published by CADE:

CONSELHO ADMINISTRATIVO DE DEFESA ECONÔMICA (CADE), 2015a. O Mercado de Transporte Individual de Passageiros: Regulação, Externalidades e Equilíbrio Urbano.

_____, 2015b. Mercado de insumos para cimento: Aspectos estruturais e exercício empírico.

_____, 2015c. Rivalidade após entrada: o impacto imediato do aplicativo Uber sobre as corridas de táxi porta-a-porta.

Papers on competition law and policy submitted by CADE to the OECD meetings:

OECD. Global Forum on Competition. *Serial Offenders: Industries prone to endemic collusion*. Contribution from Brazil. 2015.

_____. Latin American Competition Forum. *Structural Issues in the Groceries Sector: Merger and Regulatory Issues*. Contribution from Brazil. 2015.

_____. Global Forum on Competition. *The Impact of Disruptive Innovations on Competition Law Enforcement*. Contribution from Brazil. 2015.

Main publications on competition law and policy by CADE's staff:

ARAUJO, Gilvandro V. A judicialização da defesa da concorrência após a Lei 12.529/2011: a emergência da enganiosidade? In: CARVALHO, Vinícius Marques de. (Org.). A Lei 12.529/2011 e a nova política de defesa da concorrência. 1ed. São Paulo: Editora Singular, 2015, p. 115-126.

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