

**Directorate for Financial and Enterprise Affairs
COMPETITION COMMITTEE**

Cancels & replaces the same document of 6 May 2019

Annual Report on Competition Policy Developments in Brazil

-- 2018 --

5-7 June 2019

This report is submitted by Brazil to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 5-7 June 2019.

JT03447814

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Brazil

1. Introduction

1. In 2018, the Brazilian Administrative Council for Economic Defense – CADE has maintained its intensive work on providing anti-cartel enforcement and deterrence, as well as preventing and repressing violations against the economic order. CADE has also worked intensively to provide effectiveness, normative guidance, transparency and predictability to the Brazilian Competition Defense System based on institutional strengthening, cooperation with government agencies and civil society, and improvement of international cooperation.

2. In 2018, CADE had an intense cartel enforcement activity, with a special mention regarding bid-rigging and the role of its Leniency Program in the strengthening of competition enforcement activities. Additionally, CADE decided to boost the investigation of unilateral conduct cases. Moreover, CADE maintained the significant results regarding its merger review system. The authority upheld the quantitative balance between new notifications and the conclusion of undergoing assessments.

3. In the international area, CADE strengthened its participation in multilateral organizations, such as OECD, the BRICS Working Groups on competition, the ICN Working Groups and UNCTAD. CADE hosted important international events and worked actively on bilateral cooperation. It was also an important year from both a domestic and an international perspective since CADE has submitted itself to the OECD peer review process in order to become an Associate Member of the OECD Competition Committee.

4. Moreover, CADE published new guidelines and an important Resolution addressing transparency, leniency program and private damage claims.

5. This Annual Report presents CADE's activities in 2018 and is divided into five sections: (i) main changes to competition law and policy; (ii) enforcement of competition law and policy; (iii) activities carried out on competition advocacy and institutional cooperation; (iv) competition authority resources; (v) references to new reports and studies on competition policy issues.

2. Senior Leadership update

6. In December 2018, Mrs. Samantha Chantal Dobrowolski was appointed by the Brazilian Presidency of the Republic to serve as the Federal Prosecutor at CADE, as member of the Federal Public Prosecution Service, for a two-year term, after the end of the Former Federal Prosecutor mandate, Mr. Márcio Barra Lima. The appointment was approved and confirmed by the Federal Senate after an interview conducted by the Senate's Commission of Economic Affairs.

7. Also in December 2018, CADE's President, Alexandre Barreto, appointed Alexandre Espinosa Bravo Barbosa as Deputy Federal Prosecutor at CADE, after indication of the Administrative Tribunal.

3. Changes to competition law and policy

3.1. Summary of new legal provisions of competition law and related legislation

3.1.1. Change in the name of an institution of the Brazilian Competition Defense System

8. Law 12.529/11 addressed an institutional reform of the Brazilian Competition Defense System with two institutions – the Administrative Council for Economic Defense (CADE, in its acronym in Portuguese) and the Secretariat for Economic Monitoring (SEAE, in its acronym in Portuguese).

9. In January 2018, SEAE was replaced by the Secretariat for the Promotion of Productivity and Competition Advocacy (SEPRAC, in its acronym in Portuguese) and the Secretariat of Fiscal Monitoring, Energy and Lottery (SEFEL, in its acronym in Portuguese), within the Ministry of Finance, according to Decree No. 9.266/2018¹.

3.1.2. Policy of Governance, Integrity Management, Risks and Management Controls within Cade (Decree No. 283/2018)

10. The Decree No. 283, approved in May 2018, sets out CADE's Policy of Governance, Integrity Management, Risks and Management Controls, which establishes principles, objectives and guidelines for this policy applicability. It aims to provide efficiency and effectiveness through the ethical execution of work processes, to provide reliable information for decision-making, fulfillment with transparency and accountability obligations, and to ensure compliance with applicable laws and regulations, based on the principles of leadership, integrity, responsibility, commitment, transparency and accountability.

3.1.3. Procedures to access documents and information related to Administrative Proceedings (Resolution No. 21/2018)

11. The Resolution No. 21, approved in September 2018, regulates the procedures to access documents and information related to Administrative Proceedings for the imposition of administrative sanctions due to offenses to the economic order, including those arising from Leniency Agreement, Cease and Desist Agreement and dawn raid lawsuits. Through the increment of legal certainty, the Resolution also fosters private damage claims for anticompetitive conducts.

3.1.4. Other relevant measures including new guidelines

Guidelines on CADE's Antitrust Leniency Program

12. CADE updated the Guidelines on its Antitrust Leniency Program in August 2018. Although the document is not binding, a significant part of its content stems directly from Law No. 12.529/2011 and CADE's Internal Regulation (RICADE). The Guidelines represent a milestone in the history of the leniency program in

¹ In January 2019, with the new government institutional reform, SEPRAC and SEFEL were replaced by the Secretariat of Competition Advocacy and Competitiveness (SEAE, in its acronym in Portuguese), within the Ministry of Economy, according to Decree No. 9.679/19. However, for consistency reasons we are going to use the term SEPRAC and SEFEL in this report.

Brazil, reflecting CADE's experience with leniency agreements negotiations based on the past 15 years and in line with international best practices. The document is organized as frequently asked questions, encompassing the best practices and proceedings usually adopted by CADE's General Superintendence. The content of the Guidelines includes an overview of CADE's leniency program, phases of negotiation, procedures after the agreements' signature and information regarding the leniency plus.

Guidelines for Antitrust Remedies

13. In October 2018, CADE issued the first edition of its Guidelines for Antitrust Remedies. The document consolidates the best practices and procedures usually adopted by the Council in the design, implementation and monitoring of antitrust remedies and provides guidelines for the negotiation of antitrust remedies in Brazil. The Guide offers practical reference to merger and acquisitions applicants, interested third parties, public servants and society, in order to improve predictability and transparency regarding the Council's performance, facilitating doing business in Brazil.

Preliminary version of the Guidelines for submitting data to CADE's Economic Studies Department

14. In December 2018, CADE launched the preliminary version of its Guidelines for submitting data to its Economic Studies Department. The document aims at guiding applicants, plaintiffs, defendants, interested third parties or any other market participants, about the standard of information submission requested by CADE's Department of Economic Studies for the accomplishment of studies and economic opinions, in order to improve and speed up the analysis process.

15. The Guide is divided in seven sections. The first section deals with the general aspects of data requests. The second section presents a set of best practices associated with data sharing with the authority. In the third section, CADE presents the definition of a list of variables commonly requested. In the fourth section, there are specific guidelines for filling out the data. The last three sections present the deadlines for data responses, examples of data submission worksheets and the final considerations.

4. Enforcement of competition law and policy

4.1. Action against anticompetitive practices, including agreements and abuses of dominant position

4.1.1. Summary of activities of the competition authority

16. In 2018, CADE's Administrative Tribunal has judged 25 proceedings related to anticompetitive conducts – 12 of them were condemned. The imposed fines sum up to BRL 627.3 million. CADE had an intense cartel enforcement activity, with a special mention regarding bid-rigging. The investigated practices of bid rigging were related to public infrastructure works, transport sector, health products, electric equipment, services, and subcontractors' services.

17. In 2018, CADE's Leniency Program completed 15 years of a successful experience, receiving its 390^o leniency request. Over the year, CADE has signed six new

leniency agreements, four addenda to previous leniency agreements and two leniency plus agreements. Besides, during the year, CADE started eight new cartel investigations based on leniency agreements.

18. The Settlement Program (Cease and Desist Agreements) was also particularly relevant to deter and to disclosure anticompetitive conducts. In 2018, the pecuniary contributions resulting from settlements totaled almost BRL 1.33 billion.

4.1.2. Description of significant cases, including those with international implications

National Cartels

I- Salt Cartel

19. In May 2018, CADE's Administrative Tribunal condemned 18 companies, 39 individuals and three union entities for a cartel in the sea salt market. The fines applied totaled more than BRL 289 million.

20. The investigation started in 2013, after a dawn raid operation in offices of saline companies and representative entities of the sector carried out in 2012. The documents collected and the evidence produced during the proceedings proved that the accused had frequent meetings aimed at fixing prices, controlling the supply of the product and sharing the market between them. The agreements between producers and refineries affected the entire production chain and lasted at least from 1992 to 2012.

II- Flexible Packages Cartel

21. CADE's Administrative Tribunal issued nearly BRL 306 million in fines to parties for forming a flexible packaging cartel. Eight companies, eight individuals and two trade associations colluded to set minimum prices for raw materials and specific services between 2001 and 2006. The companies were collectively fined in BRL 298.3 million; the individuals together were fined in BRL 2.3 million; and the two associations in BRL 5.2 million. The investigation pointed out the existence of agreements signed between the companies, with the help of the associations, for the standardization of prices and commercial strategies.

III- Car Wash Operation

22. CADE signed sixteen Cease and Desist agreements from six cartel investigations related to the Car Wash Operation in 2018. Through these agreements, it was established the payment of around BRL 897.9 million in pecuniary contributions.

23. The settlements were established between CADE and Christiani-Nielsen Engenharia, Norberto Odebrecht, OAS and Andrade Gutierrez, as well as with employees and former employees from these companies. Through the agreements, these construction sector companies committed themselves to cease their involvement in the cartels, to recognize their participation in the illicit conduct and to collaborate with CADE's ongoing investigations.

24. The cease and desist agreements suspended the proceedings against the signatories until the accomplishment of the established obligations. The settlements integrate CADE's recent efforts to align the repression of anticompetitive practices with the work of different bodies from the Brazilian Public Administration. However, it is worth noting that these

four companies continue to be investigated in other cases linked to the Car Wash Operation that have not resulted yet in agreements or convictions.

International Cartels

I- Components for Computers and Tube Televisions

25. CADE condemned two international cartels in the market of cathode ray tubes (CRTs). After investigating, the antitrust authority concluded that the manufacturers of TV's color picture tubes (CPTs) and PC's color display tubes (CDTs) had colluded, aiming to accomplish anticompetitive practices that caused harm to the Brazilian market for over a decade. Both companies and one individual were fined in a total amount of BRL 4.9 million.

26. The anticompetitive practices occurred from 1995 to 2007, and involved the biggest worldwide CRTs manufacturers. The cartels were characterized by the regular exchange of commercially sensitive information, price fixing, market division and the restriction of the product assembly. The conducts affected competition in the market of tubes for color picture in Brazil. The companies that imported these products from the represented parties were harmed, as well as Brazilian consumers who bought TVs and computers manufactured with this technology.

27. The evidence that the alleged conducts happened and caused harm to the Brazilian market were obtained, mainly, through leniency agreements and Cease and Desist Agreements, signed by companies and individuals that were involved with the collusion. The cartels in the CRT market were also subjected to probes and conviction in other jurisdictions, such as USA, EU, Japan, Czech Republic, Hungary and South Korea.

II- Electric Components

28. CADE condemned Toshiba Corporation and Mitsubishi Electric Corporation (Melco) for participation in the international cartel of electric-energy gas-insulated switchgear (GIS). The two companies must pay fines totaling approximately BRL 4.9 millions.

29. The investigations started in 2006, following a leniency agreement between the Brazilian government and the ABB group, which provided evidences on the existence of the collusion.

30. The cartel members coordinated the supply of GIS projects on an international basis, following agreed rules and principles, respecting fixed market shares and prices, as dividing territories between 1988 and 2004. The contacts took place at meetings at different levels, called Working Group, Steering Committee and Job Meetings. There were also communications through fax, e-mails and telephone. The agreement had effects in all consuming countries, except United States, Canada, China and Russia.

4.1.3. Dawn raids on ongoing cartel investigations

31. In recent years, CADE has been increasing the use of Dawn Raids as an instrument for its investigations, especially in public bids. In 2018, CADE made four dawn raids, two times the number of 2015 and 2016, all of them in investigations related to bid rigging.

I- Medical prosthesis and hospital equipment

32. In April 2018, CADE launched the entitled “Resonance Operation” (in partnership with the Federal Public Prosecution and the Federal Police) that investigated the cartel practice on public bids regarding medical prosthesis and hospital equipment. The anticompetitive practice was mainly due to price-fixing agreements, advantages in public bidding and market sharing between competitors. The companies were also accused of submitting proposals for manipulation of bidding documents and price proposals, determining the winning company, fixing bidding standards, pricing domestic products in a higher price level than imported ones, and exchanging sensitive competitive information, in order to restrict the number of competitors.

33. Besides detention orders, 43 dawn raids were made in the Brazilian states of Rio de Janeiro, São Paulo, Paraíba, Minas Gerais, and in the Federal District. Thirty-five CADE officials, approximately 180 Federal Police Officers and members of the Brazilian Public Prosecutor’s Office participated in this operation.

II- Asphalt paving

34. In July 2018, CADE launched the entitled “Nexus Operation” (in partnership with the Public Prosecution of the State of Espírito Santo) that investigated a possible crime of cartel in public bids in the market of asphalt paving. The companies were accused of price-fixing, market sharing, presentation of bid-to-cover proposals and suppression of proposals. Twelve CADE officials and about twenty members of the Brazilian Public Prosecutor’s Office participated in this operation.

III- Garbage collection

35. In July 2018, CADE launched the entitled “Container Operation” (in partnership with the Public Prosecution of the State of Paraná) that investigated the cartel practice on public bids regarding garbage collection.

36. According to the investigation, since 2010 business groups were sharing the market and presenting proposals for coverage in the bids, in order to ensure that the agreement respected the portfolio of contracts of each company.

37. Fifteen CADE officials and approximately 60 Federal Police Officers and members of the Public Prosecutor’s Office participated in the operation, which completed 35 search warrants in the south of Brazil.

IV- Outsourced services

38. In October 2018, CADE launched the “Point of Meeting Operation”, which investigated an alleged cartel in public bids in outsourced services.

39. The investigation began with the representation of a member of CADE’s Bidding and Contracts Division, who identified evidence of possible irregularities in electronic bids for contracting brigade services. The fact raised other suspicions, since a cartel is usually organized to defraud a significant set of bids, in order to allow all involved to be contracted.

40. After that, the CADE team used the tools developed in the Brain Project to collect additional evidence. The Brain Project is a platform that allows the integration of many public procurement databases by applying data mining tools and economic filters capable of identifying and measuring the probability of occurrence of cartels in public bids.

41. The possible affected bids were related to almost 500 contracting procedures for outsourced services by federal public agencies since 2014. Approximately 40 Federal Police officers and 28 CADE officials participated in this operation.

4.1.4. Abuse of Dominant Position

Port Operators

42. CADE condemned Rodrimar and Tecon Rio Grande for abuse of dominance, on the ground that the companies charged abusive fees in port services. Due to the anticompetitive conducts, CADE imposed fines to the companies summing up to BRL 5.7 million.

43. The companies are responsible for the loading and unloading of ships and hold the monopoly of the handling and logistics of goods unloaded in their terminals. They also operate in the storage of containers, which keeps the products safe until they are ready for exportation or importation. In this market, companies compete with so-called bonded warehouses, places inside or outside the primary zone of the port that also offer storage services.

44. Rodrimar charged the bonded warehouses the fee for the segregation of import containers destined to other customs areas, known as Terminal Handling Charge 2 (THC 2), besides the usual movement fee known as Box Rate.

45. Tecon, in its turn, charged the "Faithful Deposit" fee, to be paid by the customs office for imported merchandise or products returning from abroad and unloaded in their terminal, beside the Box Rate fee.

4.1.5. Cease and Desist Agreements on financial market

I- Foreign Exchange Market

46. CADE signed three cease and desist agreements from investigations regarding: (i) anticompetitive conducts in foreign exchange markets, especially on spot market, involving foreign currencies and the Brazilian currency (Real – BRL), including forward-rate agreements with cash settlement ("non-deliverable forwards Real"); and (ii) anticompetitive conducts in the manipulation of international reference indices, with effects in Brazil.

47. The settlements aimed at protecting the competition in the foreign exchange markets with effects in Brazil. The agreements totalized almost BRL 43 million in pecuniary contribution.

II- Banking services

48. CADE signed four cease and desist agreements from investigations regarding discrimination practices and refusal to contract related to banking services and accreditation in the Brazilian market.

49. The first case involved Cielo and its parent companies, Banco do Brasil and Bradesco, which agreements totalized BRL 33.8 million in pecuniary contribution.

50. The second case involved Itaú and its controlled company, Redecard. The agreement was conditioned to a pecuniary contribution of BRL 21 million – the largest

nominal contribution ever collected by CADE in an agreement involving unilateral conduct in administrative proceeding.

III- Stock exchange

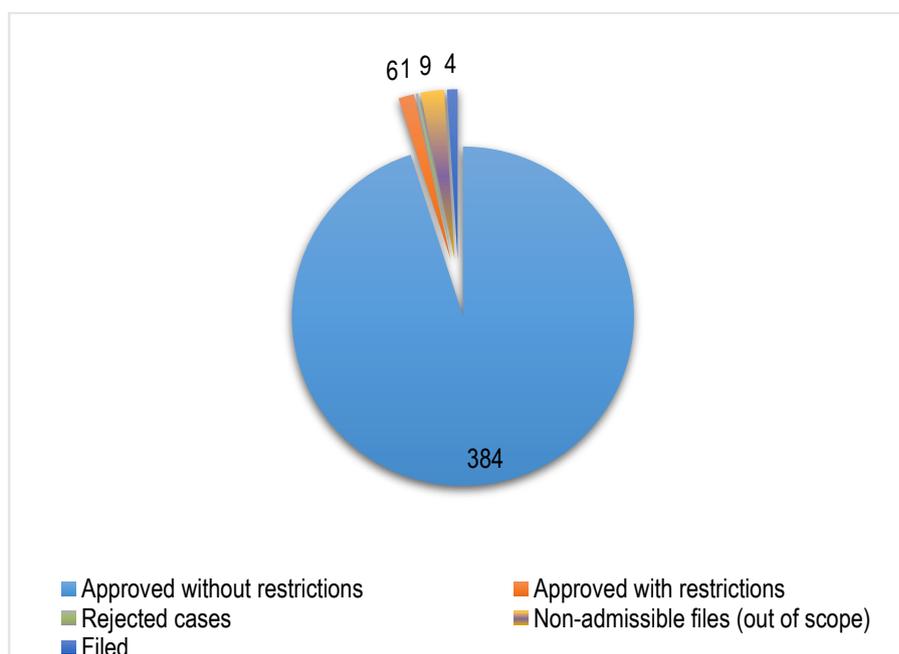
51. CADE signed one cease and desist agreement from investigations regarding anticompetitive practices in the stock exchange market, such as barriers to the entry of competitors in the market. The agreement was conditioned to a pecuniary contribution of BRL 9.4 million.

4.2. Mergers and acquisitions

4.2.1. Statistics on mergers and acquisitions

52. In 2018, CADE assessed 404 merger cases. Out of this total, 384 were approved without restrictions, 6 were approved with remedies, 9 were non-admissible filed (out of scope), 4 were filed and 1 merger was blocked. In the same period, 405 new mergers cases were notified at the authority.

53. The previous years' average of assessment was maintained and a steady balance between new notifications and the conclusion of previous assessments was reached. The average time for issuing a decision on merger cases was 27 days despite the fact that there was a large number of complex transactions under analysis. Fast-track mergers (approximately 80% of the total) were assessed in an average of 13 days. Compared with 2017, the average time for issuing a decision was reduced 10% for regular merger cases and 15% for fast-track analysis.



Source: 2018 CADE's activities report.

4.2.2. Summary of significant merger cases

National mergers

I- Petrobras e Petrotemex

54. In February 2018, Cade approved the acquisition, by Petrotemex Group, of the companies “Petroquímica de Pernambuco” (Psuape) and “Companhia Integrada Têxtil de Pernambuco” (Citepe), both subsidiaries of Petrobras. This transaction was conditioned to the signature of a Merger Control Agreement (ACC in its acronym in Portuguese), with the application of behavioral remedies, as the merger would generate a monopoly for the new company in the purified terephthalic acid (PTA) market. In this case, the application of a structural remedy was not feasible and the disapproval could result in competitive issues.

II- Votorantim Siderurgia e Arcelormittal Brasil

55. In February 2018, Cade approved the merger between the companies *Votorantim Siderurgia S.A.* e Arcelormittal Brasil S.A., conditioned to the signature of a Merger Control Agreement (ACC in its acronym in Portuguese) that included the application of structural remedies (divestment package) and behavioral remedies (performance commitment). This case encompassed the Brazilian steel market and the probabilities of exercising market power.

III- WEG and TGM

56. In February 2018, Cade approved the merger of WEG, national leader in the sale of electric generators, and TGM, leader in the commercialization of both steam turbines and turbo reducers, conditioned to the signature of a Merger Control Agreement (ACC in its acronym in Portuguese).

57. The transaction raised concerns related to abusive exercise of portfolio power, cross-subsidy practices and abusive price discrimination. According to the Agreement, the companies should comply with behavioral remedies such as non-discrimination, proposals with individualized prices in order to avoid the practice of cross-subsidy, and ensure customers the possibility of purchasing the components of turbogenerator in an integrated or single way in Brazil.

IV- Liquigás and Ultragaz

58. CADE’s Tribunal blocked the acquisition of Liquigás by Ultragaz in March 2018. According to CADE’s opinion, the purchase of Liquigás would increase the possibility for Ultragaz to exercise the abuse of market power in the Liquefied-Petroleum Gas (LPG) market. In August 2017, Cade’s General Superintendence opinion had already highlighted that the transaction could result in a high concentration level. The merger would eliminate a strong competitor in a market where only four companies held more than 85% of the supply market share.

59. Ultragaz and Liquigás have, respectively, the largest and second largest domestic market share of LPG. In a post-merger scenario, the new company would hold more than 40% of sales in many of the Brazilian States, as indicated by the data presented by the Reporting Commissioner.

60. CADE’s Reporting Commissioner concluded that the efficiencies that could be engendered after the transaction were very fragile, not specifically linked to the transaction

and not likely to be transferred to the final consumers and that the net effect on society - particularly on the consumers - would be negative. Besides that, the majority of the Tribunal agreed that the remedies proposed by the companies were not adequate to avoid price increases in many of the Brazilian States.

V- Itaú-Unibanco and *XP Investimentos*

61. CADE approved, in March 2018, the acquisition by Itaú Unibanco of a stake in *XP Investimentos*. The approval was conditioned to the signature of a Merger Control Agreement (ACC in its acronym in Portuguese) proposed by the parties within CADE's Administrative Tribunal.

62. The transaction will occur in three stages. In 2022, at the end of the final stage, Itaú Unibanco will hold 49.9 percent of the voting shares of *XP Investimentos* and 74.9 percent of its share capital. After that, the deal also establishes a put option, by *XP Investimentos*, and a call option, by Itaú Unibanco. In case of exercise of these options, the operation shall be notified to Cade for a new analysis.

63. The conditions imposed by CADE's Administrative Tribunal through the ACC aimed to reduce possible negative effects to the competition on the relevant markets analyzed.

64. The ACC includes obligations for both companies, *XP Investimentos* and Itaú Unibanco. The compliance will be monitored by a Trustee, who will have access to the information provided by the companies. The companies committed to strengthening their mechanisms of governance that ensure the independence of the current *XP Investimentos* controllers' management, maintaining the pre-merger incentives. This eliminates Cade's concerns about the possible reduction of XP's competitive pressure on the market. The other commitments agreed by the companies aim to mitigate the risks of discrimination or market foreclosure resulting from the reinforcement of vertical integrations between *XP Investimentos* and Itaú Unibanco.

International mergers

I- Bayer and Monsanto

65. In February 2018, CADE approved the merger between Monsanto Company and Bayer Aktiengesellschaft. The approval was conditioned to the signature of a Merger Control Agreement (ACC in its acronym in Portuguese) proposed by the parties within CADE's Administrative Tribunal. In this merger, Bayer acquired Monsanto's unitary control.

66. Bayer has three business areas: Pharmaceuticals Divisional, Consumer Health and Crop Science, and operates in 75 countries. Monsanto Company has activities in 67 countries and operates in Brazil through its subsidiaries.

67. CADE's General Superintendence assessment identified competition problems linked to horizontal overlaps and reinforcement of vertical integrations in the markets of soybean seeds and transgenic cotton. Moreover, the evidentiary stage also pointed out that issues related to conglomerate effects could arise from the operation in related markets.

68. CADE accepted the remedies proposed by the companies, which the main one were the divestment of all Bayer's assets related to the soybean seeds and cotton businesses, as

well as the unit of non-selective herbicides based on ammonium glufosinate. This divestment would occur through the selling of the soybeans and herbicides units to BASF.

II- Essilor and Luxottica

69. In February 2018, CADE approved, without restrictions, the merger between Essilor (eyeglass lenses manufacturer) and Luxottica (eyeglass frame manufacturer). The General Superintendence considered that the companies operate in complementary markets, with low horizontal overlaps and lack of incentives to anticompetitive practices resulting from the merger. This case was notified in 20 jurisdictions, such as Chile, China, Singapore, Colombia, México, Europe, The United States and Turkey.

III- Praxair Inc. e Linde AG

70. In June 2018, Cade approved the merger of Praxair Inc (White Martins) with Linde AG regarding industrial, special and medicinal gases market, conditioned to the signature of a Merger Control Agreement (ACC in its acronym in Portuguese), in order to rule out potential competition concerns caused by the transaction.

71. The Brazilian market of industrial and special gases is highly concentrated and the merging parties are the main players of this market. Therefore, the Merger Control Agreement imposed structural remedies like divestiture of several businesses and the commitment of non-discrimination in the supply of calcium carbide, a gas that, in Brazil, is exclusively manufactured by Praxair. This merger was filed in other jurisdictions such as Canada, Chile, Europe, Mexico, Russia, and The United States.

IV- Suzano and Fibria

72. In October 2018, Cade approved without restrictions the merger between the companies Fibria Celulose and Suzano Papel e Celulose. The main concern was about commercialization of eucalyptus wood and pulp and paper production. The General Superintendence did not identify relevant competitive problems resulting from the operation.

5. Activities carried out on competition advocacy and institutional cooperation

5.1. The role of competition authorities in formulation and implementation of other policies – competition advocacy

73. In Brazil, competition advocacy is shared across three different institutions: CADE, SEPRAC and SEFEL². CADE develops advocacy initiatives, mainly through its Department of Economic Studies. Its advocacy activities include publications, market studies, guidelines, impact assessments, lectures, and close co-operation with sector regulators and other public bodies. Additionally, both SEPRAC and SEFEL mandates include advocacy initiative as the drafting of studies analyzing public policies from a competition perspective, as well as self-regulations and normative acts of general interest

² SEFEL had no relevant advocacy initiative in 2018. It was concentrated in SEPRAC, as both were within the Ministry of Finance.

to economic agents, consumers or service users, and the assessment of regulatory impacts of sectorial public policies.

5.1.1. CADE activities in competition advocacy

74. CADE have conducted some bilateral and multilateral meetings with Senators and Congressmen aiming to discuss bills and propositions that could affect competition law and antitrust enforcement. The Department of Economic Studies issued eleven formal advocacy opinions to governments, regulators and legislators about several themes – nine related to fuel market³, one related to sea transport⁴ and one related to steel market⁵.

75. The Department of Economic Studies also conducted five market studies in order to analyze and promote a competitive environment in different economic sector. The themes were: (i) “mergers in the markets of health plans, hospitals and diagnostic medicine”, (ii) “container shipping”, (iii) “competition policy assessment: damage estimation with the gas station cartel in Londrina”; (iv) “competition effects of the sharing economy in Brazil: has Uber’s entry affected the cab-hailing app market from 2014 to 2016?”, and (v) “rethinking the fuel sector: pro-competition measures”.

76. Furthermore, CADE organized eleven advocacy events (eight seminars⁶ and three observatories⁷) regarding competition policy, cartel, digital economy and commercial defense.

5.1.2. SEPRAC activities in competition advocacy

77. Among the legal duties of SEPRAC is the preparation of studies that analyze, from the competitive point of view, public policies, self-regulation and normative acts of general interest of economic agents and consumers. In the majority of cases, SEPRAC opines in legislative proposals, propositions of regulatory agencies, evaluations requested by government institutions and fora, and also as *amicus curiae* in administrative and judicial proceedings.

³ Technical Notes No. 16/2018/DEE/CADE, No. 24/2018/DEE/CADE, No. 28/2018/DEE/CADE, No. 30/2018/DEE/CADE, No. 31/2018/DEE/CADE, No. 33/2018/DEE/CADE, No. 35/2018/DEE/CADE, No. 36/2018/DEE/CADE and No. 37/2018/DEE/CADE.

⁴ Technical Note No. 9/2018/DEE/CADE.

⁵ Technical Note No. 38/2018/DEE/CADE.

⁶ Themes: (i) “Competition effects of the sharing economy in Brazil: has Uber’s entry affected the cab-hailing app market from 2014 to 2016?”; (ii) “Evaluation of competition policy: estimate of damages in the Londrina cartel.”; (iii) “Cartel filters based on price dynamics: an application to the fuel retail in Brazil.”; (iv) “Insights from Game Theory into Social Behavior: the evolution of cooperation in non-cooperative games.”; (v) “How techniques from machine learning, complex network or agent based models can contribute to the procedures used by DEE?”; (vi) “Development of the Competition Portal.”; (vii) “Studies on the relationship between competition and trade defense measures – anti-dumping.”; (viii) “Digital Economy and Competition – BRICS and Digital Economy Working Group.”

⁷ Themes: (i) “Commercial defense: promotion of fair trade or restriction to competition?”; (ii) “Regulation of the road passenger transport service – recent changes.”; (iii) “Lotteries and trade promotions.”

78. In 2018, SEPRAC analyzed themes regarding to international trade, health market and transportation.

International Trade

79. In 2018, SEPRAC analyzed the competitive impact of the main antidumping demands being examined by the Trade Defense Department of the Ministry of Industry, Foreign Trade and Services (DECOM, in its acronym in Portuguese) and proposed the adoption of a new antidumping procedure, according to trade defense instruments regulated by the World Trade Organization and internal regulation (Decree No. 1,751/1995 and Decree No. 8,058/2013).

80. SEPRAC has acted to (i) analyze the competitive impact of the main antidumping demands and (ii) has proposed the adoption of a new antidumping procedure that would mandatorily analyze the competitive impact of a measure before adopting it, so that public interest could justify the non-adoption of an anticompetitive antidumping measure.

Health market

81. In 2018, SEPRAC worked actively in the scope of the Executive Technical Committee of the Drug Market Regulation Chamber (CMED, in its acronym in Portuguese) regarding the applicability of a new regulatory model for over-the-counter drugs (MIPS, in its acronym in Portuguese) by drafting a resolution that was adopted in 2019.

Transportation

82. In 2018, the enactment of Law No. 13,703/2018 (following the Provisional Measure – MP No. 832/2018) established the Policy of Minimum Prices of Road Transport of Loads. This was a governmental action aimed at resolving the impasses caused by the National Truckers' Strike, which took place in May 2018.

83. In the context of legal challenges, SEPRAC issued an opinion against the application of the price table without prior analysis of the impact of the measure on the markets involved. After examining the merits of Law No. 13,703/2018, SEPRAC recommended the veto of some articles that had the potential to impact on competition, with the reduction of incentive to compete among the bidders. Additionally, SEPRAC considered that price table could affect consumers and create a parallel forum of negotiation potentially sensitive to competition.

5.1.3. Relationship with other institutions and stakeholders

84. CADE strengthened its collaboration with other law enforcers as well as with governmental and legislative bodies. These efforts contribute to the improvement of the authority's investigations.

85. Cade signed several cooperation agreements with other institutions from the Brazilian Public Administration during 2018. CADE has also acted in working groups with other agencies debating important issues such as the financial market and the fuel sector. In addition, the authority participated in several meetings with government agencies and promoted seminars and courses in partnership with other institutions.

Central Bank

86. In February 2018, CADE signed a Memorandum of Understanding with the Central Bank of Brazil. This document launched the basis for the edition of a joint normative act that establishes coordination procedures between both entities. Published in December, the new legal framework regulates the interaction of the two different bodies in the analysis of mergers and violations of the economic order involving financial institutions under Central Bank's supervision.

National Institute of Industrial Property (INPI)

87. In June 2018, CADE and INPI signed a Cooperation Agreement for the exchange of technical information as for the promotion of a closer relationship between the two institutions. With the celebration of the agreement, Cade and INPI committed themselves to provide technical subsidies for the analysis of administrative processes and to exchange information, knowledge, data and documents, safeguarding the confidentiality of information. They also undertook to conduct studies, events and seminars on relations and interfaces between intellectual property and antitrust.

Ministry of Economy

88. In April 2018, CADE and the Secretariat for the Promotion of Productivity and Competition Advocacy (SEPRAC) and the Secretariat for Fiscal Monitoring, Energy and Lottery (SEFEL), both from the former Ministry of Finance (current Ministry of Economy) signed a technical cooperation agreement to establish ways of a joint action among the agencies in promoting competition law.

89. The agreement was a result of the discussions in the scope of a Working Group formed by representatives of the two bodies. It provides for the creation of the Committee on Cooperation in Competition Law (C-CAC), which will be responsible for identifying the most relevant topics to be set in this agenda. Members of C-CAC will exchange information with the objective of writing a report with joint suggestions of public policies related to competition law.

Brazilian National Agency for Petroleum, Natural Gas and Biofuels (ANP)

90. In June 2018, CADE and ANP created a Working Group to establish joint actions in the scope of the Brazilian Competition Defense System. The Working Group aims at analyzing the structure of the fuel market, as evaluating the implementation of measures proposed by CADE to rethink the fuel sector and the possibility of the permanent adoption of the exceptional regulatory measures presented by the ANP. The promotion of competition as an instrument to increase competitiveness and innovation in the Brazilian economy is also in the scope of the group.

Public Prosecution Service

91. In 2018, Cade reached the mark of 22 Agreements of Technical Cooperation signed with Public Prosecution Services from the Brazilian States. The objective of the partnerships is to act in a coordinated manner regarding the complaints formalized in both bodies, as jointly coordinate the investigations. Cade has helped public prosecutors in the criminal prosecution of cartel cases in several markets through searches and seizures, technical contributions to the analysis of seized material and identification of targets based on economic evidence. The presence of the Public Ministry in several Brazilian

municipalities enables Cade to become aware of violations of the economic order in all regions of Brazil and, thus, increase the fight against these anticompetitive practices.

Car Wash Operation

92. CADE and the inter-institutional Car Wash Operation have a partnership established since 2015, when CADE signed the first antitrust leniency agreement in the scope of the operation. In May 2018, as a part of the investigation, the Brazilian Federal Public Prosecutor's Office instituted a laboratory composed by employees from CADE, the Federal Court of Auditors (TCU, in its acronym in Portuguese), the General Comptroller's Office (CGU, in its acronym in Portuguese), and the Public Prosecutor's Office. The cooperation aims at developing new methodologies, routines and techniques for the investigation of illicit acts identified during the Car Wash investigations.

Control Agencies

93. With the objective of establishing an approximation with control bodies from the Brazilian Public Administration, Cade signed a Technical Cooperation Agreement with the Federal Court of Auditors (TCU, in its acronym in Portuguese), and the Court of Accounts of the State of São Paulo. In the Technical Cooperation documents, the institutions commit themselves to share documents, information, technological tools, databases, reports and diagnoses with each other. They also undertake a partnership to carry out initiatives such as studies, research and training of employees. The sharing of databases managed by the agencies contributes to the identification and repression of cartels in public tenders.

5.2. International cooperation

94. International cooperation is also an important feature of competition law and policy in Brazil. CADE maintains a close dialogue with several foreign jurisdictions in order to make their work converge for the purpose of more effective competition enforcement, regarding not only the resolution of anticompetitive cases but also mergers assessment. In addition, the Brazilian competition authority is part of relevant international competition fora, such as the ICN, OECD and UNCTAD, with an actively and fruitful participation, which contributes for the development of the best practices within the international competition community.

5.2.1. OECD

95. Regarding the OECD, the dialogues for the admission of Brazil to its Competition Committee began in December 2017. Through a coordinated action with the Ministry of Foreign Affairs, Cade formalized the request during the Global Forum on Competition held by the Organization that year, in Paris, France.

96. In March 2018, Cade received a positive feedback on the request and got the information that would have to undergo a peer review process, which would encompass a wide and meticulous evaluation of the Brazilian competition policy and legislation, as well as its compliance with OECD standards.

97. In November 2018, CADE's delegation presented the report resulting from the peer review process. The Organization has recognized the important advances of the agency since the enactment of the Law 12.529/2011 and the wide implementation of the recommendations of the previous peer reviews conducted in 2005 and 2010. The OECD

report also pointed Cade as one of the main antitrust agencies around the world and considered the agency one of the most efficient public bodies in Brazil.

5.2.2. *International Competition Network (ICN)*

98. The International Competition Network is one of the main antitrust cooperation network in the world that aims to foster the convergence of competition policies and procedures around the world and the dissemination of best practices, through the exchange of information and experience.

99. CADE is member of the ICN Steering Group since 2005 and Co-chair of the Cartel Working Group since 2017. In this context, CADE shares its experience with the leniency program and contributes to overcome inherent challenges in the prevention, detection and fight against cartels.

100. Moreover, in 2018 CADE were chosen to organize and host the 2019 ICN Cartel Workshop. The event will be an opportunity to promote dialogue on key issues related to cartels, to share knowledge and experience among partner agencies, and to identify common challenges and best practices in competition policy and law.

5.2.3. *BRICS*

101. Since 2017, CADE is the Chair of the BRICS Working Group on digital economy and conducts a strong benchmarking international agenda in this area. In 2018, CADE started drafting a joint report about digital economy within the BRICS that, among other topics, compares how CADE and the other BRICS countries are dealing with competition in new digital technologies and zero price markets, based on a questionnaire answered by the countries. This report will be launched on the VI BRICS Conference in 2019.

102. CADE also participates in the Working Group of automotive market, coordinated by South Africa, with contributions to the debate on related issues and responding to questionnaire.

5.2.4. *UNCTAD*

103. In 2018, CADE became member of the COMPAL – Competition and Consumer Protection in Latin America (“*Competencia y Proteccion al Consumidor en America Latina*”). COMPAL is an UNCTAD program that aims to provide capacity building and institutional strengthening on competition and consumer protection matters to beneficiary countries in Latin America, in order to implement competition policies in their market and to improve consumer welfare, thus contributing to the inclusive and sustainable development of its members.

104. With the accession, CADE began to offer technical training in competition matters to the other Latin America countries.

105. Moreover, in October 2018 CADE hosted the 8th Annual Meeting of the Working Group on Trade and Competition of Latin America and the Caribbean, promoted in partnership by CADE, Latin American and Caribbean Economic System (SELA) and the United Nations Conference on Trade and Development (UNCTAD).

5.2.5. Bilateral Cooperation

I- International Cooperation Agreements

106. In 2018, CADE signed two new international cooperation agreements with Paraguay and Costa Rica. Counting with these two new agreements, CADE had valid cooperation agreements with 13 jurisdictions in 2018: Argentina, Canada, Chile, China, Costa Rica, European Union, Japan, Mexico, Paraguay, Portugal, South Africa, Russia and USA.

II- Case analysis and benchmarking

107. In 2018, CADE has cooperated with 12 foreign competition authorities in 9 merger cases and 19 benchmarking operations.

III- Technical training

108. In December 2018, CADE has cooperated with the competition authority of Costa Rica (Conacom) providing a technical training to its staff members about “Competition Defense”. In a five days course, two CADE experts shared information regarding the Brazilian Competition Law, the Leniency Program and Cease and Desist agreements, control of structures, control of conducts, investigation procedures and penalties, compliance program, private enforcement and advocacy.

109. Also in December 2018, CADE participated as speaker in the workshop Fighting Bid Rigging in Procuring Public Works in Argentina, promoted by OECD Competition Committee and the Argentina competition authority (CNDC), aiming to provide technical training to officials that work with public procurement processes. CADE representative talked about (i) the “Brain Project”⁸; and (ii) technical cooperation with other government agencies for the investigation and prevention of cartels in bid riggings.

5.3. International events

110. In 2018, CADE participated at 51 international events and meetings on competition, represented by technical staff, Commissioners, the President or the General Superintendent, mainly with participation as speaker or moderator.

111. The main events in 2018 were the OECD meeting in June, the OECD Global Forum; the ICN Annual Conference, the ICN Cartel Workshop, the COMPAL Annual Conference, the ABA/IBA International Cartel Workshop, the ABA Spring Meeting, the IBA Annual Conference.

112. In addition, in 2018 CADE hosted three important events in Brazil: 8th Annual Meeting of the Working Group on Trade and Competition of Latin America and the Caribbean, first meeting of BRICS Working Group on Digital Economy and Global Seminar Series.

⁸ A system developed by CADE to identify cartels in bid riggings, data mining tools and economic filters used to identify possible signs of anticompetitive practices in tender, and relevant information of investigation

5.3.1. 8th Annual Meeting SELA/UNCTAD

113. In October 2018, CADE, the Latin American and Caribbean Economic System (SELA) and the United Nations Conference on Trade and Development (UNCTAD) promoted the 8th Annual Meeting of the Working Group on Trade and Competition of Latin America and the Caribbean. The meeting gathered 100 participants, representing more than 20 countries from Latin America and Caribbean. The event had discussions regarding competitive and economic issues of the maritime transport, infrastructure and port services in those regions. The event also included the presentation of two studies on competition and regulation of shipping, prepared by UNCTAD and CADE.

5.3.2. First meeting of BRICS Working Group on Digital Economy

114. In October 2018, CADE held the First Meeting of the BRICS Working Group on Digital Economy. The meeting was part of the 24th International Seminar on Defense of Competition, promoted in the city of *Campos do Jordão* by the Brazilian Institute of Studies of Competition, Consumer Affairs and International Trade (IBRAC). The meeting was a consequence of the commitment undertaken by CADE in 2017, during the 5th BRICS International Competition Conference, to conduct discussions regarding digital economy in the BRICS jurisdictions. Representatives from Brazil, Russia, India and South Africa took part in the panels. As a result of the discussions, based on a questionnaire answered by the authorities, CADE will produce a report containing the BRICS consolidated views of the digital economy panorama in competition. The publication will be launched during the 2019 BRICS International Competition Conference in Russia in 2019.

5.3.3. Global Seminar Series

115. In July 2018, in a partnership with the American Bar Association (ABA), CADE promoted an edition of the Global Seminar Series, aimed to discuss digital platforms. The discussions were divided into two panels. The first panel discussed the effects of the Most Favored Nation clauses applied to online tourism agencies and other digital platforms in accordance with the Brazilian law. The second panel analyzed cases in which the rights of innovation, product design and intellectual property have a prominent role, in accordance with the laws of Brazil and Chile.

5.4. The Brazilian Competition Journal

116. CADE continuously publishes the Brazilian Competition Journal, *Revista Brasileira de Defesa da Concorrência*. The Journal is issued biannually, with editions in May and November, and provides a relevant platform for academic discussion of competition policy and enforcement in Brazil. The Journal is classified by the Coordination for the Improvement of Higher Education Personnel (CAPES in its acronym in Portuguese) in the category B1, the third tier of an eight-level national ranking. The Journal's webpage is www.cade.gov.br/revista.

5.5. Acknowledgement and Awards

117. In 2018, Cade was appointed as the best antitrust agency in the Americas for the fourth time. The award was given by the Global Competition Review (GCR) magazine, which is specialized in competition policy and regulation. CADE also remained among the world's ten most effective antitrust agencies for the sixth consecutive year in a ranking

compiled by this same magazine. In the evaluation of the GCR, the authority has achieved remarkable results in enforcement, institutional capacity and prominence in the governmental and international agenda. The magazine highlighted the growth of the national leniency program, the large number of Cease and Desist agreements signed, the strengthening of collaboration between the authority and national and international bodies, the good performance in mergers analysis, the transparency and legal certainty provided by CADE to Brazilian society and to the antitrust community.

118. Another important international recognition in the year of 2018 was the award of the CADE's Dawn Raid Guidance as Best Soft Law at the Antitrust Writing Awards - promoted annually by the Concurrences magazine. The publication awards the most innovative enforcement tools published by antitrust authorities, such as guides and market studies. CADE has already won this category previously with the Cessation Commitment Term Guide.

6. Resources of competition authority

6.1. Resources overall

6.1.1. Annual budget

119. In 2018, CADE had a total budget of BRL 55,042,730 (USD 14,222,927). SEAE total budget was BRL 1.500.000,00 (USD 387.596)⁹.

6.1.2. Number of employees

120. In 2018, CADE had a total staff of 392 people. Among them, 72 lawyers and 32 economists. The authority has 168 non-administrative staff working on competition enforcement. Regarding the non-administrative staff, 100 work with merger review and abuse of dominance, 81 work in the anti-cartel area¹⁰.

121. SEPRAC had a total staff of 40 employees. From this total, 32 was non-administrative staff working on competition enforcement.

7. Studies published by CADE

7.1. Economic Studies

- CONSELHO ADMINISTRATIVO DE DEFESA ECONÔMICA (CADE), 2018a. Mercado de transporte marítimo de contêineres.
- _____, 2018b. Atos de concentração nos mercados de planos de saúde, hospitais e medicina diagnóstica.

⁹ USD 1 / BRL 3.87 – exchange rate at December 31, 2018

¹⁰ CADE's General Superintendence has eight units, five of them responsible for analyzing both mergers and dominance-related issues and three responsible for anti-cartel investigations. Furthermore, CADE's Leniency, Intelligence and Cartel Screening Units are part of the General Superintendence's office.

- _____, 2018c. Documento de trabalho nº 001/2018: Efeitos concorrenciais da economia do compartilhamento no Brasil – A entrada da Uber afetou o mercado de aplicativos de táxi entre 2014 e 2016?
- _____, 2018d. Documento de trabalho nº 002/2018: Avaliação de política de concorrência – estimação de danos no cartel de postos de gasolina em Londrina.

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

- OECD. “Challenges and Co-ordination of Leniency Programme”. Contribution from Brazil. June 2018.
- OECD. “Implications of E-Commerce for Competition Policy”. Contribution from Brazil. June 2018.
- OECD. “Non-price effects of mergers in the Brazilian competition law and practice”. June 2018.
- OECD. “Cartel enforcement in Brazil: priorities, challenges and new approaches”. November 2018.
- OECD. “Competition law and state-owned enterprises”. Contribution from Brazil. November 2018.