

**Directorate for Financial and Enterprise Affairs
COMPETITION COMMITTEE****Annual Report on Competition Policy Developments in Brazil****-- 2019 --**

This report is submitted by Brazil to the Competition Committee FOR INFORMATION.

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Brazil

1. Introduction

1. After the changes introduced by the Brazilian competition law in 2012, CADE made historical achievements that not only consolidate but also take the defence of competition in Brazil to new levels. The year of 2019 stands out the consolidation of institutional and structural changes at the Administrative Council for Economic Defence (CADE).

2. In 2019, Brazil was accepted by the Organisation for Economic Co-operation and Development (OECD) as an associate member of its Competition Committee. Moreover, CADE was included within the scope of the General Law of Regulatory Agencies, which granted to CADE actual administrative, budgetary and financial autonomy, as recommended by the OECD in its last evaluation of the agency's practices and organisation. These achievements were built throughout the years and indicate how CADE has been working in favour of best practices for the agency and the country.

3. In addition, CADE maintained merger review effectiveness and strengthened advocacy practices, promoting competitiveness amidst government bodies and society. Concerning the suppression of economic crimes, CADE reviewed and ruled on several important cases, and signed historical cease and desist agreements. CADE also improved its cooperation with Brazilian partners and played an active role in international competition forums.

2. Senior leadership update

4. In 2019, CADE's Tribunal welcomed four new commissioners: Lenisa Rodrigues Prado, Luis Henrique Bertolino Braido, Luiz Augusto Azevedo de Almeida Hoffmann, and Sérgio Costa Ravagnani. Furthermore, the General Superintendent, Alexandre Cordeiro, and the Chief Prosecutor, Walter de Agra Junior, were reappointed. The appointments and reappointments were confirmed by the Senate and the commissioners entered office between October and November.

3. Changes to competition law and policy

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

3.1.1. Change of the name of one of the institutions that are part of the Brazilian Competition Defence System

5. Law 12529/11 addressed an institutional reform of the Brazilian Competition Defence System, involving its two main institutions: the Administrative Council for Economic Defense (CADE) and the Secretariat for Economic Monitoring (SEAE).

6. In January, 2018, SEAE was replaced by the Secretariat for the Promotion of Productivity and Competition Advocacy (SEPRAC) and the Secretariat of Fiscal

Monitoring, Energy and Lottery (SEFEL), within the Ministry of Economy, according to Executive Order 9266/2018.

7. In January, 2019, after a new government institutional reform, both SEPRAC and SEFEL were replaced by the Secretariat of Competition Advocacy and Competitiveness (SEAE), linked to the Ministry of Economy, as per Executive Orders 9745/2019.

3.1.2. New Statutes of CADE (Resolution 22/2019)

8. The new Statutes of CADE came into force in September, 2019, and were aimed at adapting some rules that needed to be changed, as it had been proven over the years.

9. One of the main changes concerns the deadlines for presenting defences, lodging appeals and filing statements in proceedings. The deadlines for parties with different representatives, from different law firms, in cases that were carried out exclusively electronically, will no longer be doubled.

10. In addition, confirmation of electronic access to the proceedings by the parties has been added to the list of ways to ensure unambiguous knowledge of an action, for the purpose of calculating deadlines. Previously, for this purpose, the document only listed publication in the Federal Official Gazette of Brazil or filing of a document, notice or receipt to the proceedings. These changes are intended to adapt the procedures to the reality of electronic proceedings, which CADE implemented in January, 2015, in accordance with Resolution 11/2014.

11. Another important modification concerns confidentiality and restricted access to cases. The list of cases that can be categorised as confidential and have its proceedings, documents, information, and procedural acts kept secret was extended. Besides establishing it applies to investigations related to suspicious practices (preparatory proceedings, administrative investigations, and administrative proceedings), the list now includes administrative proceedings related to complaints, the assessment of mergers and acquisitions, and administrative proceedings intended to impose incidental sanctions. This was already happening in practice, but the update of the regulation formalised the matter.

3.1.3. APAC Resolution

12. In July, 2019, CADE issued its Resolution 24, aimed at regulating administrative procedures for M&A assessment (APAC), to deal with mergers that met the legal criteria for mandatory pre-merger notification but were completed without CADE's prior approval (gun jumping). The resolution is intended to increase the predictability and transparency regarding administrative procedures, and the definition of the appropriate penalty, when applicable.

13. In 2019, CADE launched 14 APAC investigations and concluded 7 cases (4 after reaching agreements with the parties and 3 after the cases were filed).

3.1.4. Procedures for accessing documents related to administrative proceedings to impose sanctions for economic crimes.

14. In November 2019, CADE issued Directive 869/2019 to regulate procedures related to its Resolution 21/2018, which established that information on investigations for economic crimes must be public.

15. The directive establishes that commissioners appointed as rapporteurs of any given case, when offering their rulings, must define which documents that were kept confidential

during the investigation must be made public. The decision of CADE's Tribunal with regard to the disclosure of information will not be conditioned by factors such as violation severity levels or length of involvement in the anticompetitive practice.

16. However, the directive also establishes that interested parties can advocate for the need of continuing restricting access to the information available in administrative proceedings, as per the provisions of Resolution 21/2018 or of any specific law, via motions for clarification. It must be stressed that the documents will only be made publicly available after the decision is final and therefore unappealable.

17. Moreover, the directive makes provisions for procedures related to exceptional requests for access to documents prior to trial, as well as to information from cases ruled before Resolution 21/2018 came into force. In such cases, interested parties will be previously notified of the need to maintain the access restricted, subject to the possibilities determined in the law, and in any specific judicial decision.

18. Finally, to foster private actions, the directive also establishes that the list of cases ruled, with their documents and information, must be made available on CADE's website.

3.1.5. General Law of Regulatory Agencies

19. In 2019, CADE achieved an important goal with its inclusion in the scope of the General Law of Regulatory Agencies (Law 13848/2019), which gave CADE actual administrative, budgetary and financial autonomy, as recommended by the OECD in its last evaluation of CADE's practices and structure. The law updates the rules for the management, organisation, and decision-making, as well as for the general public access to regulatory agencies.

20. With respect to CADE, the law addresses compliance mechanisms and establishes CADE must adopt internal control and risk management practices, as well as elaborate and advertise an integrity programme, in order to prevent, detect, penalise, and remedy frauds and corruption practices. The law also provides for increasing transparent practices through three important documents: an annual activity report, pointing out the sectors' compliance with policies in effect; a quadrennial strategic plan containing objectives, goals, and strategic results expected of the agencies' actions; and an annual management plan, which will be the consolidated plan, including actions, results, and goals expected of the agency's management processes and main activities.

21. Moreover, the regulation institutionalises exchanges between regulatory agencies. CADE will be able to request technical advice from other regulatory agencies and, should other agencies ever acknowledge anything that could be an economic crime, they will have to report it to CADE for the appropriate measures to be taken.

3.2. Other relevant measures including new guidelines

3.2.1. Guidelines for submitting data to CADE's Department of Economic Studies

22. Published in April 2019, the document provides instructions to the market with respect to standards for submitting information requested by the antitrust authority, in order to improve and speed up the analysis process.

23. The Guidelines present a list of best practices related to sharing data, define variables, provide specific guidelines for filling in data, and offer examples of data submission spreadsheets.

3.2.2. Guidelines on Fighting Cartels in Government Procurements

24. Published in December 2019, the document consolidates the institutional experience acquired by CADE in more than twenty years fighting cartels, with emphasis on collusion in public procurement processes.

25. The main purpose of the Guidelines is to advise and assist in the formulation and execution of procurement processes, offering guidelines on how to identify the main indicators of collusive practices, therefore improving the detection, prevention, and punishment of illegal actions. It is mainly targeted at auctioneers, members of procurement committees, and other authorities in charge of investigating and punishing violations, but also at the general public.

26. The document is divided into four parts. The first one addresses cartels in procurement processes: it includes general information and a brief overview regarding the fight against cartels in Brazil; the second part focuses on the identification of cartels in procurement processes: it speaks about facilitators, types of collusions, and indicators; the third part, on its turn, addresses the prevention of cartel formation in procurement processes: it mostly gives an overview of what can be done; and the fourth and final part discusses illegal actions related to cartels in procurement processes.

4. Enforcement of competition law and policy

4.1. Actions against anti-competitive practices, including agreements and abuse of dominant position

4.1.1. Summary of actions taken by the competition authority

27. In 2019, CADE launched 89 investigations related to anti-competitive practices: 39 cartel cases, 36 unilateral conduct cases, and 14 cases involving concerted practices. Companies convicted for anti-competitive practices are subject to fines and other penalties, such as prohibition from partaking in government procurements. The Tribunal of CADE judged 15 cartel cases, 10 unilateral conduct cases, and 3 concerted practices on relevant markets.

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

Cartels

The train cartel

28. In July 2019, CADE concluded one of the largest investigations in its history: the case of the cartel in government procurements for trains and metros in the states of São Paulo, Minas Gerais, Rio Grande do Sul, and in the Federal District. The investigation was launched in May 2013, after the signing of a leniency agreement with the company

Siemens. Based on the evidence presented by the company, CADE obtained judicial authorisation to carry out a search and seizure.

29. The analysis of the material collected – over 30 terabytes of electronic data and paper documents – resulted in the launching of administrative proceedings 08700.004617/2013-41 in March, 2014. At the end of the discovery phase, the General Superintendence of CADE recommended the Tribunal convict the parties involved.

30. In July, 2019, the case was scheduled for trial. The support of the Office of the Attorney General at CADE was essential for the reversal of the Decision of Revocation 3099 by the Brazilian Federal Superior Court, which made it possible to judge the case.

31. In the plenary session carried out on 8 July, the Tribunal of CADE found 11 companies and 42 individuals guilty of cartel practices. The evidence collected throughout the investigations indicated the cartel members had divided the market, fixed prices, and established conditions, advantages and forms of participation of the companies in the procurements. At least seven projects and 26 processes were affected by the cartel from 1999 through 2013.

32. For anti-competitive practices, the 11 companies were ordered to pay fines totalling BRL 515.6 million, and the 42 individuals were ordered to pay fines amounting to BRL 19.5 million. Besides fining everyone involved, the Tribunal prohibited Alstom from partaking in government procurement processes, in the fields of activities affected by the illegal practices, for five years. CADE also recommended that the companies Alstom, Bombardier and CAF should not be granted, for a period of five years, instalments of federal taxes due, tax incentives and government subsidies.

Optical disk drive cartel

33. In January, 2019, CADE found two companies guilty of involvement in an international cartel related to the optical disk drives (ODD) market, which brought about adverse effects in Brazil. The fines imposed amount to BRL 19.5 million.

34. According to the investigations, the companies and individuals exchanged sensitive competitive information on a regular basis and entered into agreements on prices and their roles in procurement processes carried out by the main buyers of ODD. The cartel, which was operative from 2003 through 2009, led to losses in Brazil both to companies that purchased their products on a global scale (Dell, Hewlett-Packard, Samsung Electronics, Asus, Gateway, Acer, and Microsoft) and to final consumers of goods that used these products in their manufacturing process.

Air-insulated switchgear cartel

35. In February, 2019, CADE found three companies and nine individuals guilty for taking part in a national cartel related to electric components for air-insulated switchgear (AIS) used in high-voltage power stations. These switchgears are responsible for the efficiency and reliability of the electricity supply. The fines imposed amount to BRL 56.1 million.

36. The investigations started in 2006, after the signing of a leniency agreement, which gave the agency access to documents proving the existence of the cartel, which operated mostly within Brazil through price fixing and market allocation schemes, making arrangements for procurements, projects and lots. The participants used strategies such as bid rotation, cover bidding, and subcontracting arrangements, which preceded the

procurement process. The collusion, which lasted at least from 1996 through 2006, affected mainly electric utilities (such as Chesf, Furnas, Eletronorte and Eletrosul) and impacted on the final price of electricity, resulting in widespread losses to society as a whole.

TFT-LCD cartel

37. Also in February, 2019, CADE imposed fines amounting to BRL 27.4 million to two companies and seventeen individuals after they were found guilty of partaking in an international cartel related to the market of thin-film-transistor liquid-crystal-display (TFT-LCD), which is a component of LCD monitors and notebooks.

38. The cartel had significant effects in Brazil and, according to the investigations carried out, operated from 2001 through 2006. The conspiracy resulted in losses to Brazilian companies that acquired the product from international companies in a global scale, as well as to Brazilian consumers who bought monitors and laptops with this technology, which, at that time, was dependent on importation.

39. The cartel operated through price fixing, market division, sharing of commercially sensitive information and production control, to manipulate both the supply and the price of the product all around the world.

Fuel cartel

40. In April, 2019, CADE found twenty-seven fuel stations, two distributors and twelve individuals guilty of cartel formation and other economic crimes related to the distribution and resale of fuels in the metropolitan area of Belo Horizonte. The fines imposed amount to BRL 156.9 million. According to the investigations, the group operated at least from March, 2007, through April, 2008, setting resale prices of fuel and adopting measures to monitor and punish stations that did not practise the given price.

Outsourced IT services cartel

41. In October 2019, CADE found four companies and six individuals guilty of forming a cartel to influence government procurements related to outsourced information technology (IT) services. CADE found out the group tampered with at least 11 procurement processes carried out by government bodies and state-owned enterprises based in the Federal District from 2005 through 2008. The fines imposed amount to BRL 2.2 million.

42. The case was launched in 2012 and the evidence clearly indicated the cartel fixed prices, divided customers and markets among its members, and attempted to take advantages of procurement processes related to outsourced IT services. The group operated mostly through bid suppression, complementary bidding, and bogus price quotes. In addition to the fines imposed, CADE has determined the Tribunal's decision should be sent to all government bodies affected by the group's actions so they can consider pursuing lawsuits for damages, and improving their procurement and control mechanisms.

4.1.3. Search and seizures on ongoing cartel investigations

43. In 2019, CADE carried out three search and seizure operations, two of them in investigations related to bid rigging.

Cartel in government procurements related to the construction, public transport and urbanization markets

44. In March, 2019, CADE launched an operation named “*Operação Desconstrução*”, together with the Public Prosecution Services of the State of Rio de Janeiro. The search and seizure operation resulted from the investigation into an alleged cartel in government procurements carried out by government bodies of the city of Rio de Janeiro since 2009, in the construction, public transport and urbanization markets. A total of three search and seizure warrants have been carried out.

45. According to the investigations, the economic crimes consisted of agreements for fixing proposals, conditions and advantages; market division among competitors, by directing the public notice; consortia; cover bidding proposals and participation abstention; and exchange of competitive sensitive information. In addition to the administrative infringement and the economic crimes, the practices may also have constituted crimes of ideological falsehood and criminal organization, which are to be investigated by the Public Prosecution Services of the State of Rio de Janeiro.

46. The operation involved 22 civil servants, including 6 of CADE’s officials.

Cartel in government procurements for assembling UPAs

47. In April, 2019, CADE launched an operation named “*Operação Contêiner*”, in partnership with the Public Prosecution Services of the States of Goiás, Minas Gerais, Rio Grande do Norte, Rio de Janeiro, besides the Federal Prosecution Services at the Court of Accounts of the Federal District, and the Civil Police of the Federal District. A total of 43 search and seizure warrants and 9 preventive arrests have been carried out.

48. The search and seizure operation resulted from an investigation into an alleged cartel in government procurements for building modules and assembling Basic Health Units (UPAs, in its acronym in Portuguese) from 2009 through 2013. According to the investigation, the alleged cartel was started in the State of Rio de Janeiro and ended up eventually affecting at least 12 other states.

49. The allegations stated the companies involved in the agreement had jointly defined the winners of each of the procurements, by having other candidates submit cover biddings, even during the submission of price quotation, in order to influence the reference value. In addition to the administrative infringement and the economic crimes, the practices may also have constituted crimes of criminal organization, embezzlement and corruption, which are to be investigated by the Public Prosecution Services.

50. The operation involved more than 350 civil servants, including 28 of CADE’s officials.

Cartel in the road transportation market

51. In 2019, CADE launched an operation named “*Operação Pacto*”, in partnership with the Brazilian Federal Police and the Public Prosecution Services of the State of São Paulo. The search and seizure operation resulted from a joint investigation into an alleged cartel in the market of road transportation of new vehicles.

52. According to the investigation, the companies involved in the alleged cartel had set an agreement for market division, avoiding competition for new contracts with vehicle manufacturers and importers. Moreover, the companies are believed to have fixed prices for freight charge, which would considerably increase the final price of new vehicles.

53. The operation, which involved 26 of CADE's officials, involved search and seizure warrants being carried out in the States of São Paulo, Espírito Santo, Bahia and Minas Gerais.

4.1.4. Abuse of Dominant Position

Payments market

54. In October 2019, CADE launched an administrative proceeding against Itaú and Rede to investigate alleged anticompetitive practices in the payments market. CADE also imposed a preventive measure that determined the termination of the requirement that commercial establishments held accounts at Itaú in order to be entitled to the most advantageous settlement conditions offered by Rede, until a final decision is made on the case.

Google

55. Throughout 2019, CADE judged and filed three proceedings involving alleged anti-competitive practices by Google. In the investigations carried out by the agency, it was not observed any losses to competition related to the search engine market. The antitrust body also came to the conclusion there was no evidence that Google had copied content from competitors or adopted abusive clauses in its ad platform contracts.

4.1.5. Cease and Desist Agreements

Historical agreements with Petrobrás

56. In July, 2019, Cade signed two historical agreements with Petrobrás. The cease and desist agreements (TCC), signed amid ongoing investigations, were aimed at stimulating competition in the natural gas and refinery markets, hitherto almost entirely exploited by the company.

57. The first agreement suspended the ongoing investigation into the alleged abuse of dominant position by the state-owned company in the refinery market. Under the agreement, Petrobrás committed to selling eight refineries, including assets related to fuel transportation. The measure is intended to increase competition in the national refinery market through the entry of new agents, which would attract investments to the sector. The divestment of the refineries must be completed by 31 December, 2021, subject to the impending circumstances provided for in the agreement. The transactions must be reported to CADE for a detailed analysis of competition matters regarding the acquisitions, insofar as the reporting is mandatory as per the legal provisions.

58. The agreement concerning the natural gas market, on its turn, was mainly aimed at mitigating structural problems in this market, in order to stimulate the entry of new companies, and new national and international investments in the sector. Under the agreement, the state-owned company committed to selling its three carriers and any indirectly owned shares of distribution companies. The signing of the agreement suspended ongoing investigations carried out by the agency into alleged anti-competitive practices adopted by the company in the natural gas market.

Auto parts market

59. In 2019, CADE signed eight cease and desist agreements (TCC) related to seven cartel investigations into the auto parts market. Through the agreements, the signatories acknowledged their participation in illegal acts, and committed to cease all anti-competitive practices and to make a financial contribution in the total amount of BRL 120,084,528.58.

4.2. Mergers and acquisitions

4.2.1. Statistics on mergers and acquisitions

60. In 2019, CADE received 442 notifications of mergers and acquisitions – a record number as of the enactment of Law 12529/2011–, most involved electricity generation, transmission and distribution; property development projects; extraction of petroleum and natural gas; and health insurance. In the same year, CADE reviewed 433 transactions, maintaining a balance between the number of new notifications and the number of ongoing cases concluded.

61. In 2019, procedural terms were suspended for a while due to a lack of quorum at CADE’s Tribunal. However, there was no significant impact on the time taken to review the cases. In general, the average term was 29 days, and CADE reviewed about 83% of all transactions within an average term of 16.9 days through summary proceedings.

62. In 2019, CADE launched 14 investigations related to gun jumping. Out of which, three were filed and four were concluded after CADE reached settlements with the parties involved, which acknowledged they incurred in antitrust violations and pledged to contribute financially to the Fund for De Facto Joint Rights (FDD), managed by the Ministry of Justice and Public Security. The resources from the fund return to society through the financing of projects linked to the environment, consumer law, and competition law, as well as to historic, cultural, and artistic heritage.

4.2.2. Summary of significant merger cases

Disney and Fox

63. In February, CADE cleared the acquisition of Fox by Disney with the condition that the Fox Sports channel was sold, among other things. Even though the parties made efforts in order to fulfil the request, the sale was not carried out in the time frame set by the Tribunal. Thus, CADE decided, in November, to review the transaction.

GSK and Pfizer

64. In June, CADE cleared, upon signing of a Divestiture Agreement, the joint venture between the GSK and Pfizer healthcare businesses. The parties suggested selling the Magnésia Bisurada line, which is the only medicine carried by Pfizer in the market of common antacids in Brazil.

Avon and Natura

65. In November 2019, CADE cleared the acquisition of Avon by Natura with no restrictions. The General Superintendence concluded there is enough rivalry in the personal hygiene market to prevent any risk of eventual abuse of market power resulting from the transaction.

IBM and Red Hat

66. The most relevant case of gun jumping involved the acquisition of Red Hat by IBM. In December 2019, the companies entered into an agreement with CADE and pledged to pay BRL 57 million for having completed the transaction before it was cleared by CADE.

5. Actions related to competition advocacy and institutional cooperation

5.1. The role of competition authorities in formulating and implementing other policies – competition advocacy

67. In Brazil, competition advocacy is shared between two different institutions: CADE and SEAE. CADE carries out advocacy initiatives mainly through its Department of Economic Studies. Its advocacy actions include publications, market studies, guidelines, impact assessments, lectures, and close cooperation with sector regulators and other government bodies. SEAE, in its turn, undertakes advocacy initiatives such as the drafting of studies analysing public policies in terms of competition, as well as regulations and normative acts of general interest to economic agents, consumers or service users, and the assessment of regulatory impacts of sectorial public policies.

5.1.1. CADE actions related to competition advocacy

68. In September 2019, CADE celebrated the tenth anniversary of its Department of Economic Studies (DEE). At the beginning, the department was an administrative unit subordinate to the competition authority. Subsequently, Law 12529/2011, which rearranged the Brazilian System for the Defence of Competition, formally instituted the DEE as one of the bodies that make up CADE, together with the General Superintendence and the Administrative Tribunal.

69. DEE's activities are divided into two supplementary areas: advising the Superintendence and the Tribunal in investigations and analysis related to proceedings involving mergers and acquisitions, as well as anti-competitive practices; and carrying out studies to evaluate the competitive situation in the market and the performance of the agency.

70. In 2019, CADE published a series of works that contributed to the dissemination of the culture of competition, and worked hard to improve its performance in matters related to competition advocacy, aimed at promoting competitiveness amidst government bodies and society.

71. CADE has played an important role in the discussions about the civil aviation market, especially regarding luggage allowance and the remaining slots of the company Avianca. In April, the DEE issued a Technical Opinion in which it listed concerns regarding competition matters related to the bill that opened the aviation sector to foreign investment, especially with respect to luggage allowance. In June, CADE, the Federal Prosecution Services and the Federal Department of Consumer Affairs sent a formal letter to the Brazilian Civil Aviation Agency (ANAC) making the recommendation that the concept of new entrant should be more flexible in the Congonhas Airport, and that the percentage of Avianca's remaining slots should be modified. The proposed measures are intended to stimulate competition in the Brazilian Civil Aviation sector.

72. The agency also had a prominent role in actions related to the natural gas and refinery sectors, which culminated in the opening of these markets. The coordinated actions by CADE, the National Petroleum Agency, the Ministry of Economy and the Ministry of Mines and Energy resulted in the launching, in July, of the program “New Gas Market”. The Federal Government initiative is aimed at establishing the necessary conditions for companies to become increasingly competitive in the production and transportation of gas through the economic opening of the sector.

73. The elaboration of a report on competition policies and enforcement in the countries that make up BRICS (Brazil, Russia, India, China, and South Africa) regarding digital markets also shows the important role performed by the agency in this area. Issued in September, the report “BRICS in the Digital Economy: Competition Policy in Practice” provides an overview of competition and enforcement policies in the BRICS countries. The document addresses the different experiences in the application of antitrust measures to explore common challenges and possible insights for each of the group’s authorities.

74. In 2019, CADE was also focused on the publication of guidelines on matters related to competition policy and institutional procedures, aiming to reinforce transparency and legal certainty. The "Guide for sending data" offers guidance to the market on the standardization of information requested by the antitrust authority to improve and speed up the analysis of cases, and the "Guide for fighting cartels in procurements" consolidates the experience of CADE in its more than twenty years fighting cartels, with emphasis on collusion in procurement processes.

75. In October 2019, CADE has launched two distance-learning courses, in partnership with the National School of Public Administration (ENAP) of the Ministry of Economy. The course on the prevention and detection of cartel in procurements aims at preparing auctioneer to identify indications of collusion between competitors and report such behaviour to the appropriate authorities, in order to prevent, detect and suppress cartels in procurements. The other course is related to CADE’s Leniency Programme and presents the legal requirements of the programme, its main characteristics and differences to the agreements signed with other government bodies, its administrative and criminal benefits, as well as its civil and administrative repercussions.

76. In November 2019, CADE started the activities of the project for the competitive review of the public procurement regime in Brazil, carried out in partnership with the OECD. The project aims to evaluate the Brazilian regulatory framework on public administration bids and contracts and to propose suggestions that enable the adaptation of Brazilian laws and practices to the OECD recommendation on combating cartels in public procurement.

77. Moreover, in 2019, CADE held the 40th edition of CADE's Internship Programme (PINCADE), one of CADE's most remarkable advocacy initiatives. The project has been carried out since 1999, and gives undergraduate and postgraduate students from all over the country the opportunity to experience CADE's day-to-day activities, carrying on both technical and procedural work. The programme is aimed at disseminating and strengthening the culture of competition, promoting scientific cooperation, and prompting discussions and academic studies on the subject. It is an opportunity for young talents from every region of Brazil that fosters technical, scientific, and cultural exchange.

5.1.2. SEAE actions related to competition advocacy

78. Amongst the legal duties of SEAE it is the preparation of studies for the analysis (from a competitive point of view) of public policies, self-regulatory actions, and regulations of general interest to economic agents and consumers. In the majority of cases, SEAE issues opinions regarding legislative bills and propositions by regulatory agencies, as well as evaluations requested by government institutions and forums, and acts as an adviser in administrative and legal proceedings.

79. In 2019, SEAE analysed matters and proposed changes regarding international trade, the health market, transportation, the financial market, land use, telecommunications, professional services, energy, amongst others.

International Trade

80. In 2019, SEAE analysed the competitive impact of the main antidumping demands being examined by the Office for Trade Defence and Public Interest of the Ministry of Economy (SDCOM, in its acronym in Portuguese), and supported methodological improvements in dumping investigations, which were aimed at promoting transparency and providing economic strength to these investigations. SEAE also worked on supporting SDCOM's Public Interest investigations by preparing competition assessment reports on some antidumping measures. In Brazil, an antidumping measure can be suspended should such suspension favour public interest, and competitive issues are one of the variables assessed in public interest investigations.

Health Market

81. In 2019, SEAE worked actively within the scope of action of the Executive Technical Committee of the Drug Market Regulation Chamber (CMED, in its acronym in Portuguese) with regards to the applicability of a new regulatory model for over-the-counter drugs (MIPS, in its acronym in Portuguese) by drafting a resolution which was adopted in 2019.

Transportation

Railway services

82. In 2019, SEAE developed the Pro-Logistics Program, aimed at fostering competition in the logistics sector. Within its scope, SEAE has worked together with interested parties (from both the government and the private sector) in a bill focused on a more flexible funding model for railway services. Bill 261/2018 (nicknamed PLS 261/2018) establishes a more flexible and business-focused funding model for railways – for both greenfield and brownfield projects–, which transfers to the private sector the investment initiative and its inherent risks, and is to be followed by minimal regulatory interventions. SEAE's focus on the bill has been on competition drivers, in order to ensure a competitive market structure for the Brazilian rail sector. The bill has been thoroughly analysed by all interested parties and is currently under discussion in Congress.

83. To support its activities in the Logistics Infrastructure sector, SEAE has signed a Technical Assistance Agreement with the World Bank, focused on the assessment of regulatory issues related to infrastructure that might affect/hinder competition. The aforementioned technical assistance agreement is supported with financial resources from

the United Kingdom Prosperity Fund, and has developed studies, mostly reports, for the railway, naval and aerospace sectors.

84. In this context, a study was carried out to identify any current regulatory competition hurdles, followed by the development of a set of measures which were proposed to improve competition in the logistics sector. Furthermore, diagnosis report of the railway sector was prepared encompassing the Brazilian Rail System, which was then followed by the assessment of a set of competitive drivers required to improve the system's performance both with regard to efficiency and competition.

Cabotage

85. SEAE has been working on identifying sectors in which there are opportunities for legal and regulatory improvements to promote competition and competitiveness. Maritime cabotage was identified as one of such sectors, which goes with the proposal that has been prepared by the Ministry of Infrastructure and was named *Programa BR do MAR*. Thus, the performance of SEAE had an impact on the reduction of importation taxes for the acquisition of new vessels (from 14% to zero) and decisively influenced the draft of the following points:

- Removing an important barrier to entry into cabotage: a company may be authorized to operate using only bareboat charter vessels (that is to say, leased), in order to prevent the need of large sums for the acquisition of vessels to obtain an authorization;
- Including crude oil and basic derivatives transportation within the scope of *BR do MAR*; this group of cargoes, according to the initial proposal, would not have been eligible to take advantage of the proposed improvements.

Slots

86. Regarding the air transportation sector, SEAE has been working side by side with the respective regulatory agency to improve slot allocation, mainly at São Paulo Congonhas Airport. In the short and medium terms, this airport will see no infrastructure improvements and it is already completely overloaded on working days.

87. That action is a consequence of the bankruptcy process of one of the top four Brazilian airline companies and of the realization that, if the general rules for slot allocation were kept the same, there would be a rise on the market concentration at Congonhas Airport, where the two main companies already own almost 90% of the slots. Thus, the performance of SEAE impacted measures that ultimately promoted the entrance of three new companies at the Congonhas Airport and provided means for the number of slots allocated to the third biggest company to be increased.

88. In addition, making use of the World Bank expertise, SEAE has continued working with the regulatory agency to assess slot allocation methods that provide appropriate means to face the challenges related to the efficient use of airport infrastructure, and to increase competition on the air transportation sector.

Financial sector

89. In 2019, SEAE created a department to monitor and foster competition in the financial sector (COSFI). The team focuses on issues related to the high market

concentration in the Brazilian banking system and works to solve advocacy issues to increase the amount of credit in the economy and reduce credit spreads.

90. During its first year, COSFI worked closely with the Central Bank of Brazil on policies to increase competition and stimulate innovation in the financial sector, taking actions to eliminate barriers to entry for financial technology companies in general, especially digital banks.

91. Of all the work done in the past year, it seems worth mentioning the following:

- The approval of a bill that improved the Brazilian credit scoring system (*Cadastro Positivo*), changing the method for gathering information from an opt-in to an opt-out model. The new law allows credit bureaus to have a more comprehensive database of credit information, thus improving credit scoring models and lowering credit spreads;
- The partnership with the Brazilian Internal Revenue Service (RFB) to allow digital banks to join the federal tax network system. In the spirit of revising regulations to accommodate and stimulate innovators, the policy effectively removed barriers to entry for digital banks, allowing their clients to comply with tax obligations without having to use traditional banks.

Energy

92. SEAE has been working closely with other authorities to foster competition in the oil and natural gas markets in Brazil. Its participation in the National Energy Policy Council (CNPE, for its acronym in Portuguese) has been strategic for the approval of a series of measures.

93. CNPE Resolution 9, of May 2019, promotes competition in the country's refining industry, by defining aspects that must be considered in the divestment strategy to be adopted by companies with a dominant position in the sector, to foster a more competitive market structure. CNPE Resolution 12, of June 2019, promotes competition and efficiency in the fuel market, by pointing out studies, initiatives and deliberations necessary to reduce barriers to entry, and eliminating transaction costs in the sector. CNPE Resolution 16, of July 2019, promotes competition in the natural gas industry, through incentives to unbundle the sector. CNPE Resolution 17, of August 2019, revoked the policy that supported price discrimination by producers/importers of LPG, based on the type of final consumer of the product. The policy had several negative effects on competition, resulting in losses to all consumers, including residential and low-income consumers. The adverse effects are related to the increase in transaction costs to import LPG and the creation of barriers to entry to new distributors of the product.

Telecommunications

94. SEAE has provided technical support and suggestions that were strategic for a more pro-competitive new Telecommunications Regulatory Framework (Law 13879/2019). It sets up a modern regulatory model, focused on broadband. The new framework will generate a reduction in competitive asymmetries, and provide legal security for private investments, which will in turn help expand broadband access in Brazil.

5.2. Relationship with other institutions and stakeholders

95. Since economic crimes are frequently related to other sort of crimes, the fulfilment of CADE's responsibilities entails close cooperation with other government bodies and with civil society to prevent, detect, and investigate wrongdoings. In this sense, CADE has actively pursued stronger ties with other institutions. These efforts contribute to the coordination and improvement of its investigations, especially those encompassing both antitrust and anti-corruption matters.

5.2.1. CADE in the Brazilian Foreign Trade Chamber (CAMEX)

96. In October 2019, CADE joined the Executive Management Committee of the Foreign Trade Chamber of the Ministry of Economy (CAMEX), indefinitely, as a guest. The agency's admission was made official with the publication of Executive Order 10044/2019, which restructures CAMEX, a government body responsible for policies related to the foreign trade of goods and services.

97. Once it joined the Committee, CADE began to aid in the decision-making process related to the defence of competition and commerce (such as anti-dumping measures). Information from CADE's cases and studies might be used to support the analyses by CAMEX, and this sharing of expertise is expected to bring benefits to the work carried out by the agency. The main goal is to unify policies of trade defence and competition defence, which will help with the creation and promotion of improved foreign trade policies in Brazil.

98. According to Executive Order 10044/2019, the Executive Management Committee is the department at CAMEX responsible for setting forth provisional or final anti-dumping and countervailing duties and safeguards; making decisions regarding suspending the requirement of provisional duties; and establishing guidelines for trade defence investigations.

5.2.2. State Prosecution Services

99. In 2019, CADE achieved its goal of having partnerships with all State Prosecution Services in the country. These partnerships are aimed at improving communication, thus promoting greater efficiency and promptness to deter and prevent cartels and other economic crimes. Through these agreements, the agencies commit to exchange information, knowledge, data, and documents to act in a coordinated manner to fight these crimes.

100. For instance, the cooperation with Prosecution Services has proven fruitful in the three searches and seizures carried out by CADE in 2019 during investigations into anti-competitive practices. The operations were supported by the Prosecution Services of the States of Rio de Janeiro and São Paulo, and of the Federal District.

5.2.3. Control bodies

101. In 2019, CADE intensified its institutional cooperation with control bodies. These partnerships are aimed at increasing communication between institutions to strengthen actions intended to deter and prevent economic crimes, such as cartels in government procurements.

102. The agreements were signed with the Office of the Comptroller General of the State of Santa Catarina and the Court of Accounts of the State of Mato Grosso do Sul. Moreover,

the agreements with the Comptroller General of the City of São Paulo and the Court of Accounts of the State of Minas Gerais, still in effect, were extended.

103. Additionally, throughout 2019, the Brazilian Court of Accounts and CADE carried out activities together to detect any anti-competitive practices in government procurements, within the scope of the cooperation agreement signed in December, 2018.

5.2.4. Regulatory agencies

104. To improve the coordinated actions to oversee and audit regulated markets, CADE established several technical partnerships with regulatory agencies, furthering the defence of free competition in these sectors. The agreements provide for the interchange of documents, information, and technology tools, and for arranging meetings, gatherings, workshops, technical visits, and training sessions.

105. In 2019, CADE signed agreements with the Brazilian Health Agency and the Brazilian Waterway Transportation Agency; extended its partnership with the Brazilian Health Surveillance Agency; and added a work plan to the agreement in force with the Brazilian Civil Aviation Agency. CADE has also carried out actions together with the Brazilian National Agency of Petroleum, Natural Gas and Biofuels, with the Securities and Exchange Commission, and with the Brazilian National Mining Agency, all within the scope of previously established partnerships.

5.2.5. Civil society organization

106. In 2019, CADE and the Brazilian Committee of the International Chamber of Commerce (ICC Brasil) entered into a technical cooperation agreement aimed at disseminating the culture of competition. The instrument covers the conduction of bilateral studies and research, as well as publications resulting from the interchange of knowledge between the parties. The endeavour also includes the organisation of lectures, conferences, seminars, symposiums, congresses, and other events on competition law.

107. Furthermore, in 2019, CADE also extended the technical cooperation agreements signed with the Brazilian Institute of Studies on Competition, Consumer Affairs, and International Trade (IBRAC) and the Brazilian Bar Associations of the State of São Paulo and of the Federal District, and entered into an agreement with the Brazilian Bar Association of the State of Minas Gerais. The partnerships create mechanisms that allow for effective and continuous communication between CADE and the four organisations to improve the electronic services provided by the antitrust authority.

5.3. International cooperation

108. CADE holds a close dialogue with several countries to make their work converge and improve competition enforcement by making it more effective, not only with regard to the timeframe of resolution for anti-competitive cases but also for M&A assessment. In 2019, CADE was involved in 33 cooperation initiatives for interchanging information with other competition authorities and international organisations about benchmarking and case analysis.

109. CADE also plays an active role in international competition forums, such as the Organisation for Economic Co-operation and Development (OECD), the United Nations Conference on Trade and Development (UNCTAD), the International Competition Network (ICN), and the *Alianza Estrategica Latinoamericana*.

5.3.1. OECD

110. In March 2019, CADE accomplished a historic feat: Brazil was accepted to join the Competition Committee of the Organisation for Economic Co-operation and Development (OECD) as an associate member.

111. CADE underwent a peer review process in 2018, which included a thorough and comprehensive analysis of the Brazilian competition policies and legislation, and their adequacy to the OECD's standards. As a result of the analysis, the OECD formulated the report Competition Law and Policy in Brazil, which mentioned CADE as one of the most efficient government bodies in Brazil.

112. The OECD recognised the important advances made by the agency as from the enactment of Law 12529/2011, and the wide implementation of the recommendations given in the previous peer reviews conducted in 2005 and 2010. The report also called attention to CADE's policy for fighting cartels, which, according to the publication, has been improved as a result of advances on the agency's Leniency Programme, as well as on its institutional cooperation agreements, intelligence tools, and investigative techniques.

113. In March 2019, CADE gathered federal government authorities and representatives of the antitrust community to release the report, which supported Brazil's acceptance as an associate member of the OECD Competition Committee. Brazil's acceptance as an associate member is a recognition of the notable advances the agency has made in antitrust matters in recent years and consolidates more than 20 years of close cooperation with the OECD Competition Committee.

5.3.2. International Competition Network (ICN)

114. CADE has been a member of the ICN Steering Group since 2005 and a co-chair of its Cartel Working Group from 2017 to 2020. In that context, CADE shared its experience with its leniency programme and contributed to have inherent challenges involved in preventing, detecting and fighting cartels overcome. Moreover, in 2018, CADE was chosen to organise and host the 2019 ICN Cartel Workshop (see section 5.4.1).

5.3.3. BRICS

115. CADE actively participates in three working groups with BRICS competition authorities with regard to the automotive, pharmaceutical, and digital markets. The Working Group on digital markets is headed by CADE and the Russian competition authority, and involves a strong international benchmarking agenda, aimed at promoting competition laws better fit for the digital era.

116. In September, 2019, CADE released the report "BRICS in the Digital Economy: Competition Policy in Practice", during the 6th BRICS Competition Conference, held in Moscow, Russia. The document provides an overview on competition and enforcement policies for digital markets in the countries members of BRICS. It addresses different experiences related to the enforcement of antitrust regulations to explore common challenges and share some insights amongst the group's authorities.

117. The report is a result of the efforts of the working group Research on the Competition Issues in the Digital Markets, led by CADE and the Russian competition authority. The group was created during the 5th BRICS Competition Conference, held in Brasília, Brazil, in 2017. The report was created from answers to a survey intended to examine the practices and challenges faced by the BRICS competition authorities

concerning the digital economy. The publication is based on the replies submitted by the Brazilian, Russian, Indian, and South African agencies. Due to a recent institutional reform, the Chinese authority could not contribute to this report, nonetheless it will be involved in future assessments.

118. This is the first of a series of documents to be published by the working group in the following years to improve the understanding of competition policies for the digital economy as well as their assessment, and to strengthen cooperation amongst the authorities.

5.3.4. Bilateral Cooperation

International Cooperation Agreements

119. In 2019, CADE signed one new international cooperation agreement with Colombia. Thus, CADE had valid cooperation agreements with 16 countries in 2019: Argentina, Canada, Chile, China, Colombia, Costa Rica, the European Union, Japan, Mexico, Paraguay, Peru, Portugal, Russia, South Africa, South Korea, and the USA.

Case analysis and benchmarking

120. In 2019, CADE was involved in 33 initiatives for interchanging information with other competition authorities and international organisations for benchmarking and case analysis.

Technical training

121. In November 2019, CADE provided the competition authority of Paraguay (Conacom) with technical training. In a five-day course, two of CADE's experts shared information regarding cartels, unilateral conduct, mergers and acquisitions, investigation techniques, competition advocacy, and compliance.

5.4. International events

122. In 2019, CADE partook in several international events and meetings on competition, being represented by members of its technical staff, Commissioners, the President or the General Superintendent, who attended most events as speakers or moderators. Some relevant events were the OECD meetings (Competition Committee, Working Party No. 2 on Competition and Regulation, and Working Party No. 3 on Cooperation and Enforcement); the OECD Global Forum on Competition; the Latin American and Caribbean Competition Forum (LACCF); the ICN Annual Conference and the ICN Unilateral Conduct Workshop; the 18th session of the Intergovernmental Group of Experts on Competition Law and Policy (UNCTAD); the VI BRICS Competition Conference; and the IX Annual Meeting of the Working Group on Trade and Competition of Latin America and the Caribbean (SELA/UNCTAD).

123. In addition, as mentioned above, CADE hosted the 2019 ICN Cartel Workshop and the International Conference “Designing Antitrust for the Digital Era”.

5.4.1. 2019 ICN Cartel Workshop

124. In October, CADE hosted the 2019 Cartel Workshop of the International Competition Network. The event brought together, in Foz do Iguaçu, in the Brazilian State

of Paraná, over 200 professionals of 40 different countries to discuss issues related to the fight against cartels, which are universally regarded as the most serious economic crime.

125. The workshop is organised annually by the ICN and is aimed at fostering discussions on the challenges and best practices related to the matter. Moreover, it also promotes the strengthening of institutional ties amongst major competition authorities around the world, boosting international cooperation in the investigation of cartels.

126. The main topic of the event was Cartels in the Age of Data-Driven Economy. Discussions revolved around the challenges of the data-driven digital age, which might facilitate the creation of collusions between competitors while at the same time making it easier for competition authorities to detect cartels.

127. Amongst the topics discussed were challenges and information management in data-driven markets; antitrust responsibility for software-based violations; intelligence and screening tools; leniency agreements and evidence in the digital age; and due legal process and cooperation tools.

5.4.2. International Conference “Designing Antitrust for the Digital Era”

128. On 31 July and 1 August, 2019, CADE hosted the international conference “Designing Antitrust for the Digital Era”, which was aimed at discussing ways to adapt competition defence policies to digital markets.

129. The discussions addressed different views on an array of topics connected to antitrust enforcement in these markets. Representatives from the BRICS competition authorities spoke about the recent challenges caused by the digitalisation of the economies in their countries, and discussed how to adjust antitrust policies to the digital age. The event also focused on the role of data in the digital economy and the challenges faced formulating antitrust remedies for this market.

5.5. Revista de Defesa da Concorrência

130. CADE issues regular editions of its journal on competition defense, the *Revista de Defesa da Concorrência*. The journal is published biannually, in May and November, and provides a relevant platform for academic discussions on competition policies and enforcement in Brazil. The journal has been classified by the Coordination for the Improvement of Higher Education Personnel (CAPES in its acronym in Portuguese) as a category B1 publication, the third tier of an eight-level national ranking. The publication is made available at www.cade.gov.br/revista.

5.6. Acknowledgements and Awards

131. In 2019, CADE was once again recognised as one of the top ten antitrust authorities in the world. CADE's efficiency was attested by the British Global Competition Review (GCR), specialized in competition and regulation. The Brazilian authority was awarded four stars in the publication's annual ranking for the seventh year in a row. The journal, which assesses the performance of antitrust agencies all around the world, named CADE one of the main competition authorities in Latin America.

6. Resources of the competition authority

6.1. Annual budget

132. In 2019, CADE had a total budget of BRL 56,184,444.00 (about USD 13,941,549.37) while SEAE had a total budget of BRL 450,000.00 (about USD 111,662.53)¹.

6.2. Number of employees

133. In 2019, CADE had 415 people in its staff. Among them, 180 were non-administrative staff members working on competition enforcement.

134. SEAE had 42 people in its staff in 2019. Among them, only two were fully dedicated to administrative work.

7. Papers published by CADE

7.1. Economic studies

- The work document "Detection of cartels in government procurements"² presents a methodology that uses economic filters based on I-Moran statistics for detecting cartels in electronic reverse auctions of government procurements.
- The work document "Fuels in the Federal District"³ estimates the positive impacts of CADE's actions for fuel consumers in the Federal District after its intervention resulted in the cartel being dismantled.
- The work document "Sadia/Perdigão"⁴ analyses the competitive effects of the merger involving Sadia and Perdigão, which created BRF Brasil Foods, in the frozen food market in Brazil.
- The work document "Antidumping measures"⁵ addresses the relationship between competition in the markets and policy measures aimed at exempting national companies from external competitive pressure.

¹ Exchange rate at 31 December 2019 (USD 1 / BRL 4.03).

² http://www.cade.gov.br/aceso-a-informacao/publicacoes-institucionais/publicacoes-dee/Documentodetrabalho_Bidd_Rigging_Final.pdf

³ http://www.cade.gov.br/aceso-a-informacao/publicacoes-institucionais/publicacoes-dee/Documentodetrabalho042019Mensurandoosbeneficiosdecombateacartis_ocasodocarteldecombustveisnoDistritoFederal.pdf

⁴ http://www.cade.gov.br/aceso-a-informacao/publicacoes-institucionais/publicacoes-dee/DocumentodeTrabalho_AvaliaoexpstedeatodeconcentraoocasoSadiaPerdigo.pdf

⁵ <http://www.cade.gov.br/aceso-a-informacao/publicacoes-institucionais/publicacoes-dee/Documentodetrabalho022019.pdf>

- The work document "Crushed stones cartel"⁶ assesses the benefit of CADE's actions in fighting the crushed stones cartel in the São Paulo City metropolitan area.
- The study "Payment market"⁷ analyses the payment market in Brazil and related competition issues.
- The study "Cement market in Brazil"⁸ compiles information regarding methodologies adopted by CADE's Tribunal, throughout the years, on the economic analysis in the cement market.

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

- "Merger control in dynamic markets"⁹. Contribution from Brazil. Global Forum on Competition. November, 2019.
- "Practical approaches to assessing digital platform markets for competition law enforcement"¹⁰. Contribution from Brazil. Latin American and Caribbean Competition Forum. September, 2019.
- "The standard of review by courts in competition cases"¹¹. Note by Brazil. Competition Committee. June, 2019.
- "Competition issues in labour markets"¹². Note by Brazil. Competition Committee. June, 2019.
- "Digital disruption in financial markets"¹³. Note by Brazil. Competition Committee. June, 2019.
- "Vertical mergers in the technology, media and telecom sector"¹⁴. Note by Brazil. Competition Committee. June, 2019.

⁶ http://www.cade.gov.br/aceso-a-informacao/publicacoes-institucionais/publicacoes-dee/DocumentodeTrabalho_CarteldeBritas.pdf

⁷ http://www.cade.gov.br/aceso-a-informacao/publicacoes-institucionais/publicacoes-dee/Cadernodeinstrumentosdepagamento_27nov2019.pdf

⁸ <http://www.cade.gov.br/aceso-a-informacao/publicacoes-institucionais/publicacoes-dee/CadernodoCadeMercadodeCimento.pdf>

⁹ [https://one.oecd.org/document/DAF/COMP/GF/WD\(2019\)53/en/pdf](https://one.oecd.org/document/DAF/COMP/GF/WD(2019)53/en/pdf)

¹⁰ [https://one.oecd.org/document/DAF/COMP/LACF\(2019\)21/en/pdf](https://one.oecd.org/document/DAF/COMP/LACF(2019)21/en/pdf)

¹¹ [https://one.oecd.org/document/DAF/COMP/WP3/WD\(2019\)5/en/pdf](https://one.oecd.org/document/DAF/COMP/WP3/WD(2019)5/en/pdf)

¹² [https://one.oecd.org/document/DAF/COMP/WD\(2019\)51/en/pdf](https://one.oecd.org/document/DAF/COMP/WD(2019)51/en/pdf)

¹³ [https://one.oecd.org/document/DAF/COMP/WD\(2019\)34/en/pdf](https://one.oecd.org/document/DAF/COMP/WD(2019)34/en/pdf)

¹⁴ [https://one.oecd.org/document/DAF/COMP/WD\(2019\)26/en/pdf](https://one.oecd.org/document/DAF/COMP/WD(2019)26/en/pdf)