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Annual Report on Competition Policy Developments in Brazil

-- 2021 --

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Brazil¹

1. Introduction

1. CADE reached significant outcomes in terms of efficiency and effectiveness of results in 2021, despite challenges brought on by the COVID-19 pandemic. Such outcomes result from employees' expertise, the agency's institutional strength and the tools for remote work that were already in place before the pandemic's outbreak, but further improved afterwards.

2. The continuity of the pandemic in 2021 urged the Brazilian Competition authority to undertake considerable efforts to improve its digital tools in 2021 and to launch new ones. On the one hand, the online merger submission and the platform for leniency agreements (Clique Denúncia), which obviate personal contact and were already in place, were more intensively used and considerably enhanced. On the other hand, a set of significant devices such as the Case Law Search Tool and the Market Data Platform (PIM), were successfully launched. PIM had a significant impact on better decision-making since it enabled the aggregation and organization of data in thematic dashboards.

3. CADE learned to adapt to the new covid reality to be able to continue performing its regular duties. Search and seizure operations, for example, have been considerably affected during the pandemic, yet the Brazilian Competition Authority still managed to carry out two in 2021. CADE had to alternatively use other means to collect relevant information for investigations, such as its screening tool and the leniency programme.

4. The overall numbers show that the strategy has been successful. CADE held, in 2021, 18 ordinary and one extraordinary hearing, totalling 73 cases adjudicated in the year. Despite the adverse scenario brought by Covid-19, it surprisingly registered in 2021 the highest number of mergers and acquisitions notified to the authority (627 cases), summing up to BRL 1.7 trillion in transactions. For the 611 transactions reviewed, CADE kept an average review time of 33 days, and 20 days for summary cases.

5. The Brazilian Competition Authority also completed nine investigations involving unreported transactions, resulting in BRL 6.7 million in financial contributions. A total of 60 investigations on anticompetitive conduct were launched - 36 related to cartels, 15 to unilateral conduct, and nine to concerted practices. CADE initiated 22 administrative proceedings, having adjudicated 25 cases. Five leniency agreements and nine cease and desist agreements were ratified, resulting in BRL 1.3 billion in fines and financial contributions.

6. To be able to more accurately dimension the impact of its actions, CADE's Department of Economic Studies (DEE) published, in 2021, a study using OECD's methodology. It concluded that CADE's work (related to cartels, unilateral conduct, and mergers) in 2021 led to savings of BRL 4.2 billion, out of which BRL 3.2 billion resulted from activities related only to mergers. As for efforts against antitrust practices, BRL 610 million were collected in cartel cases and BRL 401 million in unilateral conduct cases.

¹ Submitted on March 2023 by the Administrative Council for Economic Defense (CADE) and the Secretariat of Competition Advocacy and Competitiveness (SEAE) to the OECD Competition Committee.

7. All these results have been widely recognized, nationally and internationally. In 2021, the Institute of Management Foundation (FIA) evaluated CADE, together with Universo Online (UOL), a Brazilian web content firm, for their Award Amazing Places to Work in 2021 (Prêmio Lugares Incríveis para Trabalhar em 2021). These two places were considered the Brazilian institutions with the highest satisfaction levels amongst their employees according to the survey. The survey assesses the work environment, organisational culture, leadership management and satisfaction with the services provided by the Human Resources Department. For the second consecutive year, the Brazilian Competition Authority was considered one of the 120 amazing places to work in Brazil. It was the only government body to figure in the list, having been particularly recognised for the quality of its work environment and the achievement of excellence levels in several categories.

8. CADE was also one of the winners of the Sobratt Award for Best Remote Work Practices, carried out by the Brazilian Society for Telework and Teleactivities (Sobratt). The award recognises enterprises and organisations for their use of remote work for overall social benefit, its employees, and the environment, and for including the initiative in their strategic planning. CADE came 2nd in the government agency category.

9. In the international context, CADE's institutional prestige has also been continuously noted. In 2021, CADE was one of the awarded agencies of the Antitrust Compliance Awards—held by the French journal *Concurrences*—that recognised the most innovative initiatives in competition compliance. In its 2021 edition, the Brazilian Competition authority won the category "Readers Awards" with its Guidelines for Compliance Programs. Finally, for the ninth consecutive year, the agency got four stars in the international ranking annually published by the GCR due to its relevance amongst antitrust agencies in South America.

2. Changes to competition law and policy

10. CADE strengthened its structure in 2021 by enacting Executive Order 10597, of 8 January 2021. It established CADE's Statutory Structure and its Chart of Positions of Trust and Appointed Positions. The norm authorised the creation of a Technical Advisory Unit at the Office of the President to assist in its activities at the Tribunal specifically. It also restructured the Office of the Superintendent General and added a new unit.

11. CADE gained an Internal Affairs Unit, with responsibilities for planning, coordinating, and conducting activities connected to the System of Internal Affairs of the Federal Executive Branch within the agency. The competencies of the Internal Affairs Unit include supervising the activities and tasks of CADE's disciplinary boards and also providing information and guidance to the authority's units as to compliance with its rules.

12. The Office of the Superintendent General added two new Antitrust Analysis Units: Antitrust Analysis Unit 10 (CGAA 10) and Antitrust Analysis Unit 11 (CGAA 11). CGAA 10 is responsible for the Leniency Programme. The Head of Office of the Superintendent General used to be responsible for negotiating leniency agreements before this modification. CGAA 11 is responsible for operational procedures and other investigation-related tasks. This new Unit is performing tasks otherwise under the responsibility of the Information Analysis Unit (COI) and the Operational Support Unit (COP).

13. The Market Studies and Competition Advocacy Unit was also created in 2021 at the Department of Economic Studies. The unit has been created to boost and institutionalise activities of competition advocacy. It is responsible for elaborating economic studies on

competition, as well as for issuing technical opinions on competition advocacy and market studies.

14. CADE also created a procedural support unit: Seapro. It formally became a unit with the enactment of CADE's Directive no. 1/2021. Seapro's performance enables CADE's technical staff to focus more intensively on analysing the subject matter of competition.

15. As to law proposals, according to the Ministry of Justice and Public Security, to whom CADE is bound, appearances before lawmakers must go through the Ministry's Special Department for Federative and Parliamentary Affairs. This special department requests a statement from CADE on the issue under consideration and decides whether to present it to Congress.

16. CADE issued, in 2021, 27 statements at the federal level on competitive issues, especially in relevant sectors of the Brazilian economy, but also in bills pending in Congress and joint competition advocacy actions:

Table 1.

DATE	TOPIC
30 December 2021	Expert Opinion on Bill 3819/2020, about interstate passenger transport.
29 December 2021	Official Letter to a representative on a merger involving the Brazilian telecom company Oi.
27 December 2021	Expert Opinion on Bill 4199/2020, which sets forth the Programme for Coastal Shipping Promotion, or BR do Mar (Sea Road).
22 December 2021	Expert Opinion on Bill 3754/2021, which sets forth the Railway Law.
25 November 2021	Answer to a written request for information from a member of parliament on meetings with representatives of arms factories (RIC 1280/2021).
9 November 2021	Expert Opinion on Bill 690/2021, which addresses the topics of insolvency administration (including out-of-court) and bankruptcy.
27 October 2021	Answer to a written request for information from a member of parliament on whether CADE consulted with firearm collectors, shooters, and hunters (RIC 1280/2021).
19 October 2021	Expert Opinion on Bill 1745/2019, which addresses the Access to Information Law.
29 September 2021	Expert Opinion on Bill 21/2020, about artificial intelligence.
21 September 2021	Expert Opinion on Bill 8168/2017, about abusive anti-competitive practices in private contracts.
2 September 2021	Expert Opinion on Bill 1751/2015, which addresses the audit committee and board of directors of state-owned enterprises and mixed-ownership companies.
24 August 2021	Expert Opinion on Bill 4217/2019, about the use of LP gas.
17 August 2021	Expert Opinion on Bill 3818/2020, which officially makes sham litigation an antitrust violation.
10 August 2021	Expert Opinion on Bill 4323/2019, which makes administrative changes at CADE.
19 July 2021	Answer to a written request for information from a member of parliament on the Latam-Azul merger (RIC 769/2021).
7 June 2021	Answer to a written request for information from a member of parliament on the Premium Television Law (RIC 923/2021).
26 May 2021	Expert Opinion on Bill 1332/2020, which defines antitrust violations, allows for their criminal persecution at the federal and state levels and establishes the Prosecution Services' jurisdiction over civil lawsuits that investigate antitrust violations.
25 May 2021	Answer to a representative's Official Letter on ECAD, a body that centralises the collection and payment of performance royalties in Brazil.
24 May 2021	Answer to a written request for information from a member of parliament on the Brazilian bank sector (RIC 466/2021).
20 May 2021	Expert Opinion on Bill 9238/2017, which addresses the fines imposed by CADE.
27 April 2021	Answer to a representative's Official Letter on the sale process of the company Liquigás.
20 April 2021	Expert Opinion on Bill 4063/2019, about the conditions for CADE to start an investigation on its own motion.
20 April 2021	Answer to a written request for information from a member of parliament on meetings with representatives of arms factories. (RIC 1280/2021)
19 April 2021	Expert Opinion on Supplementary Law Bill 523/2018, which addresses CADE's access to the Federal Revenue's databanks.
13 April 2021	Expert Opinion on Bill 4323/2019, which makes administrative changes at CADE.

6 April 2021	Expert Opinion on Bill 6514/2019, about the Declaration of Rights of Economic Freedom.
26 March 2021	Answer to a representative's Official Letter containing a complaint about an alleged antitrust violation.

17. No laws directly affecting the Brazilian Competition Law were proposed or enacted in 2021. Yet there are seven different bills providing amendments to the Brazilian Competition Law, in addition to others that slightly affect antitrust enforcement:

- Bill 3636/2015, which establishes the Prosecution Services' jurisdiction to sign leniency agreements and makes other provisions with effects on CADE;
- Bill 9238/2017, which changes the methodology CADE uses to calculate fines;
- Bill 11275/2018, which doubles the damages to be paid by parties involved in antitrust violations;
- Bill 4063/2019, which addresses the conditions for CADE to start an investigation on its own motion;
- Bill 4343/2019, which changes the requirements of eligibility and judicial disqualification of CADE's commissioners, as well as their appointment process;
- Bill 1332/2020 establishes that the Prosecution Services have jurisdiction to pursue civil claims related to competition matters;
- Bill 3818/2020, which officially makes sham litigation an antitrust violation.

18. The Department of Economic Studies (DEE) also issued 11 statements in 2021 during the lawmaking process of sectoral regulations connected to competition policy:

Table 2.

DATE	REQUESTING PARTY	TOPIC
15 January 2021	Brazilian Health Regulatory Agency (Anvisa)	Analysis of Anvisa's price monitoring regulation. Expert Opinion 2: CADE recommended caution if ANVISA chooses to implement the measure, as depending on how it discloses the data, it could generate price increases for the final consumer. Moreover, it suggested that Anvisa should (1) aggregate data into groups of at least three companies and time data into periods of at least three months, (2) publish only minimum/maximum values and percentages of 35% and 65%, (3) avoid disclosing mean values, to prevent that companies align their prices to a focal point, amongst others.
22 February 2021	Brazilian Energy Policy Council (CNPE), Integrated Technical Committee to Develop the Markets of Fuels, Petroleum Products, and Biofuels (CT-CB)	CADE stated its position before the Technical Integrated Committee to Develop the Markets of Fuels, Petroleum Products, and Biofuels. Expert Opinion 3: The Department of Economic Studies was contrary to setting protectionist percentages in some industries of the fuel supply chain.
29 March 2021	Brazilian Energy Policy Council (CNPE), Committee to Promote Competition in the Brazilian Natural Gas Market	Analysis of Bill 4476/2020, which addresses the natural gas sector. Expert Opinion 7: CADE recommended they pass the bill in its entirety, as it contains provisions that (1) give third companies access to essential facilities, encouraging market entry and LNG imports; (2) forbid players of distinct stages of the supply chain to influence over the executive board or legal representatives of transport and distribution companies; (3) institute a model that allows hiring distinct companies to provide transport from the entry and exit points and that integrates the pipeline network, which obliges transport companies to allow facilities to connect; and (4) changes the model for pipeline construction from concession agreements to permits.

6 April 2021	Ministry of Justice and Public Security (MJ), Special Department for Federative and Parliamentary Affairs (Afepar)	Position about Bill 6514/2019, which amends Law 13874 (Economic Freedom Law). Expert Opinion 11: CADE agreed on the changes proposed as they intended to reduce the regulatory requirements for technologically innovative products and services.
13 July 2021	CADE's Office of the Superintendent General (Case 08700.001734/2020-82)	Assessment of the regulation of blood products' production. Expert Opinion 18: The antitrust authority recommended a review of the sector's regulation to facilitate the access of private plasma processing companies to unused plasma stocks, thus increasing efficiency and competition in this sector.
9 August 2021	Ministry of Justice and Public Security (MJ), Special Department for Federative and Parliamentary Affairs (Afepar)	Analysis of Bill 21/2020, about artificial intelligence. Expert Opinion 21: CADE suggested the bill should have a different definition for a market player in the artificial intelligence sector so that provisions on accountability for AI decisions would affect all players.
24 September 2021	Ministry of Economy's Secretariat of Competition Advocacy and Competitiveness (SEAE/ME)	Public Consultation SEAE2/2021, on the criteria for drug pricing. Expert Opinion 27: CADE understands it is necessary to review drug price caps, either to reconsider whether they are needed or to ensure equal treatment to all market players.
25 October 2021	Brazilian Energy Policy Council (CNPE), Integrated Technical Committee to Develop the Markets of Fuels, Petroleum Products, and Biofuels (CT-CB)	The position adopted by the Ministry of Economy and CADE's Department of Economic Studies about a Working Group's presentation on prioritising family farming in the biodiesel supply chain. Expert 33: CADE was opposed to the rule in force, which required fuel distributors to purchase 80% of their biodiesel from producers with a certificate of socially responsible biodiesel. The authority proposed lifting the measure.
11 November 2021	Ministry of Justice and Public Security (MJ), Special Department for Federative and Parliamentary Affairs (Afepar)	Analysis of Bill 3832/2019, which addressed conditional access audio-visual communication. Expert Opinion 36: CADE is favourable to the bill that overrides the veto on the vertical integration between companies of video production and TV infrastructure in the premium television market.
26 November 2021	Department of Grants and Port Regulations of the Brazilian Secretariat of Ports and Waterway Transport of the Ministry of Infrastructure (DNOP/SNPTA/MINFRA)	Analysis of a guide proposed by the Ministry of Infrastructure for the competition assessment of grants awarded to port terminals. Expert Opinion 35: CADE suggested that, should it be necessary to restrict the participation of certain market players in port procurement processes, it is necessary to act with the utmost caution. It should consider signs of relevant and unavoidable negative competitive effects whilst imposing the minimum restrictions to prevent harm.
21 December 2021	Ministry of Justice and Public Security (MJ), Special Department for Federative and Parliamentary Affairs (Afepar)	Railway Law, Bill 3754/2021. Expert Opinion 43: CADE suggested the bill be passed minus a provision that prescribed a period of preference for incumbent railway concessionaires in new railway projects.

3. Enforcement of competition law and policy

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

3.1.1. Summary of actions taken by the competition authority

19. In 2021, CADE signed five first-in leniency agreements, 15 addendums to leniency agreements and 17 cease and desist agreements². It issued 28 cartel decisions, two of which involved dawn raids, with the application of fines in 13 cases.

20. Total fines amounted to BRL 1,035,741,315.43, while financial contributions reached BRL 58,879,401.66 (financial contributions result from cease and desist

² CADE's leniency program is only available for first-ins. Second-ins, third-ins and others can sign cease and desist agreements.

agreements, and fines are imposed after the adjudication of a case when the parties are found guilty).

21. The average fine per cartel was BRL 73,992,923.60, and the average financial contribution per agreement in cartel cases was BRL 6,542,155.74. The average of fines and financial contributions per cartel was BRL 80,535,079.34.

22. CADE initiated, in 2021, 15 investigations of abuse of dominant position. Eighteen cases rolled over from previous years. Fines on abuse of dominant position totalled BRL 256,398,921.73 this year.

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

23. CADE's efforts on anticompetitive repression involved the markets of rendering industry; international air and maritime freight; orthoses, prostheses, and medical devices; rail transport logistics; production and commercialisation of pharmaceutical products; car filters; school meals (São Paulo); PVC pipes and fittings; school uniforms and material kits; infrastructure works at airports; sanitation infrastructure works; outsourced services; and wheel bearings. The most important cases are briefly described below.

Cartels

Cartel in the Market of Car Filters

24. The investigation was launched in 2017 in the car filters market, upon the signature of a leniency agreement with the firm Mahle Metal Leve and 18 employees. Based on the evidence presented in the agreement, which resulted in a trial against some companies related to the market and some of its employees, CADE split the investigation, launching a new procedure in 2019 to also investigate the conduct of Parker Hannifin Indústria e Comércio.

25. The investigation concluded that some of the companies represented in the process agreed on prices, conditions, and competitive advantages. They also shared competitively sensitive information, harming free competition in this industry in Brazil. The practice took place between 2001 and 2012.

26. Cartel arrangements were concluded during meetings between representatives of the companies involved in the illegal conduct and through the exchange of e-mails between competitors. In the communications, they defined percentages and deadlines for price rises.

27. The cartelists also established payment conditions for customers and prevented other participants from granting discounts without prior group approval. Notes, price sheets, meeting schedules and agendas are among the collected evidence.

28. CADE fined five individuals and the companies Parker Hannifin Indústria e Comércio and Mann + Hummel Brasil for cartel practice in the market imposing fines of BRL 235 million total.

The cartel in government procurements for school uniforms and material kits

29. In June 2021, CADE convicted six companies and 12 individuals for bid rigging practices in government procurements for school uniforms and material kits for public school students. The fines amounted to BRL 97.4 million.

30. The cartel occurred from 2007 to 2012 in different Brazilian states, including São Paulo, Rio de Janeiro, Santa Catarina and Goiás. The main evidence was collected through search and seizure operations in September 2012 at the headquarters of the firms involved.

31. CADE noted that conspirators held permanent contacts to fix prices and set advantages in procurements to divide the market and define winning bidders previously. Such strategies included the submission of cover bids and bid suppressions in the procurements.

32. In addition to 12 individuals, CADE convicted the following firms for anticompetitive conduct: Attendy Artigos de Vestuário e Confecções; Capricórnio; Diana Paolucci; Mercosul Comercial e Industrial; Excel 3000 Materiais e Serviços; and Nilcatex Têxtil Ltda.

The school meals cartel of São Paulo

33. In April 2021, CADE convicted seven firms and seven individuals for cartel practices in government procurements held by municipalities of the State of São Paulo for supplying school meals.

34. The investigation found that the enterprises and the executives exchanged information, fixed prices and divided markets in school meal procurements in the cities of São Paulo, Campinas and Sorocaba. Conspirators would hold regular meetings to define and monitor the market division scheme. The meetings occurred in the headquarters of one of the firms.

35. During the investigation, CADE used data from more than 40,000 government procurement documents, held between 2008 and 2013. The gathered evidence showed the geographic division of the market, initially suggested by an investigation of the Prosecution Services of the State of São Paulo.

36. CADE's tribunal convicted the companies to pay fines of BRL 333,866,546.30 and also determined they were banned from contracting with the public administration for a five-year term. Individuals were convicted to pay an amount totalling BRL 6,932,194.87.

The wheel bearings cartel

37. Also in April, the CADE convicted the companies SKF do Brasil, SNR Rolamentos do Brasil and an individual for cartel practices. The conducts were carried out in the market for automotive wheel bearings supplied to original equipment manufacturers (OEM) and independent automotive aftermarket industry. The levied fines amounted to BRL 88.2 million.

38. The illegal practices involved price fixing, market allocation, and the exchange of commercially sensitive information. The violations took place between 2004 and 2011.

39. In the independent automotive aftermarket industry, cartel members would discuss prices charged to independent distributors. Agreements were mainly negotiated by a group of wheel-bearing aftermarket members in meetings held at the head office of the National Union of the Automotive Parts Industry (Sindipeças). The meetings were in the years 2004, 2005 and 2009.

40. The OEM sector supplies Brazilian carmakers. In this segment, carmakers would ask suppliers for price quotes and, based on the order's size, choose one or two companies for their projects. After reviewing the quotes, carmakers would contact suppliers to ask for discounts, often being informed of their competitors' quotations.

41. Therefore, sensitive information was shared in two different moments, before even giving a quote, with the main goal of better understanding the agreed prices and strategies, and afterwards, checking with other competitors the prices that customers mentioned.

42. For engaging in illegal activities, companies SKF do Brasil and SNR Rolamentos do Brasil were fined BRL 78.7 million and BRL 9.3 million, respectively. SKF's sales director also received a fine of BRL 106,400.

3.1.3. Abuse of a Dominant Position

43. In November 2021, CADE convicted the merged companies Rumo Logística Multimodal Operator (Rumo) and América Latina Logística (ALL) for abusing their dominant position and hindering a rival company from operating in the market of logistics to export sugar via rail transportation. The applied fine amounted to BRL 247.1 million.

44. The investigation started in 2016 based on a complaint from Agrovia, a company provider of integrated logistics services via rail for sugar exportation. Agrovia claimed it depended on using a railway network managed by Rumo-ALL to transport sugar to the port of Santos in the state of São Paulo. According to the company, Rumo-ALL was hindering its operation and led Agrovia to terminate its activities.

45. Later, the Brazilian Land Transport Agency (ANTT) sent CADE a communication that confirmed the complaint. The regulatory agency found evidence of antitrust violations in one of its proceedings involving the same companies.

46. According to investigations, Rumo-ALL closed a rail yard in the city of Santa Adélia, in the state of São Paulo. The rail yard was essential to Agrovia's activities, and Rumo-ALL was making it impossible for the company to provide its services to customers in the off-season period. In its defence, Rumo-ALL alleged that the rail yard posed a safety risk as it lacked maintenance and repair. However, the defendant was the one responsible for the maintenance of the cargo station.

47. CADE's Tribunal found evidence that Rumo-ALL hindered Agrovia's access to the cargo station for at least four months. The merged companies' behaviour prevented Agrovia's access to important equipment and distribution channels for its main activity of sugar transportation, creating unreasonable obstacles for the competitor. Agrovia was forced to provide road transportation and could not sign contracts for the 2016/2017 harvest due to the uncertainty of operating in Santa Adélia again.

48. The investigation revealed that Agrovia was unable to stay operational and left the market in 2016 when the contract of rail transportation terminated. This favoured Rumo-ALL since a considerable part of the demand of Agrovia was reallocated to them.

49. CADE fined Rumo-ALL for BRL 247.1 and required it to disclose the content of the decision on its official website and to inform customers directly about it.

3.1.4. Cease and Desist Agreements

Andrade Gutierrez (Operation Car Wash)

50. In May 2021, CADE ratified a Cease and Desist Agreement (TCC) with Andrade Gutierrez Engenharia and one individual. The agreement was signed as part of an administrative enquiry that investigated an alleged cartel in the market of construction works for airport infrastructure in government procurements of the Brazilian Airport Management Agency (Infraero).

51. According to the signed TCC, signatories had to pay a total of BRL 11.6 million to the Fund for De Facto Joint Rights.

52. The investigation was launched in June 2019, after a leniency agreement was signed with the firm Construtora Norberto Odebrecht and its former employees. Evidence shows that the involved parties in the cartel exchanged sensitive information and divided the market through consortia, bid suppression and submission of fake or cover biddings in Infraero's procurements. The offences took place from 2003 to 2007.

53. CADE's President at the time, Alexandre Barreto, highlighted that all legal requirements were met for signing the agreement, i.e: parties' commitment to end the practice and refrain from any investigated conduct; the establishment of fines for eventual non-compliance with the commitments; payment of financial contributions; recognition of the wrongdoings and collaboration with the investigations.

The market of animal by-products in the State of Rio Grande do Sul

54. In June 2021, CADE ratified four Cease and Desist Agreements (TCCs) within the context of a cartel investigation in the rendering industry in the Brazilian state of Rio Grande do Sul.

55. By signing the agreements, eight firms and twelve individuals admitted their participation in anticompetitive conduct and committed to cease the practice and collaborate with CADE's investigation. Parties agreed to pay BRL 18.7 million as financial contributions, collected to the Fund for De Facto Joint Rights.

56. The administrative proceeding was launched in 2020. Evidence suggests that cartel members divided the regional market of the rendering industry and shared competitively sensitive information.

57. The agreements were undertaken by phone, e-mails and in-person meetings between representatives of the companies. The conduct took place between 2009 and 2018.

58. The cease and desist agreements were negotiated with CADE in partnership with the Prosecution Office of the State of Rio Grande do Sul (MP/RS).

3.2. Mergers and acquisitions

3.2.1. Statistics on mergers and acquisitions

59. CADE's preventive activities in 2021 were primarily focused on the sectors of electric power (including the generation, transmission, distribution and sale of electric power to the general public and industry), healthcare and hospital services, development and licensing of custom software, oil refining and natural gas, air transportation and technology. These sectors represent a considerable part of the 627 reported mergers. Of all the notified mergers, 85 led to an in-depth review in 2021, with an average number of 113.7 days for clearance.

3.2.2. Summary of significant merger cases

Localiza and Unidas

60. In December 2021, CADE cleared the merger between Companhia de Locação das Américas (aka Unidas) and Localiza Rent a Car. The clearance was subject to remedies detailed in the merger control agreement signed with the Brazilian Competition Authority.

61. The transaction affected the markets of wholesale and retail second-hand cars, fleet management, and car rental. CADE did not find any competition issues in the second-hand car segment, since it is fragmented, with a significant number of players; the same happened with the fleet management sector.

62. Yet the Brazilian Competition Authority considered the operation to raise significant concerns regarding abuse of economic power in the car rental market, with significant risks to competition.

63. In some cities and airports, the market share of both companies reached 50%, while entry conditions and market rivalry would not remove the likelihood of market power.

64. To preserve the competitive conditions of the affected sector, the transaction was cleared subject to the signing of a merger control agreement that established structural and behavioural remedies for the firms.

65. The agreement signed by the parties required asset disposal including the branch network, stores, systems and part of the operational fleet of Unidas. It also ordered the divestiture of Localiza's brand Unidas.

66. The agreement also required the firms to report to CADE any purchases related to the Brazilian fleet management market, regardless of the target company's turnover or business group.

Petrobras/White Martins/Gás Local

67. In June 2021, CADE conditionally cleared the sale of Petrobras' stake in GNL Gemini Gás Local to White Martins – a worldwide industrial gases and engineering company. As part of the deal, Petrobras' equipment in White Martin's liquefaction plant in Paulínia, state of São Paulo, was also transferred to the multinational.

68. The clearance was conditional on a Merger Control Agreement signed between CADE and Petrobras, which compelled it to leave the Gemini Consortium, a joint venture formed alongside White Martins and GNL Gemini GásLocal that produces and sells liquefied natural gas (LNG) in Brazil. Under the consortium, Petrobras supplied natural gas, White Martins liquified the gas, and GásLocal distributed it.

69. The structure of the joint venture has long raised competition concerns and has been the subject of investigations into discriminatory practices and market foreclosure.

70. CADE considered that the transaction mitigated but did not entirely preclude incentives to Petrobras' anticompetitive practices for the benefit of GasLocal under their consortium. The agreement, therefore, compelled the Brazilian Petroleum state-owned company to leave the consortium to prevent any competitive harm. The document determined a final deadline for Petrobras to fulfil the agreed conditions.

4. Actions related to competition advocacy and institutional cooperation

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

71. In Brazil, two different entities perform competition advocacy duties: CADE and SEAE. CADE's advocacy initiatives are mainly under the responsibility of its Department of Economic Studies (DEE), whose actions include publications, market studies, guidelines, impact assessments, lectures, and close cooperation with sector regulators and other government bodies. SEAE performs advocacy initiatives such as the elaboration of

studies examining competition repercussions of public policies, and also analyses regulations and normative acts of general interest to economic agents, considering competition aspects.

4.1.1. CADE's actions related to competition advocacy

72. In 2021 CADE achieved significant outcomes in its advocacy role. It issued opinions in response to requests from federal legislators on 27 occasions. The Brazilian Competition Authority also presented opinions in 11 trade defence proceedings to enforce and renew antidumping rights, stressing its potential negative effects; and in 11 lawmaking processes of sectoral regulations related to antitrust policies.

73. The Department of Economic Studies published two market studies on digital platform markets and the private health insurance market, respectively, in addition to seven working papers on several topics. It also held four seminars on economics and competition defence, which addressed several topics such as the digital platform markets and the intersection between competition defence and data protection.

74. Other relevant publications released in 2021 were: the guide Parameters for Submitting Evidence in Leniency Applications; the checklist named Bid rigging in public procurements: warning signs; and CADE Mecum, a document issued to compile and systematize regulations related to antitrust matters in Brazil—making easy the access to the content and serving as reference material for professionals in the field, students, and the antitrust community as a whole.

75. In May 2021, the collection of articles “Direito Econômico e Defesa da Concorrência” was released. It was part of the work produced by CADE's employees that, in 2020, undertook the in-company postgraduate study in Competition Protection and Economic Law at Fundação Getúlio Vargas (FGV).

76. Other relevant publications relate to CADE's journal named Revista de Defesa da Concorrência. CAPES (an agency of the Ministry of Education that evaluates the scientific works of high education in the country) considers it one of the best legal journals in Brazil.

77. In 2021, CADE concluded its partnership with the National School of Public Administration (ENAP) to elaborate online courses to be offered to the public by the EVG, a government online course provider. The partnership resulted in the following four courses:

- Analysis of unilateral conduct restrictive to competition
- Competition Compliance
- Introduction to the Defense of Competition
- Analysis of mergers and acquisitions

78. Previously, the following courses were already available:

- CADE's Antitrust Leniency Programme
- Prevention and Detection of Cartels in Procurements

79. The Brazilian competition Authority also organized courses for civil servants of different national and international government bodies on antitrust investigation techniques to fight and prevent anticompetitive conduct. CADE trained more than 2,000 people.

80. Additionally, the Brazilian Competition authority carried out the second edition of the Brazilian Anticartel Week (SNCC). The event focused on having participants share

their experiences and strengthening actions to fight cartels in public procurements. Therefore, discussions addressed the new procurement law in Brazil, the intersection between CADE and other government bodies to fight cartels in procurements, and the detection tools for preventing collusion.

81. Another important event on competition advocacy was the ninth edition of the “Jornada de Estudos de Regulação”. It was held in partnership with the Institute for Applied Economic Research (IPEA) and discussed damages quantification methods, solutions and the detection of cartels and bid-rigging.

82. Concerning national cooperation, CADE signed agreements with bar associations, state prosecution services, state comptrollers, and other regulatory agencies such as the Agency for Waterway Transportation (ANTAQ) and the Brazilian authority for data protection (ANPD). The agreement signed with ANPD foresees the coordinated operation of the agencies. It resulted in an international benchmarking study on legal matters and the main correlations between antitrust agencies and data protection authorities of 12 jurisdictions, including Brazil.

83. In terms of international cooperation, CADE signed memorandums of understanding with the antitrust authorities of Mexico and India. The agency also carried out the competition assessment review on public procurements in Brazil, and the competition assessment project for the markets of port and civil aviation in the country, in partnership with the OECD.

4.1.2. SEAE actions related to competition advocacy

84. As stated in Law 12,529/2011, the original jurisdiction of the Secretariat for Economic Monitoring (SEAE) is competition advocacy. It is a permanent process of analysis of the Brazilian economic environment, aiming to promote the best conditions for business development and wealth generation.

85. In the sphere of competition advocacy, SEAE obtained several pro-competition advances in 2021, through participation in public consultations or direct interaction with agencies and entities of Public Consultation, including during the prosecution of proposals. The most important advancements shall be listed below. They are only a fraction of the innumerable SEAE actions that increased the competition environment in the country. The information is separated by sector.

Petroleum and Natural Gas

Flexibilization of the refinery services

86. The Secretariat coordinated efforts to evaluate competition advocacy in the petroleum and natural gas onshore market through the following proposals: the flexibilization the provision of refinement service to other agents in the production chain and flexibilization of the commercialization of derivative products. The suggestions were approved in the resolution minutes of the Brazilian National Agency of Petroleum, Natural Gas and Biofuel (ANP)'s Public Consultation 16/2020. SEAE's contributions proposed deregulation measures, creating an environment favourable to competition.

Advances in CNPE 14/2020

87. SEAE produced a document identifying possible entry barriers and regulatory burdens on the Biofuel market due to the current legislation on the subject. Regulatory barriers to the adoption of new technologies of Biodiesel products were identified and

forwarded to the ANP. The result was the creation of a working group to address the problem and create a new model for biodiesel commercialization and opening to biodiesel importation.

Non-interventionism: exclusion of Coordination (CNPE/2020)

88. The Committee required a report about the current dynamics of the aviation fuel market, especially Aviation Jet Fuel (ATF), to present to the National Council for Energy Policy (CNPE). SEAE actively participated in recommendations that were approved, such as the dismissal of the proposal to discuss tariff averages and information transparency for observers accessing the ATF infrastructures. SEAE's contributions are essential to reduce intervention and increase information transparency to guarantee more competition in the infrastructure of aviation fuel.

Veto to art. 3 of Senatorial Bill 209/2015

89. SEAE spoke against Art. 3 of Senatorial Bill 209/2015, suggesting its veto. The text had problems of adverse selection, state intervention in investments and risk of additional costs for the consumer. The suggestion was accepted and SEAE's position was included in the message of veto. Thus, SEAE's actions allowed the New Natural Gas Market to have more attractiveness and participation of private investments.

Competition improvements in the gas market in São Paulo

90. The development of the natural gas market in São Paulo state is strategic to encourage competition in the natural gas industry and serve as a reference for discussions over the subject in other states. As such, SEAE wrote a technical opinion forwarded to the regulatory agency ARSESP, with the following being accepted: i. possibility of the trader hiring insurance; ii. Ex-ante control over traders market shares; and iii. tariffs transparency. These points are vital to improve the traders' regulation and contribute to the New Natural Gas Market's effectiveness.

Analysis of Regulatory Impact on natural gas specifications

91. SEAE elaborated a report on natural gas specifications, recommending an analysis of the regulatory impact to lay out regulations on the subject, which was not provisioned by the Regulatory Agency. With SEAE's advocacy, the Brazilian National Oil Agency (ANP) accepted the suggestion, which was inserted in ANP's regulatory agenda for 2020/2021, aiming to make this beneficial practice applicable.

International Trade

Cessation of Maritime Agreements with Argentina and Uruguay

92. SEAE examined the competition aspects of the Brazil-Argentina Maritime Transport Agreement, signed in 1985; and the Brazil-Uruguay Agreement on Maritime Transport, signed in 1975. After the analysis, it was concluded that these agreements damaged competition, as they difficulted the entrance of new players as only the ships bearing the flags of the respective countries could make the route, which reduced the users' options and resulted in more expensive exported/imported products and a smaller trade flux between these countries.

93. Per the suggestion of SEAE, the subject was discussed in the 2nd Meeting of the Commercial Strategy Council, held on 9 December 2020. The Agreements' discontinuity was decided on the occasion. This is an initiative of SEAE of extreme importance, as

protectionism in maritime transport between the countries shall cease to exist. Thus, any interested navigation company shall be able to operate in the area regardless of its flag. The end of the agreements shall bring greater competitiveness for Brazilian products.

PVC-S Plastic Resin Market

94. SEAE evaluated the regularity of supply problems in the domestic market that resulted from the COVID-19 sanitary crisis. The evaluation resulted in a proposal for a temporary reduction of the PVC-S import tax and an extension of the dichloroethane (EDE) import tax, among other suggestions. SEAE's technical opinion worked as the basis for the approval of Resolution GECEX 127 on 10 December 2020, which established a temporary reduction in the PVC import aliquot, from 14% to 4%.

Infrastructure

Elaboration of the Cabotage bill

95. The Sea Highway (Bill 4.199/2020) makes the navigation rules between national ports to reduce costs and expand the internal supply of vessels dedicated to cabotage more flexible. SEAE proposed a flexibilization in chartering foreign vessels without crew (bareboat charter) to encourage competition through new market participants increasing the supply and reducing the price of cabotage transportation. The proposal was accepted and added to the text forwarded to the Brazilian Congress. During the Bill processing in the Brazilian House of Representatives, SEAE analyzed the proposed amendments to inform the position of the government, successfully maintaining items that incentive competition.

Auction of the Port of Vila do Conde

96. The Brazilian National Agency for Ports and Navigation (ANTAQ) initiated the extension and lease process for the current lessees of Port of Vila do Conde. SEAE opposed it, based on material and competition aspects. As result, ANTAQ accepted to hold an auction, ensuring that the asset would be subject to competition.

Review of the TRIIP Regulation

97. During the Brazilian National Agency of Land Transportation (ANTT)'s Subsidies Grant nº 004/2020, SEAE pointed out the necessity of making several criteria more flexible: the demand for differential Social Capital, the demand for leave of eventual absence and the limitation of the number of authorizations per month for each licensed transport company. The agency deemed SEAE's contributions aimed to increase the supply of service, and thus the competition, valid.

Airport Slots

98. The Brazilian National Agency of Civil Aviation (ANAC) disciplines slot allocation in coordinated airports through rules similar to those employed by central economies. Unlike those economies however, Brazil has a limited number of secondary airports, the railway and highway transport systems offer little competition to the aviation transport system and, finally, there is a small number of airlines in Brazil. Due to this problem of reduced competition, the Secretariat of Competition Advocacy and Competitiveness, in cooperation with the World Bank, is researching alternative rules for slot allocation. The conclusions of this study shall fundament the choice for a potential new rule proposed by the regulatory agency.

Services

99. Bill that removes barriers to foreign engineers forwarded to the Brazilian National Congress

100. SEAE proposed the withdrawal of competition barriers to the participation of foreign engineering companies and professionals through the removal of market reservations and simplification of the registration process in professional associations, including the clause of tacit approval after 45 days for persons and 90 days for companies. It would contribute to attracting foreign investments in infrastructure and reduction of non-tariff barriers to the service market. At the current moment, SEAE is working to make the proposal's approval in the Brazilian Congress possible.

Vetos to restrictions against electronic signatures

101. Provisory Measure 983/2020—which laid out the use of electronic signatures in interactions with public entities, on acts of juridical persons and health-related topics and software licenses developed by public entities—was converted on Law 14,063 of 23 September 2020, accepting the veto recommendations made by SEAE to Article 5, Item V, and Articles 11 and 12, which limited competition between companies, client options, information available to the market and the number or variety of suppliers.

Health

Achievements in the Brazilian National Supplementary Health Services Agency (ANS)'s agreement of mitigation of economic impacts

102. SEAE acted to improve the Agreement proposed by ANS to mitigate possible short-term economic-financial impacts caused by the COVID-19 Pandemic. Through its advocacy, the Secretariat of Competition Advocacy and Competitiveness managed to establish mechanisms to assist providers with greater financial or budget risk, allowing the continuity of their activities and maintenance of the number of competitors in the sector.

Achievements in the Public Consultation 77/2020 ANS

103. SEAE made known its desire for more transparency regarding what impacts the proposal for a Normative Resolution presented in the Public Consultation (PC) about the criteria for health insurance companies' regulatory capital would have on consumers. Through its advocacy, SEAE helped to improve the proposal, with benefits for small-sized health insurance companies, also promoting the reduction of information asymmetry by publicizing the solvency rates of health insurance companies, helping the consumers' choice.

Opening to new technologies in the sanitation market

104. Through 2020, SEAE discussed with entities of the private sector, sometimes through the German government's GIZ agency, and with the Brazilian National Institute of Metrology, Standardization and Industrial Quality (INMETRO) about the need to change the INMETRO Directive 54/2016, which slowed and increased costs to evaluate the compliance of electronic equipment in regards to the Health Regulation rules and thus prevented or limited the entrance of new technologies in Brazil. In December 2020, the INMETRO Directive 384/2020 was published and its text included recommendations made by SEAE to simplify the requirements for a compliance evaluation.

Mining

Extension of mining rights

105. To contribute to Brazilian National Mining Agency (ANM)'s regulation process, SEAE proposed that tariffs over mining rights were not limited solely to their concession, but also that they were applied to the other rights described in Decree 9,406/2018, art. 42. The Brazilian National Mining Agency (ANM) added SEAE's suggestion to the resolution minutes of Public Consultation 3/2020. SEAE promotes alternatives that may make allow financing the sector's activities, generating jobs and income, and assisting the country's economic growth.

Financial Sector and Market

Achievements in the BACEN Consultation 76/20

106. SEAE acted to improve the document that established the Central Bank of Brazil's regulation for the instant payment platform, named PIX. Through its advocacy, SEAE promoted improvements in PIX's participation requirements, expanding the possibility of fintech participation and increasing competition in the sector.

Achievements on the review of SUSEP 16/20

107. SEAE acted to improve the document that lays out the working and the criteria to operate insurance coverage. The result was the simplification of contract rules for mass risk insurance and allowed the harmonization of coverages between different types in a single product. As result, it is possible to more easily offer insurance, with lower prices and customise it according to client needs.

Achievements on the review of SUSEP 19/20

108. SEAE participated in the Superintendency of Private Insurance's Public Consultation 19/2020, which concerned the rules and criteria to operate property insurance. This resulted in changes in line with the new directives of the Law of Economic Freedom, a regulatory milestone with the potential to increase the dynamism in the insurance market and simplify the rules and criteria to operate property insurance.

Achievements in the Securities and Exchange Commission of Brazil (CVM)'s Public Audience 7/2020

109. SEAE acted to improve the changes in the regulations related to the company type in which the juridical persons of independent auditors are included and to the responsibility regime of their partners. As a result, there was compatibilization of the regulations to the international parameters, aligning the Brazilian model to the best international practices.

Telecommunications and Audio-Visual

Achievements in the Brazilian National Telecommunications Agency (ANATEL)'s Public Consultation 05/2020

110. SEAE participated in Anatel's Public Consultation 05/2020, regarding a proposal to reevaluate the Brazilian regulatory model for the provision of telecommunication services, which resulted in improvements to the criteria to employ the balances originated in the adaptation from the telephony concessions to the telephony authorizations regime,

in geographic areas which have held no economic value, in which there is no adequate competition, no competition or where there was no initial market before the intervention.

Achievements in ANATEL's Public Consultation 37/2020

111. SEAE participated in ANATEL's Public Consultation 37/2020, regarding the Proposal to Regulate the Enumeration of Telecommunications Services. Through its advocacy, the Secretariat of Competition Advocacy and Competitiveness convinced ANATEL to implement a gradual process to establish a converging regime, with a predefined deregulation timetable and pre-established regulations to track the actions undertaken, to grant more credibility to the technological convergence process and competition neutrality between Service of Multimedia Communication (SCM) and Mobile Personal Service (SMP).

Achievements in AIR 01-E/2020/ANCINE

112. SEAE participated in the National Agency of Cinema (ANCINE)'s Public Consultation regarding the Analysis of Regulatory Impact (AIR) 01-E/2020/DIR-LR, regarding the Evaluation of How the Legal Obligation to Offer Half-Price Tickets Influences the Cinema Exhibition Market. Through its advocacy, SEAE contributed to elaborating a proposal to end the half-price ticket benefit, which eliminates a financial burden on the cinema exhibitor's activities in a moment where the technological changes in the sector open a unique opportunity to expand the program alternatives for cinemas.

Internet of Things (IoT)

113. Since the beginning of the new government, SEAE has been working on proposals to expand the Internet of Things (IoT) and satellite internet access. To reach such objectives, the distortions originated from fees over some sectorial charges related to these pieces of equipment were corrected. The regulatory alterations shall allow for a massification of the internet of things and an expansion of broadband internet access in Brazil's countryside, with an increase in productivity and enabling new business models.

Measures Related to the Pandemic

Improvements on Law 14,010/20

114. SEAE participated in the legislation process of Law 14,010 of 10 June 2020, regarding the Emergency and Transitory Juridical Regime of Private Law's juridical relation (RJET) in the period of the coronavirus pandemic (Covid-19). SEAE's team contributed to the adequation of the measure through analysis and proposal of alterations in the rules related to the Competition Regime, e-commerce, evictions and rent, which were accepted.

Achievements in Brazilian Health Regulatory Agency (ANVISA)'s Public Consultations 889 and 890

115. SEAE participated in the Brazilian Health Regulatory Agency's Public Consultations 889 and 890/2020, regarding the notification, registry and post-registry of medical gases categorized as medicine and the list of medical gases categorized as medicine subject to notification. Through its advocacy, SEAE managed to contribute to the simplification of the procedures to register, renew and post-register changes of medical gases, which eliminates important barriers to entry into the sector.

Provisory Measure 952/2020 – Telecommunications

116. SEAE actively participated in the elaboration of Provisory Measure 952/2020, which extended the deadlines to pay tributes over the provision of telecommunications services. SEAE's team was fundamental to adequate the measure to the current rules in the telecommunication sector, with the suggestion to remove articles that went against the General Law of Telecommunications (LGT); and the proposal's budget adequation through the suggestion of postponing the values still in the same year, for compatibility with the Law of Financial Responsibility (LRF).

5. Resources of the competition authority

5.1. Annual budget

117. In 2021, CADE's budget was BRL 53,778,996.00.

118. Orçamento Seae 2021: R\$554.377 ou US\$99.351 (valor em dólares obtido a partir da taxa de câmbio de 5,58 R\$/US\$, de 31/12/2021)

5.2. Number of employees

119. In 2021, CADE had 492 people in its staff. Among them, 226 work in core activities.

120. Número de servidores Seae em 31/12/2021: 52.

6. Papers published by CADE

6.1. Economic studies

6.1.1. The problematic binary approach to the concept of dominance

121. The document provides a better understanding of dominance and market power, current hot topics in antitrust analysis.

6.1.2. International benchmarking on the relationship between antitrust and data protection authorities

122. The document analyses how antitrust and data protection authorities of 12 different jurisdictions worldwide operate.

6.1.3. Ex Post Mergers Evaluation: Evidence from the Brazilian Airline Industry

123. The document evaluates the impact of CADE's decision on two transactions made in the Brazilian airline industry.

6.1.4. Study on the market of private health insurance

124. The document brings together three studies on the market of private health insurance.

6.1.5. Updated discussions on the definition of relevant market

125. The document presents quantitative methods to define the relevant market when carrying out a competition review, in addition to the critical loss and aggregate diversion ratio methodologies, the use of simulations, and the analysis of counterfactual scenarios.

6.1.6. International benchmarking on the structure, functioning, and interrelations between antitrust and trade defence authorities.

126. The study shows the relationship between antitrust and trade defence. It is a by-product of the participation of CADE as a permanent guest on the Executive Board of the Brazilian Foreign Trade Chamber.

6.1.7. Measuring the expected benefits from CADE's activities in 2020

127. The document measured the benefits expected from CADE's activities related to anticompetitive conduct and merger and acquisitions in 2020.

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

- Environmental considerations in competition enforcement (available [here](#)).
- Ex-ante regulation and competition in digital markets (available [here](#)).
- Economic analysis and evidence in abuse cases (available [here](#)).
- The promotion of competitive neutrality by competition authorities (available [here](#)).