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**LATIN AMERICAN COMPETITION FORUM**

**-- Session III: Strategies for Competition Advocacy --**

**Contribution from Brazil**

**8-9 September 2010, San José (Costa Rica)**

*The attached document from Brazil is circulated to the Latin American Competition Forum FOR DISCUSSION under session III of its forthcoming meeting to be held in Costa Rica on 8-9 September 2010.*

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**LATIN AMERICAN COMPETITION FORUM**

**8-9 September, San José (Costa Rica)**

**Session III: Strategies for Competition Advocacy**

**-- COMPETITION ADVOCACY: RECENT DEVELOPMENTS IN BRAZIL<sup>1</sup> --**

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**1. Introduction**

1. The competition law and practice in Brazil is governed primarily by Law no. 8,884, of 1994, as further amended. The Brazilian Competition Policy System (“BCPS”) is composed of three bodies – namely, the Secretariat for Economic Monitoring of the Ministry of Finance (“SeAE”), the Secretariat of Economic Law of the Ministry of Justice (“SDE”), and the Brazilian Competition Tribunal (“CADE”)<sup>2</sup>.

2. Besides its role in analysis of conducts and structures, the BCPS has also the purpose of disseminating the value of competition within the government and throughout the Brazilian civil society.

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<sup>1</sup> This is a draft version; please do not quote without permission from the author. The views expressed here are the author’s alone and do not necessarily reflect the views of the Brazilian Competition Tribunal (CADE) or other antitrust authorities of the Brazilian Competition Policy System.

<sup>2</sup> SeAE issues non-binding economic opinion in merger review and it may also issue non-binding opinions related to anti-competitive practices. SDE is the chief investigative body in matters related to anti-competitive practices, also issuing non-binding opinions in merger cases. CADE is the administrative tribunal which makes the final rulings in connection with anti-competitive practices and merger review.

3. This competition advocacy role has encompassed a variety of chores that included campaigns in the media, preparation and publication of technical papers, delivery of lectures in courses and seminars to different audiences, participation in working group discussions with different governmental bodies and promotion of competition impact assessments of sectoral regulations.
4. Since 1996, CADE holds a biannual internship program. In each term of the program students from all over the country experience the daily life of one of the most important antitrust authorities in Latin America.
5. During their month in Brasília, students have both practical and theoretical contact with antitrust law and policy, in a way they get involved in the major challenges of the Brazilian practice in competition law.
6. Students are selected after a competitive selection procedure in which meritocracy plays a leading role. Since its very beginning, CADE's Internship Program (in Portuguese, called as "PINCADE") is known for its excellence in providing useful training in antitrust law for students willing to learn it and practice it afterwards.
7. In this regard, it is offered a course of antitrust law, with lectures of leading Professors from fields ranging from Law, Economics, Business Administration and Public Policy. After some modifications implemented during the past two (2) years, such course became a powerful mechanism to diffuse competition culture, not only among the selected students, but also among governmental actors.
8. This paper is divided as follows: part II describes the 2008 framework of CADE's Internship Program and its process of restructuring; part III sets the results achieved, and part IV presents the concluding remarks.

## **2. Restructuring CADE's Internship Program: *The New Institutional Strategy***

### **2.1 *The Challenges Ahead: The 2008 Framework***

9. In the end of 2008, a detailed and statistical analysis was promoted to understand the institutional framework of the Program and specially the deficiencies and challenges ahead.
10. This analysis highlighted that: (i) there was a low number of applicants (for each edition, the average was nearly fifty applicants); (ii) there was a high regional concentration (the undergraduate students were coming almost exclusively from three Brazilian States: São Paulo, Rio de Janeiro and Minas Gerais); (iii) the students were not applying to the Program due to costs of accommodation in Brasília and transportation; (iv) there was no mechanisms to spread information about the Program; (v) lack of inductive activities in universities and research centers; (vi) lack of participation of graduate students [Master (LL.M). and Doctorate (J.S.D.) students]; (vii) lack of participation of government actors.
11. The analysis of such data reflected that CADE's Internship Program could improve substantially the performance of its main goals, which are (i) to broadly disseminate the competition culture advocacy, (ii) to increase institutional credibility of the CADE nationally and internationally; and, (iii) to promote scientific cooperation, including with academia, in order to stimulate academic studies and events in the area of competition policy and economic regulation.

## 2.2 *The Establishment of Seven Major Goals*

12. In order to effectively develop a new institutional framework to the Program, seven goals were defined:

- Becoming international: enhance the participation of Latin American antitrust authorities in the Internship Program;
- Diversity: encourage of underrepresented States raise the number of its inhabitants applications;
- Meritocracy: make academic and professional merits – *not socioeconomic means* – the sole requirements to participation in the Program and also create a transparent criteria for selection;
- Participation: increase the number of participants in the Internship Program;
- Qualification: make outstanding academic achievements a constant feature of those selected to the Internship Program;
- Access to information: to develop a website, containing information on the Internship Program and send to universities and research centers posters and folders about the Internship Program; and,
- Access to Knowledge: conceive and implement the “*Applied Course in Competition Policy*” with lectures of leading Professors from fields ranging from Law, Economics, Business and Public Policy.

## 3. **Experience and Results Achieved: Building Institutions for Development**

13. Mostly due to the implementation of several actions related to the goals above mentioned, the following results were achieved:

- Becoming International: the PINCADE’s 2009 second edition represented the milestone of its internationalization. Throughout that edition and the following two, fourteen (14) different Latin America antitrust authorities were represented in the Program. Mostly by virtue of the agreement sealed with the Brazilian Cooperation Agency (a branch of the Ministry of Foreign Affairs), which guarantees financial resources and institutional support to the Latin American Antitrust Authorities and its representatives during the period of internship at the CADE.
- Diversity: this goal was gradually implemented throughout last editions of the Internship Program. Mostly on account of the disclosure of the Program in universities throughout Brazil, in January 2010, a record was achieved and ten (10) Brazilian States were represented at the Internship Program. This record, however, was broken again in PINCADE’s last edition, when representatives of fourteen (14) Brazilian States took part of the Program.
- Meritocracy: it was signed a Cooperation Agreement with World Bank to provide financial support to all selected participants, which encompasses the round-trip tickets to Brasilia and also a scholarship to finance their sojourn along the Internship Program. Furthermore, it was rearranged the selection process criteria to enhance transparency and objectivity. The Selection Committee has now to base its decisions on five aspects of the candidate’s application: (a) scholarly research agenda for the near future; (b) academic records of the applicant (curriculum vitae which should include, where applicable: education, work experience, scholastic honors, and publications); (c) letters of reference, preferably written by applicant’s current or

former Professors or from employers; (d) a separate response explaining the reasons for seeking admissions to CADE's Internship Program; and (e) a separate response clarifying how CADE's Internship Program fits in with applicant's career plans.

- Participation: in January 2010, for the first time, the Internship Program had 25 participants. This number was also achieved at the subsequent edition of PINCADE. Furthermore, the number of applicants rose successively in the past three editions, surpassing the one hundred and thirty (130) applications on January and reaching one hundred and seventy five (175) on July 2010.
- Qualification: both in January and July 2010 editions all selected participants had some sort of academic engagement. On July 2009, four (4) of them were graduate students, including Brazilian students and members from Latin America. On January, ten (10). On July 2010, twelve (12). This represents an outstanding performance that the Internship Program has never reached before.
- Access to Information: the official website was developed ([www.cade.gov.br/pincade](http://www.cade.gov.br/pincade)) in Portuguese, English and Spanish. The website contains a large array of information on the Internship Program, on the selection process to the Internship Program and also on its role as a Brazilian Competition Tribunal public policy mechanism. Furthermore, the website served as communication center to the participants, where they could find study materials and Professors' presentations and papers.
- Access to Knowledge: it was designed and developed an *Applied Course in Competition Policy* to be part of the Program. Over the three last editions of the Program, more than fifty (50) leading Professors delivered lectures at the *Applied Course in Competition Policy*, turning the Course a central component of the Internship Program. At the last edition, beside the lectures of some of Brazilian Professors in Law, Economics and Business Administration, it was also offered lectures from Professor George L. Priest (Yale University), Professor Fernando Araújo (Lisboa University), Mr. Michael Sullivan, Deputy Commissioner of Competition Legislative and International Affairs Branch Competition Bureau of Canada, and Mr. Manuel Sebastião, President of the Portugal's Competition Authority. Also, it was prepared a book course exclusively to the PINCADE's applied course with Professors' articles, papers and cases selected, and main legislation.

14. It should also be noted that the July 2010 edition of CADE's Internship Program has not produced its primarily results only as mechanism to disseminate the competition culture advocacy among students.

15. The *Applied Course on Competition Policy* was also opened to the participation of public lawyers and of civil servants, including some already allocated in sector regulators. This was due to partnerships sealed with three important governmental actors: (a) National School of Public Administration (in Portuguese, "ENAP")<sup>3</sup>; (b) Institutional Capacity Strengthening for Management of Regulation Project (in Portuguese, "PRO-REG")<sup>4</sup>; and, (c) School of the Attorney General's Office (in Portuguese, "Escola da AGU")<sup>5</sup>.

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<sup>3</sup> *National School of Public Administration* ("ENAP") is a public foundation linked to the Brazilian Ministry of Planning, Budget and Management, whose primary function is to train civil servants from the federal public administration. For further information, please visit its official website: <http://www.enap.gov.br/>.

<sup>4</sup> *Institutional Capacity Strengthening for Management of Regulation Project* ("PRO-REG") is project whose purpose is to support Brazilian Government in improving the quality of its Brazilian regulation, by promoting strengthening of the autonomy in the decision-making process and improving formulation,

16. These measures were adopted to educate governmental actors on competition aspects. Due to the importance of intra-governmental advocacy, this relationship-building with governmental stakeholders aims to avoid anti-competitive impact of governmental actions or inaction on the market.

17. The first partnership developed with ENAP was addressed to spread competition culture to all federal public servants. As we know, the government can affect the efficiency of markets, may due to a domestic regulation, regulatory or industrial policy, regulations imposed by a regional or local authority, rules regulating international trade or other interactions between the state and the market, this agreement with ENAP, then, aggregates to disseminate competition ideas to governmental bodies as all.

18. In order to spur the participation of public servants, the course on competition policy was officially recognized by Brazilian Ministry of Planning, Budget and Management as a course to move public servants' career forward, due to its faculty and structure, which represented a unique and striking accomplishment.

19. The CADE's Internship Program faculty is as broad ranging in its interests and expertise as it is distinguished. It includes prominent scholars of economics, business, and public policy, as well as leading specialists in many areas of law. Over 50 professors are joined the Program creating a vibrant intellectual community.

20. As well as ENAP's partnership, which created a more favorable environment for competition culture in the public service, the PRO-REG's agreement improved the dissemination of the competition to the heads of regulatory authorities.

21. The partnership celebrated with School of the Attorney General's Office, in its turn, spread competition culture to *public lawyers* and *federal prosecutors*. Also, it allowed the broadcasting of some lectures of the Course on Competition Policy through *TV Justiça*, a television channel owned by the Brazilian Judicial branch and administered by the Brazilian Supreme Federal Court, the highest court in Brazil. This broadcasting of the course increased the audience, reaching federal and state judges, state prosecutors, and public defenders.

22. Ultimately, the results achieved by the CADE's Internship Program and mentioned in the paragraphs above were in the top headlines in general media, such as one of the most prestigious Brazilian newspapers ("*Correio Braziliense*")<sup>6</sup>, and also university media<sup>7</sup>.

23. In this regard, CADE's Internship Program has gone beyond Brazilian borders, being remarked in one of the most prestigious antitrust websites around the world, the *Antitrust & Competition Blog*<sup>8</sup>, edited by Prof. Daniel Sokol.

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coordination and institutional management of the activities that reflect in the regulatory process. For further information, please visit its official website: <http://www.regulacao.gov.br/>.

<sup>5</sup> The main purpose of the *School of the Attorney General's Office* ("Escola da AGU") is to train public lawyers. For further information, please visit Attorney General official website: <http://www.agu.gov.br/>.

<sup>6</sup> Please see print edition on July 7<sup>th</sup> 2010 of the *Jornal Correio Braziliense*, available at (<http://www.correiobraziliense.com.br/app/noticia182/2010/07/07/economia,i=201191/NO+MUNDO+DE+CARTEIS+E+FUSOES.shtml>).

<sup>7</sup> Please see PINCADE's twitter, available at (<http://twitter.com/PINCADE>).

<sup>8</sup> Please see the following link: [http://lawprofessors.typepad.com/antitrustprof\\_blog/2010/07/cade-internship-program.html](http://lawprofessors.typepad.com/antitrustprof_blog/2010/07/cade-internship-program.html).

#### **4. Concluding Remarks.**

24. Those are a few reasons why the CADE's Internship Program constitutes one of the most powerful tools of the Brazilian Competition Policy System to broaden and disseminate the competition culture along the country.

25. The Program has substantially enhanced internship's analytical capacity and exposed themselves to a mosaic of different legal cultures. Increasing diversity and stimulating public servants created a unique environment with intense intellectual exchange, which has allowed internships to develop a vigorous and interdisciplinary research.

26. Cradling intra-governmental advocacy and breeding relationship-building with all branches of government would yield significant benefits to promote a competition environment, avoiding adverse effects of public policies and institutions.

27. The Program improved competition advocacy and policy to an upper degree in Brazil and represents also a very important mechanism able to shape Brazilian development toward a fair and long standing development cycle.

28. To sum up, CADE's Internship Program constitutes an important contribution to the efforts to create adequate institutions to enhance and promote development in Brazil.