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Corporate Influence in Competition Policymaking – Note by Brazil

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1. Introduction

1. Large corporations, with extensive financial resources, can significantly influence the formulation of public policies and regulations that favour their interests. Although such action is part of the legitimate democratic process, it may also represent risks to the effectiveness of competition defence policy, especially when it results in the adoption of measures that distort the competitive dynamics of markets.

2. Corporations can influence both public policymakers and other private agents, such as research centres and academics. The financing of studies, events, and training by large companies may skew technical analyses and compromise the quality and independence of the information used by competition authorities and the Judiciary. The external interference in the regulatory process may result in distorted regulations, creating entry barriers, favouring certain economic agents, or restricting market innovation and efficiency.

3. This contribution seeks to highlight the main strategies adopted by the Brazilian Competition Defense System (SBDC), comprised of the Administrative Council for Economic Defense (CADE) and the Secretariat for Economic Reforms (SRE) of the Ministry of Finance, to mitigate the adverse effects of the corporative influence on competition policy.

4. On the influence on private agents, Section 2 discusses companies' mechanisms and initiatives from CADE to strengthen the integrity and transparency of the decision-making process. The agency's initiatives extend the transparency and accountability of the proceedings using the Brazilian Electronic Information System (SEI), which ensures the publicity of the decisions, and by directly funding research through the Fund for the Facto Joint Rights (FDD), which stimulates technical knowledge without conflict of interests, contributing to a more qualified and diverse regulatory debate.

5. Section 3 addresses the regulatory process, mentioning traditional mechanisms for competition advocacy, such as public consultations and legislative discussions, as well as the Regulatory and Competition Assessment Procedure (PARC), recently implemented by the SRE in 2024, which establishes public hearings for market players and other interested parties to contribute to the identification of possible anticompetitive regulations.

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2. Corporate Influence in Competition Policy Research

2.1. The corporate influence in antitrust

6. The concept of regulatory capture was firstly presented in the George Stigler’s seminal article “The Theory of Economic Regulation”². Stigler mentioned that “*regulation is acquired by the industry and is designed and operated primarily for its benefit*”. If the main goal of the regulation is to protect the public interest—that is, the population in general—the entities regulated receive incentives to capture the regulator in favour of private interests. It is important to bear in mind that the concern, in this scenario, is to capture public interest through private interest. However, private agents can also be captured by other market players.

7. In 2024, Jonathan Kanter stated the existence of an expertise crisis in the antitrust community³. The source of the crisis is the financing by big companies of training, events, as well as reports and research, carried out by academics or research institutes. Then, these projects are presented to competition authorities, courts, and supranational bodies without an official disclaimer of the founding used. The risk lies in the fact that decisions by authorities and the judiciary are based on studies captured by the interests of specific companies and economic sectors, without necessarily representing the reality of the data or the broader discussion on the subject. The academic research, when financed by players with specific interests is no longer independent and becomes, in fact, a form of concealed competition advocacy.

8. Aviv Nevo, director of the Bureau of Economics of the U.S. Federal Trade Commission, addressed the same topic during the *17th Annual Microeconomics Conference*⁴. Speaking directly to academics, Nevo reinforced the role of research for antitrust enforcement, while also emphasising the need for higher standards of study funding disclaimers and the responsibility that academics have when acting as experts in investigations.

9. Phenomena described above have been a matter discussed by academics over the last few years. Recently, the relation between corporate financing and antitrust academic research was the topic of an international conference hosted by the University College of London⁵, demonstrating the projection of this matter in regulators’ and researchers’ debate agendas.

10. James Kwak has described the problem as “cultural capture”⁶. This phenomenon is the process in which the state regulation is meant for the private and not the public interest.

² George Stigler, *The Theory of Economic Regulation*, *The Bell Journal of Economics and Management Science*, vol. 2, n. 1 (Spring 1971), pp. 3-21.

³ “Assistant Attorney General Jonathan Kantar Delivers Remarks for the Fordham Law Institute’s 51st Annual Conference on International Antitrust Law and Policy”, September 12, 2024.

⁴ Aviv Nevo, *Disclosures and Accountability: Helping Economic Research Impact Policy*, November 14, 2024.

⁵ “How Corporate Funding Impacts Competition Policy Research”, March 6, 2025. <https://www.ucl.ac.uk/laws/events/2025/mar/how-corporate-funding-impacts-competition-policy-research>

⁶ James Kwak. *Cultural Capture and the Financial Crisis*. In.: David Carpender, David A. Moss. *Preventing Regulatory Capture: special interest influence and how to limit it*. Cambridge University Press, 2013, pp. 7198.

Although the corruption/capture relationship is the most common in the specialised literature, Kwak explains that there are incentives for capture beyond the material interests. Therefore, cultural capture happens when regulators identify with elements and players of the regulated industry. For example, when regulators feel more conformable to adopt opinions defended by players of the same group or with a larger social, economic, or academic status. There is also the well-known fact of “revolving doors” between the private and public sector.

11. Cultural capture seems to thrive in the antitrust environment. According to Jan Broulik⁷, unlike other specific regulatory agencies, the competition authorities have a crosscutting work in several economic sectors. Thus, antitrust authorities and professionals (lawyers and economists) who provide services to companies targeted (or potentially targeted) by the authority are in constant communication. The events gather lawyers, academics, authorities and representatives of the companies that, normally, are subject of an investigation.

12. The issue of corporate influence in policy making is not hypothetical. Data reveals that academic research by authors with conflict of interests show a low perception of confidence by its peers and population in general. In a research lead by Barrios et al., the results indicate that the conflicts of interests reduce in about 30% the reliability of economic academic papers⁸.

13. Although the discussion about corporate influence on public policies for the defence of competition is more concentrated in the United States and Europe, emerging jurisdictions like Brazil are not immune to its negative effects. In no way this contribution seeks to taint the reputation of any specific researcher or institution - but there is no denying of the existent problem. The aim of this contribution is to present the tools that are available to the Brazilian regulators destined to minimise corporate influence in their public activities.

2.2. Transparency as a Method to Combat Corporate Influence and Concealed Private Interests

14. The discussion about corporate influence in competition policy making faces a significant challenge: the influence is naturally concealed, existing in a grey area where the interests of the involved players are not clear. The absence of disclaimers and disclosures about conflicts of interest by authors adds to the problem.

15. Currently, an academic movement advocates for better disclaimers about the financing of think tanks and academics. The aim is to provide more transparency for the reader on possible interests that may have interfered with a specific study or expert opinion.

16. Corporations may influence (or capture) the process of making competition policies, or even the enforcement of competition law itself, by hiring academics to defend

⁷ Jan Broulik, *Cultural Capture of Competition Policy: exploring the risk in the US and the EU*. World Competition, volume 45, issue 2 (2022).

⁸ “Career-related CoIs [*Conflicts of Interest*] reduce trust by 36%, while data-access conflicts result in reductions between 20% and 52%, depending on the level of control over the data. Academic CoIs, by contrast, have minimal effects. Average Americans do not distinguish between a conflicted paper and a non-conflicted one. Economists’ trust *increases* by 4% when the finding is against the academic interest of the author and decreases by 5% when it is aligned with the author’s interest. Ideological (political) CoIs reduce trust by 17% on average.” (John Barrios *et al.*, *The Conflict-of-Interest Discount in the Marketplace of Ideas*, NBER Working Paper 33645, April 2025).

the corporation's goals in a specific proceeding. We are not talking about lawyers here, who, of course, will be defending their clients' interests. The concern is, for example, academics hired by a corporation as expert witnesses to produce an economic or legal study on the matter discussed by the antitrust authority.

17. Considering that these experts are hired and paid by a company, it is expected that the arguments presented in the study reinforce the companies' positions. So the first challenge is: how can antitrust authorities verify if the arguments presented by these experts are based on a high-quality study? There is significant information asymmetry among companies, hired experts, and the competition authority.

18. A second issue to be addressed is the *transparency* of academics and consultants who conduct studies for companies. Society must know who these professionals are and which interests they are hired to defend. In systems with no publicity of the documents presented to the antitrust authority, there is a decrease in accountability for these experts. Society as a whole must at least be able to see who acted in which cases and what interests were defended.

19. Brazil is very successful in this regard. Through the Brazilian Electronic Information System (SEI), documents from CADE's investigations and merger reviews are open for public access. The following Section explores the functionalities of the SEI and its capacity to publicise administrative proceedings launched at CADE.

2.3. The Brazilian Electronic Information System (SEI)

20. The Brazilian public administration has evolved promoting the digitalisation of its procedures to ensure more transparency and publicity to the administrative practices. There is a robust legal framework that structures and encourages the use of electronic processes to give citizens greater access to data. Examples are Law 12527/2011, Decree 8539/2015⁹, as well as Law 14129/2011.

21. Particularly to the Brazilian Competition Defense System, CADE was the first agency of public administration to use electronic systems in administrative proceedings. CADE's Resolution no. 11/2014 establishes SEI as the official system for document management at the competition authority. According to Article 5 of Resolution 11/2014, any person can access the proceedings and documents from SEI, without needing previous authorisation.

22. Naturally, there is some competitively sensitive information about the parties involved in the investigations, which may not be accessed by the wider public (including competitors). In these situations, Resolution no. 11/2014 reserves the access to confidential documents only to authorised individuals. However, only certain documents can be classified as restricted or confidential.

23. Aiming to avoid abuse of confidentiality, and to encourage economic agents to conceal relevant data, the Statutes of CADE establishes in Article 52 cases in which the agency may grant access to restricted documents¹⁰.

⁹ Sets forth the usage of electronic means for administrative proceedings within the bodies and entities of the direct public administration, agencies, and foundational administration.

¹⁰ Art. 52. Depending on the circumstances and in the interest of procedural instruction, either ex officio or upon request by an interested party, restricted access may be granted—due to confidentiality established by law or because the information pertains to the business activity of natural persons or private legal entities, the disclosure of which could provide a competitive advantage to other economic agents (pursuant to Article 22 of Law No. 12,527/2011 and Article 6,

24. Considering it is common practice for the parties in CADE's proceedings to bring economic and legal opinions by independent experts, it is important that other economic agents, not only the parties directly involved in the investigation, have access to the names of the specialists and their opinions.

25. The provisions in Resolution no. 11/2014 and the Statutes of CADE are important regulations to repress inappropriate usage of the confidentiality prerogative by economic agents. Except in situations where the procedure is completely confidential, such as some investigations of anticompetitive practices and negotiation of agreements, parties involved must present a redacted version of expert opinions made available for public access.

26. CADE also regulates the basic content shown in documents of public access. According to Article 54 of the Statutes of CADE, the documents available for public access must have sufficient elements in order for a party to exercise the right to full answer and defence, including information on market share, in intervals of 10 percentage points. In case an economic agent, according to its confidential data, presents to CADE a 35% market share, such specific detail may be suppressed and be replaced by a range of percentages, for example, [30-40%]. Another case is when an economic agent inform confidentially that it owns six production plants, for example, and in the public document this number can be presented as a range, since the exact number may be considered as competitively sensitive information.

27. Besides the authority's power to demand the submission of the public version of the documents, economic agents that may feel jeopardised by the confidential documents (companies that are the target of anticompetitive complaints by their competitors) can file a petition to CADE asking for a more complete public version of a specific document. This aims to provide the aggrieved party with all the needed information to carry out due process.

28. CADE's regulation on the need for public access to information means that virtually all documents submitted to the authority are accessible to the general population. Public versions of legal or economic opinions, for example, which are common in investigations into anticompetitive behaviour and merger reviews, show the names of the authors, their academic and professional affiliations, and a relevant part of the opinion's content.

29. The authority's effort to require a version for public access of the majority of its documents can be used as an example for other jurisdictions. The fact that the Statute of CADE requires a version for public access of the proceedings' documents reinforces the transparency and accountability of parties involved before the competition authority. This has the potential to reduce the incentive for obscure influences by large companies on the authority's decision-making process in the broader policy making of Brazilian competition law.

item I, and Article 5, § 2 of Decree No. 7,724/2012)—to case files, documents, objects, data, and information related to: I – commercial bookkeeping; II – the economic-financial situation of a company; III – tax or banking secrecy; IV – trade secrets; V – production processes and industrial secrets, especially industrial processes and formulas related to the manufacture of products; VI – the interested party's revenue; VII – date, transaction value, and form of payment; VIII – documents that formalize the notified merger; IX – the latest annual report prepared for shareholders or quota holders, except when the document is public in nature; X - value and quantity of sales and financial statements; XI – clients and suppliers; XII – installed capacity; XIII – production costs and expenses related to research and development of new products or services; or XIV – other situations, at the discretion of the granting authority, in accordance with Articles 22 of Law No. 12,527/2011 and Article 6, item I, and Article 5, § 2 of Decree No. 7,724/2012.

2.4. Fund for the Facto Joint Rights (FDD)

30. It cannot be denied that academic initiatives need funding so that they can attract the most competent professionals in the field. It should be emphasised that the issue is not receiving a funding from a company, but rather the fact that there is no publicity about the funding and the interests that may be linked to the economic agent that acts as patron of such academic research. Regulators should be aware that the study was produced with the funding from a specific company, and that the outcomes may reflect the interests of the sponsor.

31. It is a difficult trade-off. In a hypothetical counterfactual scenario, the alternative would be to extinguish such studies and create more difficulties for experts to get compensation. It would not be the best scenario. The challenge is thus to create financing mechanisms capable of promoting more strict academic research, without conflict of interests.

32. A possible alternative is public funding for research. Filippo Lancieri mentions that this type of funding could be direct (through legislation) or indirect (through public authorities and members of the civil society)¹¹.

33. This report shows an ideal situation for corporations to fund studies and research. In Brazil, the *Fund for the Factoo Joint Rights (FDD)* could work as indirect funding, especially in competition law. Considering that CADE is the main responsible for the collection of the FDD¹², it is reasonable to think that part of the resources should be targeted to academic research of relevant topics, ensuring that the outcomes are not hiding shadowy interests of private supporters.

3. Corporate Influence in Policy-Making: The Leading Role of Competition Advocacy

3.1. Advocacy tools

34. Government interventions play a fundamental role in defining market rules and influencing competitive dynamics, as they establish the legal and regulatory framework within which businesses operate. In this context, corporations have incentives to pursue strategies to influence authorities to implement regulatory measures aligned with their own interests.

35. The attempt to influence regulatory bodies and policy makers is a legitimate right of companies and economic sectors and is broadly recognised in democratic countries that value the participation of various stakeholders in the decision-making process. Moreover, this interaction may generate significant benefits for policymakers by providing specialized information and insights that allows the adoption of more effective and informed regulations.

36. However, in certain situations, companies can influence regulations or legislation in a way which can negatively affect competition, by creating barriers to entry, distorting incentives, or favoring certain market players at the expense of others. Although economic agents may be sanctioned for antitrust practices, Brazilian authorities have limited scope to

¹¹ Filippo Lancieri, *Narrowing Data Protection's Enforcement Gap*, Maine Law Review 74 (1), January 2022.

¹² The fines imposed by CADE as a result of antitrust investigations are directed to the FDD.

impose penalties on companies that influence regulatory policies, even when they result in anticompetitive effects.¹³

37. Considering that the revision of laws and regulations that may harm competition can address antitrust concerns, competition advocacy directed at other government entities is a strategy frequently adopted by antitrust authorities to counterbalance corporate influence in the policymaking process.

38. Competition advocacy plays a key role in shaping and reforming sectorial regulations, by influencing rulemaking processes and ensuring that competition is properly considered. To this end, advocacy may be materialized with contributions to public consultations held by regulatory agencies and active participation in legislative processes, offering technical analyses that highlight the competitive implications of the proposals under review.

39. In addition to these traditional mechanisms, the Secretariat for Economic Reform (SRE) of the Ministry of Finance, which is part of the Brazilian Competition Defense System (SBDC), implemented¹⁴ the Regulatory and Competition Assessment Procedure (PARC), in December 2024.¹⁵ This innovative advocacy instrument enables market players and other stakeholders to point out allegedly anticompetitive regulations for review.

40. This strategy represents a novel approach to mitigate the persistent challenge of identifying regulations with potential anticompetitive effects, an especially complex matter in country as institutionally dense and territorially vast as Brazil. The multiplicity of regulatory authorities and the layered interaction among several government bodies, often obscure the detection of regulatory measures that may restrict competition, create unjustified barriers to entry to new players or impose unnecessary burdens on companies and consumers across different sectors. In this context, stakeholders adversely affected by such distortions—whether by being denied greater market participation or by being

¹³ CADE's case law has consistently affirmed that companies and trade unions accused of attempting to influence the enactment of potentially anticompetitive regulations should not be subject to sanctions, except where there is unequivocal evidence of the use of unlawful or deceptive means to achieve such ends. In Administrative Proceeding No. 08012.010648/2009-11, for example, companies operating in the sunglasses retail market were acquitted of allegations concerning efforts to establish rules that would prohibit the sale of competing products, among other claims. Similarly, in Administrative Proceeding No. 08700.000625/2014-08, a trade union and its representatives were not held liable despite their actions aimed at preventing the passage of legislation that would allow fuel stations to operate within supermarkets and hypermarkets in the municipality of Natal/RN. These precedents illustrate Cade's cautious and restrictive stance on sanctioning petitioning activities with allegedly anticompetitive purposes, requiring a clear demonstration of manifestly unlawful or deceptive practices for such conduct to be deemed an infringement of competition law.

¹⁴ The Secretariat for Economic Monitoring (SEAE), also part of the SBDC and linked to the SRE, plays a consolidated ^{advisory} role in competition advocacy, in accordance to Law 1229/2011. It issues opinions on normative acts and legislative proposals that may impact competition, as well as preparing sectorial studies to assess situations in various sectors of the economy, proposing a review of laws and regulations that may be seen as anticompetitive.

¹⁵ The Regulatory and Competition Assessment Procedure (PARC), established by Regulation 12/2024, aimed to improve the Intensive Front for Regulatory and Competition Assessment (FIARC) which was created by the Resolution 84/2022. The FIARC was a continuous initiative in which any person could file an application to the Ministry of Finance, indicating regulations that could harm competition. From 2021 to 2022, this mechanism resulted in the publication of five opinions, which analysed regulations in specific sectors and identified significant competitive harms.

compelled to pay higher prices or accept lower quality services— are often in a particularly privileged position to identify and report regulations that harm competition.

41. PARC channels and redirects corporate influence toward pro-competitive outcomes, by enabling market players and stakeholders to actively contribute to the identification and minimization of anticompetitive regulatory barriers. Through a formal and transparent process, PARC transforms private sector engagement into an instrument for regulatory enhancement, ensuring that concerns over potential competition distortions are addressed through a technical and institutionalized framework.

42. The following Section details the main aspects of the procedure.

3.2. Regulatory and Competition Assessment Procedure (PARC)

43. PARC is generally initiated through semi-annual public consultations that allow interested individuals to send contributions and suggestions on regulations that may have anticompetitive effects.¹⁶ This practice not only reduces the administrative cost of identifying potentially anticompetitive rules but also gives greater transparency and legitimacy to the process. If necessary, SRE may also initiate ex officio regulatory actions.

44. To help stakeholders identify regulatory restrictions that may negatively affect competition, PARC relied on guidelines established on the OECD Competition Assessment Toolkit. Thus, it presents a list of possible effects that may lead to certain regulations being classified as harmful to competition, along four axes: limiting the number or variety of companies in a market, limiting the ability of companies to compete, reducing the incentive for companies to compete, limiting choice and the information available to consumers.

45. After each public consultation, SRE releases a decision in which it states the regulations that are to be analysed, selected based on a technical opinion that takes into consideration the public interest, the potential competitive impact of the regulation and if a competition assessment was made before the regulation was issued, among other criteria.

46. The next step is to notify the authority responsible for issuing the regulation, so they can present the technical grounds that motivated the regulation and other important data. Furthermore, to subsidise the analysis of the possible anticompetitive effects of the regulation, the Secretariat may request information from companies, associations, and other market players. The non-compliance of these requests or the presentation of fake information subject the parties to fines, similarly to what is done in mergers reviews and in anticompetitive conducts investigations. This prerogative enables SRE to collect relevant information directly from interested parties, increasing quality and effectiveness of the analysis.

47. At the end of the proceeding, SRE issues a final report with the results of its analysis. In the case the regulation is found to be anticompetitive, one of the goals of PARC is to establish a collaboration with the regulatory agency to present concrete suggestions for improvements, aiming to adjust the regulations to principles pursued by the Brazilian Competition Law.

48. This regulatory procedure may also result in other measures for competition advocacy, such as meetings and seminars with regulatory agencies and debates with other government bodies to facilitate interinstitutional coordination and promote the regulatory improvements proposed. If necessary, the Ministry of Finance can also propose reviews of

¹⁶ <https://www.gov.br/participamaisbrasil/parc>

laws and decrees or recommendations to amend regulations to carry out the improvements suggested in PARC.

49. This structured approach allows the Ministry to enhance its mandate to foster the improvement of the regulatory environment, in line with the principles of free competition and economic development.

3.3. First Public Consultation

50. On 7 February 2025, SRE started the selection of the First Cycle of PARC for 2025, with a period of 40 days when anyone could submit contributions via the *Participa + Brasil* platform.¹⁷

51. There was significant social involvement: 80 contributions were received from participants with a diverse profile: academics, associations, the third sector, and several companies. The public consultation provided insights on regulations with a negative impact in several markets. The biggest number of reported regulations were in the energy sector (37.5%), followed by the health sector (19%), transport sector (12.5%), and financial sector (12.5%).

52. The selection of regulations for review was guided by criteria such as the strategic relevance and public interest of the affected economic sectors, the estimated magnitude of potential anticompetitive effects, and the existence of a prior competition impact assessment conducted by the issuing authority before the regulation's adoption.

53. Based on the evaluation of the submitted proposals, SRE has decided to initiate six Regulatory and Competition Assessment Procedures in the following areas: (1) the distribution of liquefied petroleum gas (LPG); (2) the criteria for setting maximum sale prices for medicines; (3) the simplified procedures for the registration, post-registration modifications, and renewal of pharmaceutical products; (4) the service structure provided by port operators and port facilities for the handling and storage of containerized cargo; (5) the operation of financial market infrastructures, ie payment systems, central securities depositories, securities settlement systems and central counterparties, as well as the procedures to create liens and claims on such assets; and (6) regulations establishing adequate conditions for the participation of banking institutions, non-banking financial institutions, and payment institutions in the process conducted by Social Security to select the benefit payers.

4. Conclusion

54. Although the debate is still in its early stages in the country, Brazil is not oblivious to the risks of private influence on public policy decisions in competition law. An example is the Public Consultation launched by the Ministry of Finance about economic and competitive aspects of digital platforms. The Ministry of Finance received more than 300 contributions, including the third sector and think tanks. A minority of contributions had some type of disclaimer or disclosures, sent by members or external funders of the contributions.

55. Mechanisms like the SEI are important to endow with transparency the proceedings carried by CADE, as well as the positions defended by specific players. Specialists place their credibility in their legal or economic opinions in investigations. Mechanisms that

¹⁷ <https://www.gov.br/participamaibrasil/parc>

provide more transparency may impose some level of chilling effect on corporative opportunists, who would face more difficulties to find experts willing to advocate for their own interests instead of a healthy competition environment.

56. It would be in CADE's interest to develop a Disclosure Policy for all experts who collaborate in administrative proceedings¹⁸. An expert opinion would only be considered if the professional joined the Disclosure Policy, in which the disclosure of the study sponsor would be essential.

57. Regarding the influence of corporations in the regulatory process, the creation of the *Regulatory and Competition Assessment Procedure* (PARC) and the establishment of an autonomous administrative proceeding represents an important step to broaden the scope of performance of the Secretariat for Economic Reforms of the Ministry of Finance, and to promote more transparency in the regulatory process. PARC aims at channelling the corporative influence to the benefit of competition by allowing market players and stakeholders to actively contribute to the identification and minimisation of anticompetitive regulatory barriers. This change is added to other measures to promote democratisation of the regulatory debate, aiming to improve the efficiency and legitimacy of public policies for a more balanced competitive environment.

¹⁸ For example, the duty to disclose arbitrators in arbitration proceedings. According to Article 14 of Law 9307/1996 (the Brazilian Arbitration Law), “*people appointed as arbitrators, have the duty to disclose, before accepting the role, any fact that denotes justified doubt as to their impartiality and independence.*”