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**Information Sharing in Competition Policy – Note by Brazil**

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## Brazil

### Information sharing in competition policy: CADE's perspective<sup>1</sup>

1. Given the growing number of investigations related to the exchange of competitively sensitive information, the Administrative Council for Economic Defense (CADE) prepared a draft of the Guidelines for Competitors' Cooperation, submitted to Public Consultation on 18 March 2026. Particularly, one of the chapters addresses the challenges that resulted from the dissemination of sharing strategies among competitors<sup>2</sup>.
2. The consultation is aimed at gathering subsidies from the lawyers' community, companies, and public agencies to consolidate the parameters for the characterisation of conduct, reassuring that CADE's approaches remain based on transparency, predictability, and legal certainty.
3. This initiative seeks to meet the need of the Brazilian antitrust community to classify specific sharing practices as anticompetitive conducts. This is so due to the varied hypotheses where such exchanges result in competition benefits.
4. In Brazil, the exchange of competitively sensitive information can be investigated as a standalone infringement, even though its prevalent occurrence in the current jurisprudence is as an instrument of horizontal agreements.
5. This type of information exchange can lead to coordinated effects between competitors. Thus, companies' independent behaviour in the market can be set aside, as the coordination between them is facilitated through this sharing. By reducing the uncertainty inherent to competition, the exchange of information can distort the market.
6. Since 2016, CADE has launched investigations where this practice is the only anticompetitive conduct identified in the case<sup>3</sup>. In this regard, the classification of the exchange as an infringement to be investigated by the competition authority considers three characteristics: (1) the information exchanged, (2) the strategies that operationalise the exchange, and (3) the market affected<sup>4</sup>.

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<sup>1</sup> This paper was written by Felipe Roquete, Deputy Superintendent of the Office of the Superintendent General at CADE. It was translated by Izabel Cristina Medina Brum and proofread by Karine Neumann Gonçalves, in-house translators at the International Unit of CADE.

<sup>2</sup> The draft is available (in Portuguese) at <https://brasilparticipativo.presidencia.gov.br/processes/guiacolaboracao>.

<sup>3</sup> The following may be considered competitively sensitive information, among others: (1) prices, discounts, and general pricing strategies, (2) cost structure, (3) capacity levels and expansion plans, (4) terms and contractual conditions with clients, suppliers, creditors, distributors, resellers, and other contractual counterparts, including pricing, deadlines and payment or supply conditions, non-restrictive obligations (e.g. exclusivity, preference, non-competitiveness, non-requiring, etc.), and other relevant obligations, (5) intellectual property, production process, and business and industrial confidentialities, (6) strategies and initiatives of R&D, (7) customisation of technologies and technical specification of goods or services, (8) production, sale, and distribution volumes, (9) productive, idle, and installed capacity levels and expansion plans, (10) marketing strategies, (11) wages and benefits offered to employees; (12) confidential information on the financial and economic situation and non-public financial indicators.

<sup>4</sup> The exchange of information has been receiving the attention of authorities of the competition defence in other jurisdictions. In the European Union, the labour market is the focus of recent

7. As a general rule, the following characteristics were identified in the cases under investigation:

Types of information	Exchange strategies	Affected market <sup>5</sup>
Granular		
Individualised		Transparency
Non-anonymous	Repeated/frequent	Symmetry between competitors
Accuracy	In-person or technology-mediated <sup>8</sup>	Goods/services homogeneity
Present/future <sup>6</sup>	Non-public environment	Maturity
Representative market	Monitoring	Innovation level
Non-public data <sup>7</sup>	Institutionalisation	Merger <sup>9</sup>
Key competitive variables		
Inputs for decision-making		

8. It is worth mentioning that these are by way of example, on a case-based analysis where there are many affected markets, in addition to strategies used for information sharing. Thus, one should not assume that all these characteristics will be verified in every case.

9. In this vein, it is fundamental to record the use and destination of the information to enable the analysis of the factual context of the sharing and verify whether the information oriented activities and competitive strategies. Hence, it includes the moment, extension, and details of the settings, as well as the influence of the information accessed or shared.

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concerns (see Ana Sofia Rodrigues, Marta Rocha, Sónia Moura, Anticompetitive Agreements in Labour Markets: a Survey of the most Recent Developments in EU Competition Law, *Journal of European Competition Law & Practice*, Volume 15, Issue 2, March 2024, Pages 141–149). Available at: <https://doi.org/10.1093/jecclap/lpad068>).

<sup>5</sup> The identification of the level of competitive sensitivity of certain information, regarding their strategic and competitive relevance, must be made in the light of the context and markets related. Thus, information that are not considered competitively sensitive in certain markets or contexts, may otherwise be considered so in others.

<sup>6</sup> The proper time lag between the occurrence, collection, and information disclosure, which is able to reduce the sensitiveness of the information, depends directly on the characteristics of the markets involved.

<sup>7</sup> Overall, information publicly accessible will not be considered competitively sensitive, such as those disclosed both to shareholders and markets, and the ones shared by regulatory agencies or public databases. However, the mere public disclosure of a piece of competitively sensitive information is not enough to extinguish the competition risk linked to its sharing or dissemination.

<sup>8</sup> Particularly, the exchanges become more effective in diminishing uncertainties regarding competitors' activities when simulated by automated tools for monitoring and data consolidation.

<sup>9</sup> As a general rule, the risk increases as these elements are identified (1) the possibility and probability of obtaining competitive advantages through information sharing; (2) the dimension of this competitive advantage, given that other players cannot access the information in question, and; (3) the chance to prevent or restrict the range of information sharing either by reducing its amount or establishing internal restrictive mechanisms in that regard.

10. Despite the ongoing investigations, the Tribunal of CADE has not reviewed cases of exchange of competitively sensitive information as a standalone infringement yet.
11. On the whole, the SG/ CADE has identified that this exchange of competitively sensitive information has been used as a strategy to mitigate risks associated with the drafting and execution of an explicit collusive agreement. In other words, cases under investigation present robust evidence that the exchange of information about key competitive variables in the market lead to results similar to those obtained by companies that are parties to explicit agreements<sup>10</sup>, that is, the coordination between them.
12. Therefore, cases at hand have been classified as violations and the per se rule should be applied, given the new way of coordination among rivals<sup>11</sup>.
13. Nonetheless, it is worth highlighting that the development of the jurisprudence is still in course, reason why the SG interpretation will still be analysed by the Tribunal of CADE.
14. In Brazil, the participation of associations in the sector and/or advisory companies by facilitating the implementation of information sharing was already detected in cases related to the exchange of competitively sensitive information. Such facilitation occurred by the deployment of infrastructure to operationalise the sharing, organisation, consolidation, treatment, and dissemination of data.
15. Nevertheless, the participation of associations and/or advisories is not a *sine qua non* for the anticompetitive conduct finding. It has only been observed in cases where companies already interacted frequently in institutional representative forums.
16. The development and dissemination of new technology – whether new algorithms or AI-based tools – significantly impact the way competition authorities are to deal with the exchange of competitively sensitive information.
17. One aspect of the impact concerns the way it might be implemented through the use of new technologies. The use of algorithmic or AI-based mechanisms will transform the exchange of sensitive information production and treatment, boosting the anticompetitive potential of such sharing. This is due to various characteristics, such as granularity<sup>12</sup>, accuracy, and representativity, which define the competitive sensitivity of information relatively to the future and are bound to be boosted by the use of technology. Thus, the sharing will be more relevant for the companies' effective decision-making<sup>13</sup>.

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<sup>10</sup> Experimental research has already identified the anticompetitive effects of the exchange of competitively sensitive information, via price adjustment mechanisms (see David P. Byrne, Nicolas de Roos, Matthew S. Lewis, Leslie M. Marx, and Xiaosong Wu. Asymmetric Information Sharing in Oligopoly: A Natural Experiment in Retail Gasoline. *Journal of Political Economy* 2025 133: 7, 2031-2088. Available at: <https://www.journals.uchicago.edu/doi/10.1086/734872>).

<sup>11</sup> See Peter C. Carstensen and Annkathrin Marschall, Pooling and Exchanging Competitively Sensitive Information Among Rivals: Absolutely Illegal Not Just Unreasonable, 92 U. Cin. L. Rev. 335 (2023). Available at: <https://scholarship.law.uc.edu/uclr/vol92/iss2/2>.

<sup>12</sup> Importantly, even the anonymisation of information might not mitigate coordination risks arising from the exchange of competitively sensitive information (see Rosa Abrantes-Metz, Pedro Erdei-Gonzaga, Albert Metz, Ben Wagner, Can Exchanges of Anonymized Disaggregated Data Facilitate Collusion?, *Journal of Competition Law & Economics*, 2025; nhaf024. Available at: <https://doi.org/10.1093/joclec/nhaf024>).

<sup>13</sup> For mapping the complexities in the definition of the types of information exchange that allow coordination, see Yu Awaya and Krishna Vijay. Information Exchange in Cartels. *The RAND*

18. Similarly, algorithmic or AI-based mechanisms will certainly modify the strategies for information exchange, allowing the implementation of more frequent and effective monitoring strategies, and finally, the institutionalisation of sharing through IT architecture.

19. Another aspect is related to the competition authorities' investigation strategies. As the implementation of the practices through algorithmic or AI-based mechanisms progresses, there will be investigation challenges concerning both their identification and the evidential stage.

20. In this regard, the standard of proof will need to be adapted to cover the use of algorithmic or AI-based mechanisms to implement the exchange of competitively sensitive information. The characteristics of the algorithm, architecture of the tool, and data repository become the main sources of evidence of information sharing.

21. Likewise, companies will need to create mapping mechanisms for competition risks, in case they decide to use technological tools that enable the access to competitively sensitive information by rivals. In the absence of this compliance by design of technologies, it would be feasible to defend the strict liability of companies that use such tools for decision-making.

22. It is possible to identify the exchange of competitively sensitive information, even without in-person meetings and/or the operations of working groups. Brazilian case law has shown that anticompetitive information exchanges begin through initiatives that include in-person meetings and/or the creation of informal working groups. However, this stage seems to work as a strategy to establish bonds of trust and security among the participants. Later, they tend to choose technology tools (websites, messaging apps, or repositories) to keep the exchange of information on an institutionalised basis, using monitoring initiatives.

23. Despite not having cases on this matter that have already been reviewed in Brazil, the administrative proceedings point to the challenge – in terms of standard of proof – related to the existence of the conduct.

24. The premise of the investigation unit (SG/CADE) is to create a body of evidence with granular characteristics of the information shared, indicating its competition sensitivity. Additionally, and whenever possible, it should mention the strategies of exchange and the use of information for decision-making by the companies involved in the conduct.

25. CADE's case law has already demonstrated the exchange of information through (1) collaborators' reports (cease and desist agreements), (2) e-mails, (3) meeting minutes, (4) messaging apps, (5) spreadsheets, (6) websites used as repositories of information exchange, among others.

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Journal of Economics, vol. 51, no. 2, 2020, pp. 421–46. JSTOR. Available at: <http://www.jstor.org/stable/45380710>.

Table 1. Investigations on the Exchange of Competitively Sensitive Information in Brazil

Case No. 08700.006386/2016-53 <sup>1</sup>	Aftermarket of auto parts (IAM).	Investigation concluded, with recommendation for conviction. Pending judgement by the Tribunal.
Case No. 08700.004633/2015-04 <sup>2</sup>	Offshore currency market involving pairs of foreign currencies and non-deliverable forwards Real/BRL NDF.	Investigation concluded, with recommendation for conviction. Pending judgement by the Tribunal.
Case No. 08700.008182/2016-57 <sup>3</sup>	Onshore currency market in the Brazilian territory, involving the Brazilian Real (BRL).	Under investigation.
Case No. 08700.000171/2019-71 <sup>4</sup>	International insurance and reinsurance brokerage market for aviation and aerospace, and supporting services, with potential effects in Brazil.	Investigation concluded, with recommendation for conviction. Pending judgement by the Tribunal.
Case No. 08700.004548/2019-61 <sup>5</sup>	Brazilian labour market of the industry of health care products, equipment, and services.	Under investigation.
Case No. 08700.000992/2024-75 <sup>6</sup>	Brazilian labour market of companies in the consumer goods sector.	Under investigation.
Case No. 08700.001198/2024-49 <sup>7</sup>	MNCs Brazilian market.	Under investigation.
Case No. 08700.000478/2024-30 <sup>8</sup>	R&D in the international market of light automotive vehicles for passenger transport in Brazil.	Under investigation.
Case No. 08700.006280/2024-60 <sup>9</sup>	Pricing algorithm in fuel retail market.	Under investigation (Cease and Desist Agreement signed with the company developer of the pricing algorithm).
Case No. 08700.007894/2023-88 <sup>10</sup>	Air passenger transport market.	Under investigation.

Notes:

<sup>1</sup> Public access here: [https://sei.cade.gov.br/sei/modulos/pesquisa/md\\_pesq\\_processo\\_exibir.php?0c62g277GvPsZDAxAO1tMiVcL9FcFMR5UuJ6rLqPEJuTUu08mg6wxLt0JzWxCor9mNcMYP8UAjTVP9dxRfPBcdosLisLk49jlp0Rhy3QNUZKEc-rx9oNfcBskOLCbvY](https://sei.cade.gov.br/sei/modulos/pesquisa/md_pesq_processo_exibir.php?0c62g277GvPsZDAxAO1tMiVcL9FcFMR5UuJ6rLqPEJuTUu08mg6wxLt0JzWxCor9mNcMYP8UAjTVP9dxRfPBcdosLisLk49jlp0Rhy3QNUZKEc-rx9oNfcBskOLCbvY)

<sup>2</sup> Public access here: [https://sei.cade.gov.br/sei/modulos/pesquisa/md\\_pesq\\_processo\\_exibir.php?KOXi3eEqJC73dCc3G\\_MH5w73G76ivtXYDDG65Jr7vK4fhNNDrmFDgAfJTIfrN8\\_ywCudVlgCNGrOiNgXFAenRar3xUS7-sicrFxZ4ImaieImm9zEuFgPK5nJUeOoyXo](https://sei.cade.gov.br/sei/modulos/pesquisa/md_pesq_processo_exibir.php?KOXi3eEqJC73dCc3G_MH5w73G76ivtXYDDG65Jr7vK4fhNNDrmFDgAfJTIfrN8_ywCudVlgCNGrOiNgXFAenRar3xUS7-sicrFxZ4ImaieImm9zEuFgPK5nJUeOoyXo)

<sup>3</sup> Public access here: [https://sei.cade.gov.br/sei/modulos/pesquisa/md\\_pesq\\_processo\\_exibir.php?0c62g277GvPsZDAxAO1tMiVcL9FcFMR5UuJ6rLqPEJuTUu08mg6wxLt0JzWxCor9mNcMYP8UAjTVP9dxRfPBccwmuMTP-WWZ\\_CS0iP5otV2iPI\\_xbr3kF-etCr4Dhifo](https://sei.cade.gov.br/sei/modulos/pesquisa/md_pesq_processo_exibir.php?0c62g277GvPsZDAxAO1tMiVcL9FcFMR5UuJ6rLqPEJuTUu08mg6wxLt0JzWxCor9mNcMYP8UAjTVP9dxRfPBccwmuMTP-WWZ_CS0iP5otV2iPI_xbr3kF-etCr4Dhifo)

<sup>4</sup> Public access here: [https://sei.cade.gov.br/sei/modulos/pesquisa/md\\_pesq\\_processo\\_exibir.php?0c62g277GvPsZDAxAO1tMiVcL9FcFMR5UuJ6rLqPEJuTUu08mg6wxLt0JzWxCor9mNcMYP8UAjTVP9dxRfPBcf231Myvr-LUqJhKTstt8S1t5McbUwyAWiJ0Rb98WvRE](https://sei.cade.gov.br/sei/modulos/pesquisa/md_pesq_processo_exibir.php?0c62g277GvPsZDAxAO1tMiVcL9FcFMR5UuJ6rLqPEJuTUu08mg6wxLt0JzWxCor9mNcMYP8UAjTVP9dxRfPBcf231Myvr-LUqJhKTstt8S1t5McbUwyAWiJ0Rb98WvRE)

<sup>5</sup> Public access here: [https://sei.cade.gov.br/sei/modulos/pesquisa/md\\_pesq\\_processo\\_exibir.php?0c62g277GvPsZDAxAO1tMiVcL9FcFMR5UuJ6rLqPEJuTUu08mg6wxLt0JzWxCor9mNcMYP8UAjTVP9dxRfPBcbNWPzZPeCksBINHq0njZaqDyuZ-RXFK\\_z9bmZJIDnEL](https://sei.cade.gov.br/sei/modulos/pesquisa/md_pesq_processo_exibir.php?0c62g277GvPsZDAxAO1tMiVcL9FcFMR5UuJ6rLqPEJuTUu08mg6wxLt0JzWxCor9mNcMYP8UAjTVP9dxRfPBcbNWPzZPeCksBINHq0njZaqDyuZ-RXFK_z9bmZJIDnEL)

<sup>6</sup> Public access here: [https://sei.cade.gov.br/sei/modulos/pesquisa/md\\_pesq\\_processo\\_exibir.php?1MQnTNkPQ\\_sX\\_bghfgNtnzTLgP9Ehbk5UOJvmyzesnbE-Rf6Pd6hBcedDS\\_xdwMQMK6\\_PgwPd2GFLJjH0OLyFSPkQ5YsxmAljMvp9glFzawRki0onIIMD7FJARFsAr0J](https://sei.cade.gov.br/sei/modulos/pesquisa/md_pesq_processo_exibir.php?1MQnTNkPQ_sX_bghfgNtnzTLgP9Ehbk5UOJvmyzesnbE-Rf6Pd6hBcedDS_xdwMQMK6_PgwPd2GFLJjH0OLyFSPkQ5YsxmAljMvp9glFzawRki0onIIMD7FJARFsAr0J)

<sup>7</sup> Public access here: [https://sei.cade.gov.br/sei/modulos/pesquisa/md\\_pesq\\_processo\\_exibir.php?1MQnTNkPQ\\_sX\\_bghfgNtnzTLgP9Ehbk5UOJvmyzesnbE-Rf6Pd6hBcedDS\\_xdwMQMK6\\_PgwPd2GFLJjH0OLyFcD4QXzX890HYlfB7s9p-3KtcL2Ds5MAOnjU2oLzNpdq](https://sei.cade.gov.br/sei/modulos/pesquisa/md_pesq_processo_exibir.php?1MQnTNkPQ_sX_bghfgNtnzTLgP9Ehbk5UOJvmyzesnbE-Rf6Pd6hBcedDS_xdwMQMK6_PgwPd2GFLJjH0OLyFcD4QXzX890HYlfB7s9p-3KtcL2Ds5MAOnjU2oLzNpdq)

<sup>8</sup> Public access here: [https://sei.cade.gov.br/sei/modulos/pesquisa/md\\_pesq\\_processo\\_exibir.php?1MQnTNkPQ\\_sX\\_bghfgNtnzTLgP9Ehbk5UOJvmyzesnbE-Rf6Pd6hBcedDS\\_xdwMQMK6\\_PgwPd2GFLJjH0OLyFTmF7nd\\_MP-mhPV-9SkYaL2PYJt6AodyTatXQ3wfl9RV](https://sei.cade.gov.br/sei/modulos/pesquisa/md_pesq_processo_exibir.php?1MQnTNkPQ_sX_bghfgNtnzTLgP9Ehbk5UOJvmyzesnbE-Rf6Pd6hBcedDS_xdwMQMK6_PgwPd2GFLJjH0OLyFTmF7nd_MP-mhPV-9SkYaL2PYJt6AodyTatXQ3wfl9RV)

<sup>9</sup> Public access here: [https://sei.cade.gov.br/sei/modulos/pesquisa/md\\_pesq\\_processo\\_exibir.php?1MQnTNkPQ\\_sX\\_bghfgNtnzTLgP9Ehbk5UOJvmyzesnbE-Rf6Pd6hBcedDS\\_xdwMQMK6\\_PgwPd2GFLJjH0OLyFd26YdFSuKaiR\\_Yh82SFNFu79XelC6k2KGI2r6unOyRP](https://sei.cade.gov.br/sei/modulos/pesquisa/md_pesq_processo_exibir.php?1MQnTNkPQ_sX_bghfgNtnzTLgP9Ehbk5UOJvmyzesnbE-Rf6Pd6hBcedDS_xdwMQMK6_PgwPd2GFLJjH0OLyFd26YdFSuKaiR_Yh82SFNFu79XelC6k2KGI2r6unOyRP)

<sup>10</sup> Public access here: [https://sei.cade.gov.br/sei/modulos/pesquisa/md\\_pesq\\_processo\\_exibir.php?1MQnTNkPQ\\_sX\\_bghfgNtnzTLgP9Ehbk5UOJvmyzesnbE-Rf6Pd6hBcedDS\\_xdwMQMK6\\_PgwPd2GFLJjH0OLyFeDCE3AczIrKvKcNvGq7qO8PSnpxiT048zY67oHr4Ph](https://sei.cade.gov.br/sei/modulos/pesquisa/md_pesq_processo_exibir.php?1MQnTNkPQ_sX_bghfgNtnzTLgP9Ehbk5UOJvmyzesnbE-Rf6Pd6hBcedDS_xdwMQMK6_PgwPd2GFLJjH0OLyFeDCE3AczIrKvKcNvGq7qO8PSnpxiT048zY67oHr4Ph)