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Organisation de Coopération et de Développement Economiques  
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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
COMPETITION COMMITTEE**

DAF/COMP(2005)19  
Unclassified

**ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN BRAZIL**

-- 2004 --

*This report is submitted by the Brazilian Delegation to the Competition Committee FOR INFORMATION at its forthcoming meeting (1-2 June 2005).*

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## **Executive Summary**

### **I. Changes to competition laws and policies, proposed or adopted**

#### **1. Summary of new legal provisions of competition law and related legislation**

1. As per Ordinance n. 14/2004, SDE sets the main guidelines for designing a compliance program, defining the requirements and conditions for SDE to issue the corresponding Compliance Certificate. The Compliance Certificate is in fact a 'quality seal' from SDE that will be issued if the program is in line with the legal directives described in the Ordinance. In summary, this certificate attests that the company has a competition compliance program in force, and that the senior management has set certain directives to promote a competition culture and environment within the company's market. Besides, the Ordinance establishes that SDE may suggest to CADE that the penalties are reduced whenever the respondent firm has a Compliance Program. It is worth mentioning that even though an Ordinance would of course not be needed for companies to adopt compliance programs, the goal is to encourage companies to establish in-house competition policies that address specific needs of the companies.

2. SDE has also issued a new ordinance that regulates the criteria for fines to be applicable to companies that fail to attend requests issued by the Secretariat. Ordinance n. 15/2004 disciplines the administrative proceedings for the enforcement by SDE of the sanctions listed on article 26 of the Brazilian antitrust law, which states that the refusal, omission, misrepresentation or undue delay in providing information or documents to the Brazilian Competition Policy System (BCPS) or to any governmental body applying the law is an infringement that may be sanctioned with a fine.

3. Jointly, SDE and SEAE issued a new ordinance (Ordinance MF/MJ n° 8, from February, 2<sup>nd</sup>, 2004) which added a new category of cases that are now eligible for the simplified procedure, which are those where the merging parties' turnover within Brazil is less than R\$ 400,000,000.00 reais (aprox. US\$ 133,000,000.00). In addition, as of January 2004, SEAE and SDE informally instituted a "Joint Procedure for Merger Review" that has also been significantly expediting the analysis. Immediately after the submission, staff members of both Secretariats started working together, with more or less intensity depending on the complexity of the case. Thus, when the case reaches SDE, the report will be immediately issued, as the analysis will have been already done together with SEAE. Both initiatives were a very important step to reduce the time devoted by the agencies to unimportant cases.

4. CADE adopted Resolution n° 36, of May 19, 2004, which further develops the guidelines for establishing fines in cases of untimely notifications of mergers. It determines that a pecuniary fine shall be imposed upon the acknowledged untimely submission of a merger subject to BCPS's review. The fines, which range from 60,000 Tax Reference Units (UFIR) to 6,000,000 UFIR, might be increased according to the number of days of delay, conditions of approval of the case under review, lack of voluntary submission, transaction value and conditions of the petitioners. The UFIR existed until October 26<sup>th</sup>, 2000, when its value was updated according to inflation. Since then fines are referred to in Reais in CADE's decisions, based on the last UFIR value (each UFIR corresponds to R\$ 1,0641, approx. US\$ 0,38).

5. CADE had also issued Resolution n° 37, of October 20, 2004, which defined rules for the payment of procedural fees assessed on cases under CADE's authority, and was revoked by Resolution n° 38, of January 31, 2005, which has similar content.

#### **2. Other relevant measures, including new guidelines**

6. There are no other relevant measures.

### 3. *Government proposals for new legislation*

7. Representatives of the three antitrust governmental bodies have been discussing, since 2000, important amendments to the Brazilian antitrust law. A new structure for the BCPS is being designed in order to avoid some duplication of current activities, with, basically, a new composition of functions, which gives to SEAE the responsibility for competition advocacy of the System, as well for the relationship between the BCPS and the regulatory agencies and monitoring markets, specially regulated markets; the competition department of SDE will be incorporated by CADE and will carry out the merger review analysis and investigation of conduct cases; and CADE keeps its attribution as of an independent tribunal. The name CADE will be kept and it will be an independent agency linked to the Minister of Justice. It will have both the attributions of investigating and judging the cases – the investigation will be carried by a Directorate General, which head will have a two-year mandate. The Tribunal's president and commissioners (6) will have four-year non-renewable mandate, instead of a two-year renewable once, as it is now.

8. The amendments will also introduce some new important features, such as pre-merger notification system, the improvement of the notification criteria (increasing the threshold) and early termination for simple cases.

9. Due to the pre-merger analysis, the BCPS will emit its opinion in relation to merger cases, which may fulfil the notification criteria, before its consummation. In this way, involved parties are stimulated to maximize cooperation for expediting the analysis, and at the same time, the generation of alternatives to solve market competition problems that might occur are highly increased. Authorities will have a deadline to conclude the examination of the cases.

10. Together with the Bill for amendments to the Brazilian antitrust law, it is being proposed the creation of a career for technicians in competition and regulation.

11. On competition advocacy, government has sent to Congress new draft legislation that will require all regulatory agencies to submit new rules and regulations to the Ministry of Finance for review as part of their normal public comments phase. There has also been a clear demand from the Minister of Finance for better advice for his discussions of regulatory issues. Combined with the proposed concentration of merger review and conduct investigation activities proposed in the new competition law, these new developments make it clear that SEAE's main role in the future will be competition advocacy, leaving the task related to the enforcement of the competition law to the new CADE.

## II. **Enforcement of competition laws and policies**

### 1. *Action against anticompetitive practices, including agreements and abuses of dominant positions*

#### a) *Summary of activities of:*

#### Competition authorities

12. During 2004, 37 new cases of possible anticompetitive practices arrived at CADE, while 42 of the same kind were judged by the Council. Thereof, 20 were found guilty (10 were condemned by cartel actions and the other 10 for abuse of dominance activities) and resulted in the imposition of fines and other sanctions. The total of fines imposed on anticompetitive practices in 2004 was of R\$ 5,645,764.59, approx. US\$ 1,875,669.29. The remaining 22 cases were filed usually due to acquittal or to prescription.

13. Allegations of anticompetitive practices were present in the following sectors: food and beverages industries (3); Chemical and Petrochemical industries (2); Pharmaceutical and hygiene industries (2); informatics and telecommunications industries (2); civil construction (3); transports (4); health services (12); financial services (1); gas stations cartel (1); retail commerce (4); essential and infrastructure services (1); others (8).

14. There were 53 preliminary investigations to be closed, presented to CADE by SDE. CADE filed 52 and required SDE to continue the investigation of 01 case.

15. SDE concluded 37 investigations and sent the cases to CADE for a decision. Among these, 23 were reports recommending the extinction of the cases, since no anticompetitive conduct was found, 12 were administrative processes where SDE found that the parties were guilty and recommended the application of a sanction, and 2 other administrative processes where SDE suggested the celebration of an agreement where the parties would commit to cease the practice (“cease and desist agreement”).

#### 2004 Conducts

Year	Conduct Cases Judged	Conduct Cases Condemned	Review of the closing of a preliminary investigation	Review of cease-and-desist orders
2004	42	20	53	7

#### Type of Conducts analysed by CADE

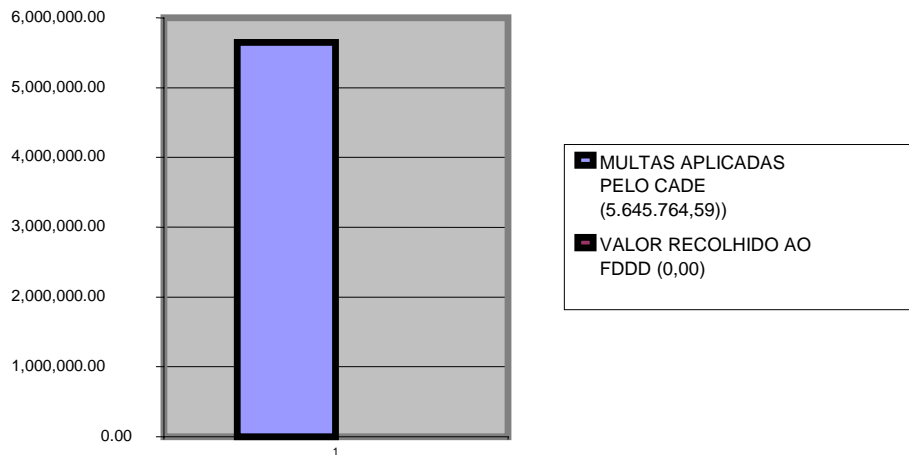
2004	horizontal agreements	vertical agreements	abuse of dominance
Cases concluded	23	0	19
Total sanctions imposed (R\$)	5 645 764.59		

#### Fines

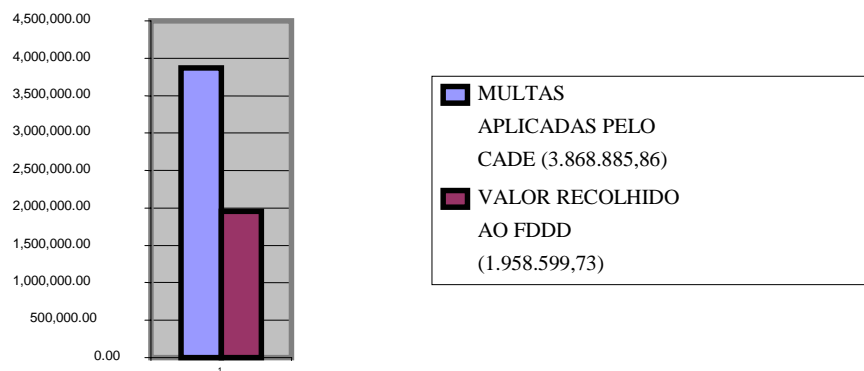
16. There are two main types of fines assessed by CADE: (i) fines collected on a Merger Review, due to untimely notification, and (ii) fines imposed when a company is pledged guilty for an anticompetitive conduct. In case of merger fines, CADE has been successful in collecting them. However, in conduct cases, the amount of fines collected is still quite low, as almost all of the condemned cases are under appeal in the Judiciary (see graphic below - the blue bar refers to fines assessed and red bar refers to fines collected):

Year	Assessed	Collected	% of fines collected /assessed
2004	R\$ 9,514,650.45	R\$ 1,958,599.73	20,58%

**AMOUNT (R\$) OF FINES OF CADE RELATED TO CONDUCT CASES ON 2004**



**AMOUNT (R\$) OF FINES RELATED TO MERGER CASES ON 2004**



17. In order to increase the collection of fines and increase the effectiveness of penalties, CADE, as well as SDE, are currently working closer to the Judiciary. This work includes both a task force to defend CADE and SDE decisions, as well as a competition advocacy work, by means of workshops and conferences for Judges, General Attorneys and Public Prosecutors.

Courts

18. The list below illustrates the existing legal suits where CADE is a party, either as an author, defendant or intervenient party, until November 2004:

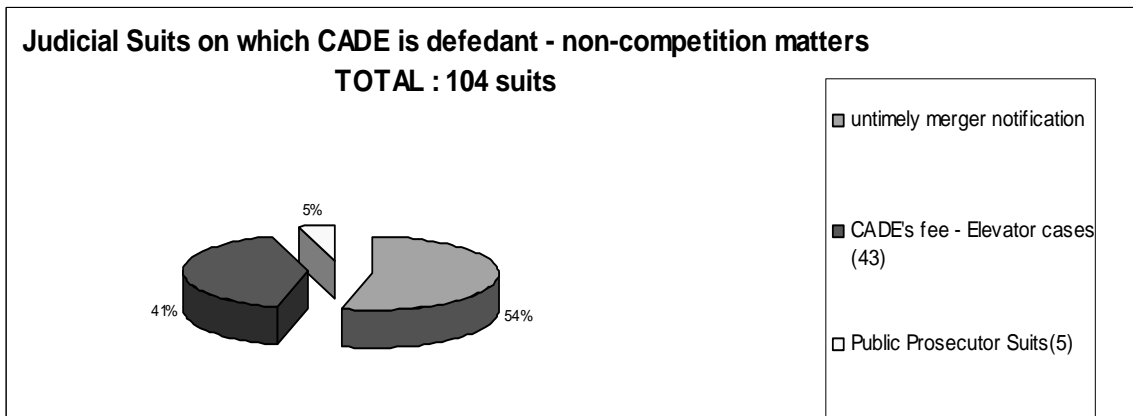
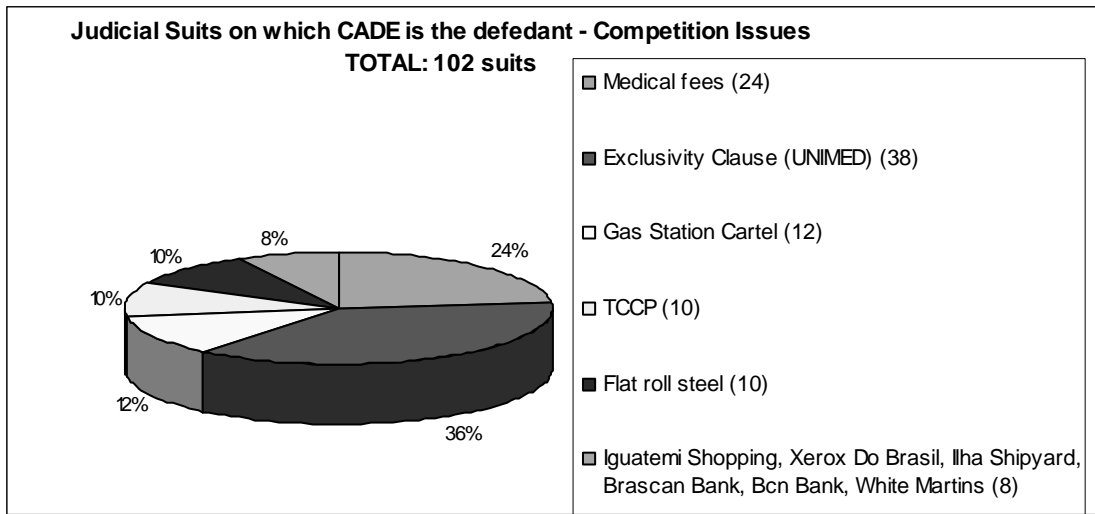
<b>Judicial Instance</b>	<b>Number of Process*</b>
First Instance Court	279 suits
Court of Appeals	240 appeals
Superior Court (STJ – non-constitutional matters)	12 suits
Supreme Court (STF – Constitutional issues)	1 suit
Judicial Execution of Decisions	129
Others	67 suits (special courts and labour issues)
<b>TOTAL</b>	<b>728</b>

(\*) Not including the closed processes

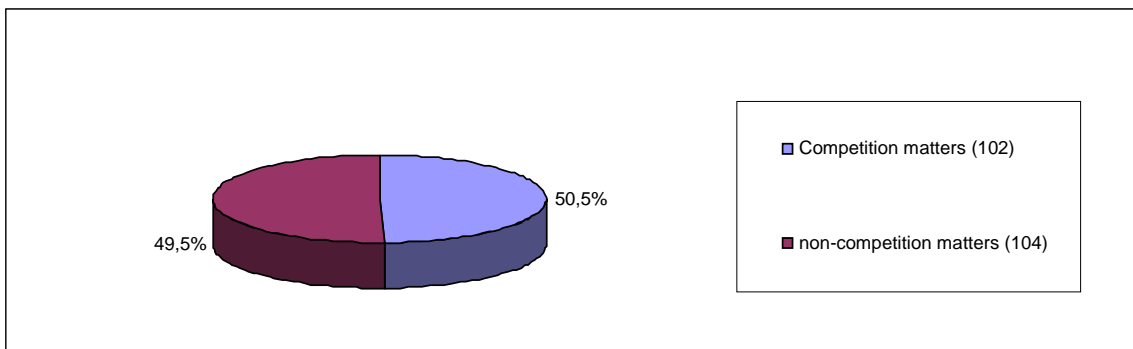
19. Among these suits, the most frequent subjects discussed are:

- medical Fees;
- exclusivity clauses (health sector);
- cease and desist Agreements (tccp);
- gas station and flat-rolled steel cartels;
- Iguatemi Shopping Center;
- Xerox do Brasil;
- Eisa - Ilha Shipyard;
- Brascan Bank;
- BCN Bank;
- White Martins;
- untimely notification fines;
- CADE's fees.

CADE's Judicial Suits Statistics



**Comparative Charter of Judicial Suits as per type of matter – CADE as a Defendant**



b) *Summary of significant cases.*

Cartels

20. From the total of 42 cases judged by CADE, above mentioned, 23 cases referred to cartel, ten of them were found guilty; 13 cases were considered not guilty, and the cases were consequently closed.

**1. *Administrative Procedure n°08012.008024/1998-40***  
*(328 Ordinary Session, 25/08/2004)*

Denouncer: Secretariat of Economic Law *ex officio*

Defendant: Microsoft Informática Ltda, TBA Informática Ltda.

Reporting Commissioner: Roberto Pfeifer

21. **Abstract:** Complaint that Microsoft conceded exclusivity to TBA Informática, hindering the access of other computer companies to contracts signed with government agencies and also the imposition of territorial restrictions by Microsoft.

22. **Summary:** Microsoft does not sell its products directly to final consumers, but through partners, who are responsible for the licensing and commercialization of the products. TBA is one such partner.

23. In this case, Microsoft was accused of creating obstacles for the qualification of new partners who would sell its products and directing all its sales to one partner, TBA. Microsoft alleged that it had no market power to damage competition and that TBA and Microsoft were not competitors, TBA was a mere distributor of Microsoft's products.

24. The Secretariat of Economic Monitoring considered that the legal framework for the acquisition of software by government agencies facilitated the use of dominant position in to spheres of the production process. It recommended a number of actions to be taken to solve this problem.

25. The Secretariat of Economic Law suggested the conviction of both Defendants, the application of a fine, the elimination of the territorial restrictions imposed by Microsoft and the publication of the final decision in the most renowned newspaper of the region. CADE's Attorney General's Office agreed with the opinion of SDE.

26. **Decision:** The Council unanimously considered the Defendants as subject to article 20, subsections I and IV, combined with article 21, subsections IV and VIII, from Law n° 8.884/94. By majority, a fine was imposed in the terms of the Reporting Commissioner's vote. Dissenting from the majority were Commissioners Luiz Fernando and Delorme Prado.

**2. *Administrative Procedure n°08012.003208/1999-85***  
*(323 Ordinary Session, 02/06/2004)*

Denouncer: Department of Justice of the State of Pernambuco

Defendants: Union of Retail Stores of Petroleum-derivative products and Convenience Stores of the State of Pernambuco – Sindicombustíveis/PE and its controllers Romildo Ferreira Leite and Joseval Alves Augusto.



27. **Abstract:** Practice of cartel to fix prices on the part of gas stations, influenced by the Union Sindicombustíveis.

28. **Summary:** The Complaint came from the Department of Justice of the State of Pernambuco, who noticed a uniform, abnormal and inexplicable increase in the price of gas in the city of Recife, capital of the State of Pernambuco.

29. Throughout the investigation, it was verified that the majority of the gas stations' prices had an abrupt and uniform increase. Moreover, minutes of meetings in the Union Sindicombustíveis constantly mentioned the prices of gas in the city.

30. The Secretariat of Economic Monitoring (SEAE), the Secretariat of Economic Law (SDE) and CADE's Attorney General's Office suggested the conviction of the Defendants.

31. **Decision:** The Council unanimously decided to consider the Defendants as subject to article 20, subsection I, combined with article 21, subsection II, of the Law n° 8.884/94, convicting the Union Sindicombustíveis to a fine equivalent to 15% of its total revenue, excluding taxes, from the year previous to the instauration of the Administrative Procedure, and the controllers Romildo Ferreira Leite and Joseval Alves Augusto to a fine of 15% of the whole value of the fine imposed to Sindicombustíveis, among other determinations, according to the vote of the Reporting Commissioner.

### **3. Administrative Procedure n° 08012.000677/1999-70**

*(330 Ordinary Session, 15/09/2004)*

Denouncer: Secretariat of Economic Law (SDE) *ex officio*, Secretariat of Economic Monitoring (SEAE)

Defendants: Viação Aérea Rio-Grandense – VARIG S/A, Transportes Aéreos Regionais S/A – TAM, TRANSBRAZIL S/A Linhas Aéreas e Viação Aérea São Paulo S/A VASP, and its administrators Fernando da Cruz Pinto, Rolim Adolfo Amaro, Wagner Canhedo Azevedo e Celso Cipriani, respectively.

Original Reporting Commissioner: Thompson Almeida de Andrade

Current Reporting Commissioner: Luis Fernando Rigato Vasconcellos

32. **Abstract:** Practice of cartel on the part of the Defendants in the civil aviation sector, according to article 20, subsection I, combined with article 21, subsections I and II of the Law n° 8.884/94.

33. **Summary:** All four companies are airlines operating in the market of civil aviation services in Brazil. In January of 1999, the Brazilian Institute of Tourism (EMBRATUR) sent a complaint to SDE about a 30% discount in the price of airfares made by all four firms simultaneously. A few months later, SEAE noticed an increase in airfares in the Rio de Janeiro-São Paulo line of 10% also made simultaneously by all four airlines.

34. The Defendants gave different reasons to explain the conducts mentioned above. Among these are the similarity in costs, the legal framework of the civil aviation sector and that their marginal profits did not increase as a result of the practice.

35. SEAE, SDE and CADE's Attorney General's Office recommended the conviction of the Defendants because they considered the evidences sufficient to characterize a cartel, for there was no other explanation for the uniform and simultaneous price swings.

36. **Decision:** By majority, the Council decided to convict the Defendants for the infraction to the economic order, according to article 20, subsection I, combined with article 21, subsection I and II, of the Law n° 8.884/94. The penalties were: A) a fine of 1% of the total revenue of the Rio de Janeiro-São Paulo route for the year 1999; B) the obligation to present to the Commission of Decision Monitoring of CADE (CAD/CADE) the values of their total revenue for the year 1999 for the application of a daily fine; C) the obligation of not fix and not report its price adjustments; D) publish, at their own expense, the content of CADE's decision in a renowned newspaper for two consecutive days for two weeks; E) Application of a daily fine of R\$ 5.000 if the Defendants do not comply with the above; F) Prove, before CADE, in the period of 60 days, that the above determinations are being complied.

**4. Administrative Procedure n°08012.004860/2000-01**  
(30 Extraordinary Session, 05/10/2004)

Denouncer: Delegacia de Defesa do Consumidor do Distrito Federal – DECON/DF (Agency for Defense of the Consumer of the Federal District)

Defendant: AMV Mota Distribuidora de Gás-ME, AN de Faria Sousa Distribuidora de Gás-ME, Maria de Fátima Rezende de Prado-ME, Trevo Matérias de Construção Ltda., Osvaldo Cruz de Mesquita, Francisco Armínio Bezerra, Armínio Bezerra Filho, Leonardo Carluccio and Maria de Fátima Rezende Prado.

Reporting Commissioner: Ricardo Villas Bôas Cueva

37. **Abstract:** Practice of cartel on the part of the Defendants, according to article 20, subsections I and III, combined with article 21, subsections I, II, and XXIV of the Law n° 8.884/94.

38. **Summary:** The Defendants operate in the market of liquid gas in the city of São Sebastião, in the Federal District. The accusation was that they were fixing identical prices of the 13kg barrel of liquid gas. This case originated in a complaint made by the owner of a competitor firm, who was compelled to practice the same price as the Defendants.

39. Throughout the investigation, the Secretariat of economic Law (SDE) found that the Defendants had a meeting to discuss and fix the price of liquid gas in the region. In a local search, SDE also found that the prices practiced by all Defendants were, in fact, identical.

40. SDE and CADE's Attorney General's Office suggested the conviction of the Defendants.

41. **Decision:** The Council unanimously decided to convict the Defendants for the infraction to the economic order, according to article 20, subsections I and III, combined with article 21, subsection I, II, and XXIV of the Law n° 8.884/94. The penalties were: a fine of 15% of the total revenue of year 2002 for the firms; a fine of 10% of the total value of the fine imposed to the firms to be paid by their owner; the obligation to present to the Commission of Decision Monitoring of CADE (CAD/CADE) the values of their total revenue for the year 2002 for the application of the fine; publish, at their own expense, the content of CADE's decision in a renowned newspaper for two consecutive days for two weeks; application of a daily fine of R\$ 5.000 if the Defendants do not comply with the above; prove, before CADE, in the period of 60 days, that the above determinations are being complied.

**5. Administrative Procedure n°08000.02451/1994-77**  
(337 Ordinary Session, 15/12/2004)

Denouncer: Secretariat of Economic Law – SDE *ex officio*

Defendant: Rede Gasol (Grupo Cascão), Rede Igrejinha, SINPETRO/DF – Sindicato do Comércio Varejista de Derivados de Petróleo do Distrito Federal (Union of Retail Sale of Petroleum Derivatives of the Federal District).

Reporting Commissioner: Roberto Augusto Castellanos Pfeiffer

42. **Abstract:** Practice of cartel to impede the entry of a competitor in the market and agreement for the non commercialization of special diesel oil, according to article 20, subsection I, and article 21, subsections II and X of the Law n° 8.884/94.

43. **Decision:** The Council unanimously decided that the Defendants were subject to article 20, subsections I, II e IV, combined with article 21, subsections II, IV, V e X, of the Law n° 8.884/94, imposing, to each Defendant a fine in the value of 5% of its total revenue for the reason of limiting competition and impeding the entry of a competitor in the market, and only to Sinpetro/DF, a fine in the value of 5% of its total revenue for stopping the sale of diesel oil, besides other determinations in the terms of the Reporting Commissioner's vote.

**6. Administrative Procedure n°08012.003664/2001-92**  
(338 Ordinary Session, 19/01/2005)

Denouncer: Ciefas – Comitê de Integração de Entidades Fechadas de Assistência à Saúde (Integration of Closed Entities of Health Assistance Committee)

Defendant: Coopanest – CE – Cooperativa dos Médicos Anestesiologistas do Ceará (Cooperative of Anesthesiologist of the State of Ceará)

Reporting Commissioner: Luiz Alberto Esteves Scaloppe

44. **Abstract:** Fixation of a table of prices of services performed through the cooperative.

45. **Summary:** The Denouncer accused the Defendant of influencing the prices charged by doctors in the state of Ceará by imposing a table of prices and the obligation that the contracts of anaesthesiology services be made only through the cooperative.

46. The Defendant claimed that filiation to the cooperative is not compulsory and that there is no determination of prices. It also alleged that the Cooperative does not dominate the market, but only unite the professionals and, thus it does not exercise dominant position.

47. The Secretariat of Economic Law (SDE) concluded that the imposition of a table of prices had the potential to damage competition and, consequently, was subject to article 20, subsections I and IV, combined with article 21, subsection II of the Law n° 8.884/94. However, it found that the fact that contracts were made through the cooperative was not a infraction to the economic order. CADE's Attorney General's Office agreed with SDE.

48. **Decision:** By majority, the Council decided that there was no infraction to the economic order by the part of the Defendant and so it decided for the closing of the case. Dissenting from the majority were

Commissioners Luiz Alberto Esteves Scaloppe and Ricardo Villas Bôas Cueva, who considered the Defendant subject to article 20, subsection I and II and article 21, subsection II, of the Law n° 8.884/94.

**7. *Administrative Procedure n°08012.005779/2001-01***  
*(338 Ordinary Session, 19/01/2005)*

Denouncer: Aliança Metropolitana – RJ Cooperativa de Trabalho Médico (Cooperative of Medical Work)

Defendant: Unimed São Gonçalo – Niterói, Sociedade Cooperativa de Serviços Médicos e Hospitalares (Cooperative Society of Hospital and Medical Services)

Reporting Commissioner: Ricardo Villas Bôas Cueva

49. **Abstract:** Clause of non-association with other cooperative of same social object.

50. **Summary:** The Denouncer and the Defendant are cooperatives of medical services in the State of Rio de Janeiro, and compete in the market of medical services. The Denouncer accused the Defendant of imposing a clause to its affiliated doctors that prohibited them to be associated with another cooperative. The Defendant claimed that there was no such clause in its Articles of Association.

51. The Secretariat of Economic Law verified that the Defendant prohibited its affiliated doctors from associating with the Denouncer only, and thus, the case was a private dispute and it did not affect competition. CADE's Attorney General's Office, however, considered the Defendant's conduct subject to article 20, subsection I and IV, and article 21, subsections IV and V of the Law n° 8.884/94.

52. **Decision:** By majority, the Council decided for the closing of the case because it did not find that the Defendant's conduct hurt competition in any way. Dissenting from the majority were Commissioners Ricardo Villas Bôas Cueva and Luis Fernando Rigato Vasconcellos, who considered the Defendant's conduct subject to article 20, subsection I and IV, and article 21, subsections IV and V of the Law n° 8.884/94.

### **Other Anticompetitive Conducts**

**1. *Administrative Procedure n°08012.009991/98-82***  
*(315 Ordinary Session, 03/03/2004)*

Denouncer: Participações Morro Vermelho Ltda.

Defendant: Condomínio Shopping Center Iguatemi e Shopping Centers Reunidos do Brasil Ltda.

Reporting Commissioner: Roberto Pfeiffer

53. **Abstract:** Imposition of an exclusivity clause by Shopping Center Iguatemi in the lease contract between this company and tenants, which hindered the tenants located in Shopping Center Iguatemi from operating in other shopping centres located in the city of São Paulo.

54. **Summary:** The Denouncer is a shopping centre located in the city of São Paulo and complained that the exclusivity clause in the lease contract of Shopping Center Iguatemi caused damages to competition.

55. According to the referred clause, tenants from Shopping Iguatemi could not operate in other shopping centres in the city of São Paulo, including Shopping Center Jardim Sul, controlled by the Denouncer. The Defendant argued that it did not have enough market power to damage competition in any way and that the exclusivity clause is actually pro competition.

56. The Secretariat of Economic Law and CADE's Attorney General's Office concluded that the Defendant did have enough market power to hurt competition, and the exclusivity clause was anti competitive because it influenced the tenant mix of other shopping centres, giving the Defendant an artificial advantage over its competitors.

57. **Decision:** The Council decided, by majority, the Defendant as subject to article 20, subsections I and II, and to article 21, subsections IV and V of the Law n° 8.884/94. A fine was imposed of 1% of the Defendants' total revenue and other determinations, according to the vote of the Reporting Commissioner. Dissenting from the majority were the President and Commissioner Fernando Marques, who decided by the closing of the case.

**2. Administrative Procedure n° 08012.001182/1998-31**  
(322 Ordinary Session, 19/05/2004)

Denouncer: Paiva Piovesan Engenharia & Informática Ltda.

Defendant: Microsoft Informática Ltda.

Reporting Commissioner: Thompson Andrade

58. **Abstract:** Complain from Paiva Engenharia & Informática Ltda accusing Microsoft Informática Ltda of anti competitive conducts, according to article 20, subsections I and IV, and article 21, subsections IV, V, VI and XXIII of the Law n° 8.884/94.

59. **Summary:** The Denouncer, who operates in the market of softwares, accused the Defendant of practicing tie-in by including a software called "Microsoft Money" on the package "Microsoft Office for Small Business". It also complained that it was having difficulties accessing distributors that also commercialized Microsoft products. Finally, it denounced the acquisition by Banco do Brasil and Caixa Econômica Federal of substantial amounts of "Microsoft Money" without an invitation to bid.

60. The Defendant argued that preferred its softwares and the fact that they came in packages. It also explained that "Microsoft Money" was only included in the referred package as a limited time promotion.

61. The Secretariat of Economic Monitoring concluded that the conduct could not be considered a tie-in because the supposedly tied product (Microsoft Money) was not imposed to the consumer and could be purchased separately. It also argued that Microsoft used legal practices to make its products more attractive to distributors and that the purchasing of the software by the companies cited above was not to be judged by the Competition Agencies.

62. The Secretariat of Economic Law, on the other hand, concluded that the intention of the Defendant was to dominate the relevant market by illegally selling "Microsoft Money" to Banco do Brasil and Caixa Economica, using a anti competitive contract called Select. SDE, however, agreed with SEAE on the issue of tie-in.

63. CADE's Attorney General's Office opined for the closing of the case for the same reasons as SEAE.

**Decision:** The Council unanimously decided for the closing of the case.

**3. Administrative Procedure n°08012.002841/2001-13**  
(338 Ordinary Session, 19/01/2005)

Denouncer: Condomínio Shopping D

Defendant: Center Norte S/A – Construção, Empreendimento, Administração e Participação

Reporting Commissioner: Roberto Augusto Castellanos Pfeiffer

64. **Abstract:** Imposition of exclusivity clause (radius clause) by Shopping Center Norte in the contract with its tenants, prohibiting them to operate in an radius of one thousand meters from the shopping centre.

65. **Summary:** Both the Denouncer and the Defendant are shopping centres operating in the city of São Paulo. The Denouncer accused the Defendant of infracting the economic order with its exclusivity clause, which prohibited its tenants from operating in a radius of one thousand meters from the shopping centre.

66. The Defendant alleged that the radius clause was a common practice and it was used to protect its business from unfair competition.

67. The Secretariat of Economic Law (SDE) and CADE's Attorney General's Office considered the exclusivity clause abusive and recommended the conviction of the Defendant.

68. **Decision:** The Council unanimously decided to convict the Defendant, according to article 20, subsection I and IV, combined with article 21, subsections IV and V of the Law n° 8.884/94, imposing the payment of a fine of 1% of the total revenue of the Defendant in the year prior to the instauration of the administrative procedure. By majority, the Council decided that the Defendant (i) must stop the practice and notify its tenants within 30 days, and prove that it has altered all its lease contracts within 90 days; (ii) must publish, at its own expense, CADE's decision in a renowned newspaper in the state of São Paulo; (iii) and is subject to a R\$ 31.923,00 daily fine, in the terms of the reformulated vote of President Elizabeth Farina and the Reporting Commissioner.

**2. Mergers and acquisitions**

a) *Statistics on number, size and type of mergers notified and/or controlled under competition laws;*

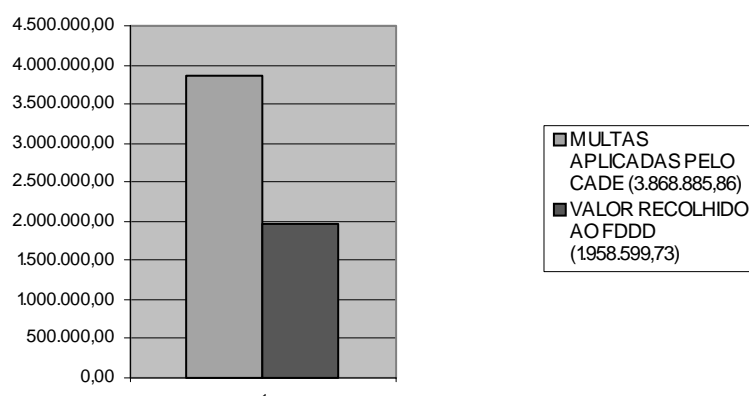
69. During 2004, 511 merger cases were notified to CADE, while 651 were concluded. Thereof, 618 were considered by the Council, 11 were not considered (1,69%) and 22 were filed due to desistance of the parties (3,38%). Among the 618 mergers, 574 were approved without restrictions; 01 case was blocked and the remaining 43 cases were approved with the following remedies:

### Mergers approved with restrictions

Restriction	Number of Cases
Limitation on the territorial aspect of non-competition clause	28
Modification of non-competition clause	4
Conditioned to performance commitments	5
Reduction of non-competition clause to 5 years	5
Exclusion of anticompetitive clauses in the merger agreement	1
Total	43

Fines for untimely merger notification filing were imposed on 18 cases, amounting to R\$ 3,347,213.22, approx. US\$ 1,112,030.97 (see graphic above - the blue bar refers to fines assessed and red bar refers to fines collected):

Amount (R\$) of Fines related to Merger Cases on 2004



An APRO (Agreement of Preservation of the Reversibility of the Operation) was signed between CADE and the petitioners (Companhia Brasileira de Distribuição e Sendas S/A), which are big chains of supermarkets in March 17, 2004

**Nº do Processo: 08700.000018/2004-68**

Representantes: Associação Nacional de Investidores do Mercado de Capital – ANIMEC

Representadas: Telecom Italia International N.V. ( TII)

Tipo de Processo: Medida Cautelar

Sector: Telecomunicações

Data da Assinatura do Despacho (APRO): 17/03/2004

**Nº do Processo: 53500.002423/2003**

Requerentes General Motors Corporation

The News Corporation Limited

Hughes Electronics Corporation

Tipo de Processo: Atos e Contratos do Artigo 54

Sector : Telecomunicações

Data da Assinatura do Despacho (APRO): 14/04/2004

**Nº do Processo: 08012.009959/2003-34**

Requerentes Sendas S/A, Companhia Brasileira de Distribuição

Tipo de Processo: Atos e Contratos do Artigo 54

Setor : Comércio Varejista

Data da Assinatura do APRO: 17/03/2004

Summary:

<b>2004</b>	<b>Mergers</b>	<b>% (approx.)</b>
<b>Cases initiated</b>	511	-
<b>Cases concluded</b>	618	94,93%
<b>Cases approved without restrictions</b>	574	92,88%
<b>Cases with restrictions imposed</b>	43	6,96%
<b>Cases blocked</b>	01	0,16%
<b>Cases judged under fast track procedure</b>	488	74,96%
<b>Untimely notification</b>	18	2,91%
<b>Total sanctions imposed for untimely notifications (R\$)</b>	3 341 213.22	-

b) *Summary of significant cases.*

Mergers

1. Merger Act nº 08012.004818/2000-82

(314 Ordinary Session of Judgment, 18/02/2004)

Petitioners: Terra Networks Brasil S/A e Internet Digital Boulevard S/C Ltda.

Reporting Commissioner: Miguel Tebar Barrionuevo.

70. Abstract: Acquisition by Terra Networks Brasil S/A of Internet Digital Boulevard's client portfolio of internet access, hosting of websites, space for internet publicity, domain registration and internet equipment.

71. Summary: Terra Networks Brasil provides services of dial-up Internet connection and other internet related services, such as corporative solutions, space for internet publicity, e-commerce, and hosting of websites. Internet Digital Boulevard provides services of dial-up connection, domain registration, hosting of websites and space for Internet publicity.

72. Only Terra Brasil operates in the upstream market of telecommunication infrastructure for Internet providing, but both companies operate in the downstream markets of Internet services. The merger act consists of the acquisition by Terra Brasil of Internet Boulevard's client portfolio of Internet access, Internet equipment, and the services provided by Internet Boulevard mentioned above. Before the operation, Terra Brasil and Internet Boulevard had 4% and 23% of market share in the market for Internet access, respectively.

73. The Secretariat of Economic Monitoring of the Ministry of Finance, the Secretariat for Economic Law and CADE's Prosecution staff concluded that the merger act would not cause any damage to competition, since there were many other companies in the market, including one with superior market share, and the market for Internet services was in a process of expansion.



74. **Decision:** The Council, unanimously, approved the operation, and, by majority, approve it imposing restrictions, according with the Commissioner Cleveland Prates' vote. Dissenting from the majority were the President and the Reporting Commissioner, who both approved the merger act without imposing any restrictions and Commissioner Thompson Andrade, who approved it with recommendations.

2. Merger Act nº 08012.000212/2002-30  
(326 Ordinary Session, 14/07/2004)

Petitioners: Pepsico, Inc. e Companhia Brasileira de Bebeidas

Reporting Commissioner: Miguel Tebar Barrionuevo

75. **Abstract:** Licensing given to CBB by Pepsico, so that CBB can manufacture, commercialize and distribute the product "Gatorade", occurring the transfer of all assets related to this product from Pepsico's subsidiary to CBB.

76. **Summary:** Pepsico Inc. is an American company, controlled by PepsiCo Inc and it does not have any commercial activity, it only participates in other companies. Its subsidiaries manufacture snacks, concentrated products, nutritional complements, and flavoured milk, among other products. CBB's subsidiaries participate on the markets of beer, non-alcoholic beverage (carbonated and non carbonated), essences and concentrated products.

77. The operation consists on the transfer from Pepsico to CBB of the licensing to manufacture, distribute and commercialize "Gatorade", with the consequent transfer of assets related to the product from one firm to the other.

78. The Secretariat of Economic Monitoring considered the relevant market as being the one of isotonic drinks and, considering that the firms together would have 93% of market share, recommended the withhold of the operation, and if it was to be approved, a number of restrictions had to be imposed.

79. The Secretariat of economic Law and CADE's Prosecution staff recommended the approval of the operation with restrictions.

80. **Decision:** The Commission, by majority, approved the operation, in the terms of Commissioner Roberto Pfeiffer's vote. Dissenting from the majority were Commissioner Thompson Andrade, who decided for the withholding of the operation and Commissioner Cleveland Prates, who indicated the alienation of the Marathon brand.

3. Merger Act n° 08012.003971/2001-73  
(326 Ordinary Session, 14/07/2004)

Petitioner: Gás Natural São Paulo Sul

Reporting Commissioner: Cleveland Prates Teixeira

81. **Abstract:** Merger act with the fulfilment of the condition in paragraph 3 of article 54 of the Law n° 8.884/94. Untimely submission.

82. **Summary:** Gás Natural São Paulo Sul is a firm controlled by the Gás Natural SDG Group. It is located in Sorocaba, in the State of São Paulo and it operates in the markets of distribution and commercialization of natural gas.

83. The operation consists in the granting to Gás Natural by the State of São Paulo of the right to distribute canalized natural gas in the southern part of the state, covering 93 municipalities.

84. The Secretariat of Economic Monitoring, the Secretariat of Economic Law, and CADE's Prosecution staff suggested the approval of the operation without imposing any restrictions. However, SDE and CADE's Prosecution staff considered the submission of the merger act to CADE as untimely.

85. **Decision:** The Council unanimously decided to approve the operation without any restrictions, but imposing a fine of R\$ 232.250,01 for the untimely submission of the merger act.

4. Merger Act n° 08012.005516/2001-11  
(326 Ordinary Session, 14/07/2004)

Petitioners: Petrobrás Gás S.A. – Gaspetro, Gásgoiano e Governo do Estado de Goiás

Reporting Commissioner: Fernando de Oliveira Marques

86. **Abstract:** Creation of the Agency of Canalized Gas of the State of Goiás S/A

87. **Summary:** The petitioners operate in the sector of distribution and commercialization of natural gas. The operation consists in the creation of the Agency of Canalized Gas of the State of Goiás, who is to explore services related to canalized natural gas in the state of Goiás.

88. The creation of the Agency was authorized by the Law n° 13.641/01, which established that the state of Goiás was to possess 51% of the shares of the new Agency. Through a licitation, Gásgoiano e Gaspetro were chosen to participate in the society.

89. The Secretariat of Economic Monitoring (SEAE), the Secretariat of Economic Law (SDE) and CADE's Prosecution staff suggested the approval of the operation without imposing any restrictions. However, SDE and CADE's Prosecution considered the submission of the merger act to CADE as untimely.

90. **Decision:** The Council unanimously decided to approve the operation without imposing any restrictions.

5. Merger Act n° 08012.001697/2002-89  
(312 Ordinary Session, 04/02/2004)

Petitioners: Nestlé Brasil Ltda. and Chocolates Garoto S/A

Reporting Commissioner: Thompson Almeida de Andrade

91. Abstract: Acquisition of the whole capital stock of Chocolates Caroto S/A by Nestlé Brasil Ltda., resulting in a horizontal concentration in the market of chocolates.

92. **Summary:** Nestlé Brasil is the Brazilian subsidiary of the Swiss Group Nestlé and it operates in the markets of food, non-alcoholic beverage, animal products, and druggist and hygiene products. Chocolates Garoto is a Brazilian firm that participates in the food sector, especially in the market of chocolates and sweets. In fact, Garoto was one of the three biggest Brazilian chocolate companies and Nestle has also a strong participation in the Brazilian market.

93. Given the operation, there would be a horizontal concentration in the market of chocolates and sweets. This market was subdivided in other relevant markets and an elevated concentration was verified in most of them. For example, the resulting firm would have a market share of 63,10% in the market for chocolate bars, 88.50% for solid chocolate topping and it would completely dominate the market for chocolate liquid topping. It was also alleged that brand fixation was an important barrier to entry and it could facilitate an abuse of dominant position on the part of the resulting firm.

94. The Secretariat of Economic Monitoring (SEAE) concluded that there was a possibility that the resulting firm would exercise a market power that could damage competition. However, brand fixation was not as strong as it was suggested.

95. The Secretariat of Economic Law (SDE) found that there was a strong possibility that Nestlé would exercise an abuse of dominant position and that the petitioners should be responsible for presenting to CADE solutions to mitigate the market power they would gain with the operation. CADE's Attorney General's Office agreed with SDE.

96. CADE understood that not enough efficiencies were shown and no structural remedies were available to reduce the negative effects of the high concentration.

97. Decision: By majority, the Council decided for the withholding of the operation, in the terms of the vote of the Reporting Commissioner. Dissenting from the majority was the President, who approved the operation with restrictions. The decision was published on February 3, 2005 and the companies appealed to CADE against the decision. On April 27, 2005 the Council rejected the appellation and confirmed the block of the merger.

**III. The role of competition authorities in the formulation and implementation of other policies, e.g. regulatory reform, trade and industrial policies**

98. In 2003 and 2004, BCPS has done important competition advocacy in the private insurance health sector, actively participating in the discussion with the competent Ministry, agency (*Agência Nacional de Saúde Suplementar, ANS*), consumers and enterprises. Besides, some work has also been done regarding the banking sector and the scope to increase competition.

99. Another focus for competition advocacy has been the discussion with the Ministry of Development, Industry and Foreign Trade (*Ministério do Desenvolvimento, Indústria e Comércio, MDIC*) and other entities aiming to reduce of technical barriers that prevent competition from (potentially) imported products. In the same line, BCPS has proposed some debate so as to reduce tariffs in concentrated sectors, aiming to increase imports.

100. With respect specifically to SEAE, this Secretariat took advocacy as a priority for 2004 deepening and improving relations with regulatory agencies and their supervising Ministries to assure that a competition perspective is considered in all major regulatory changes.

101. The result was that SEAE took an active part in:

- the definitions of the auction rules for electrical energy auction;
- the definition of the scope and role of a new regulatory agency for audio-visual content production and distribution;
- the discussions on restructuring of the airline sector;
- the definition of the structure of concession bidding for federal highways;
- the discussions on the modernization of all major ports in the country;
- the discussions for a new bill redefining the regulation of the water and sewage services;
- the discussions to define how to regulate carbon credits;
- the definition of new rules to regulate postal tariffs;
- the definition of a new price cap rule for the prices of OTC and prescription drugs;
- the definition of import tariffs and anti-dumping rights in several sectors.

102. For 2005, SEAE intends to continue the drive to improve relations with regulatory agencies and sectorial ministries so that SEAE can effectively advocate competition oriented solutions for the major regulatory changes, with particular emphasis on the energy and transport sectors.

103. Below follows more detailed explanation of the initiatives listed above:

104. *Electricity auctions*: as part of the restructuring of the electricity sector in Brazil, the Ministry of Mines and Energy has created a wholesale pool entity that brokers a series of auctions through which generators must sell energy to meet the demand that is projected by distribution companies. With support from the Getulio Vargas Foundation Department of Economics, SEAE helped the Ministry of Mines and Energy design the auction mechanism and rules. This support involved the development of an auction simulation model as well as performing over 50 experimental auctions using graduate students as auction participants with monetary rewards linked to auction performance. These auction experiments allowed us to simulate different options in auction design, as well as supported several discussion documents in which we advocated design options that we understood as more robust against collusive behaviour and that would produce better price discovery results. Several auction design changes as well as very strict procedural rules that isolated auction participants were implemented as a direct result of this advocacy. As a measure of the significance of this work, two auctions have already been realized in which approximately 40% of

the total energy capacity (of all sources, not only electrical) of the country has been negotiated in contracts totalling over R\$ 80 billion.

105. *New Audio-visual regulatory agency:* The Ministry of Culture proposed the transformation of the current Cinema Agency (ANCINE), that is mainly focused on promoting the local production of movies, into a new regulator for the markets of audio-visual products. SEAE represented the Ministry of Finance in the discussions and is currently in charge of drafting a first proposal for a revision of the current fiscal incentives.

106. *Roads:* Since there is no competition when a company is operating a road, the competition advocacy has been centered in improving the competition in the bidding process. Discussions have been focused on the rules and format for the bidding process, the parameters and assumptions used to calculate government's reservation prices and on loosening the qualification criteria in order to participate in the bidding process.

107. *Ports:* SEAE has appointed one of the two Ministry of Finance representatives for an inter-ministerial ports working group. Current topics being discussed in the inter-ministerial working group and with ANTAQ, the regulation agency for port issues, are policies to improve competition in the port dredging services market, and the general profile of the sector to favour efficiency, specially important in the context of export growth in Brazil.

108. *Water and sewage:* A proposal for a new bill defining federal guidelines for this sector has been in discussion within government for the last two years and SEAE has had during this process a very active role. Several discussion documents have been written and served both to build internal consensus with the Secretariat of Treasury as well as to defend a overall Ministry of Finance position when discussing with other areas of government.

109. *Market of carbon certificates:* since Kyoto Protocol ratification has taken place in the end of 2004, SEAE has been working to foster the market of carbon certificates in Brazil. This work consists of talking with other Ministry of Finance Secretariats and with the Central Bank in order to identify and solve legal and institutional problems that may be limiting the market growth. SEAE has also been talking with market players in order to better understand the problems that limit the growth of carbon market in Brazil. With this purpose, representatives from law and consulting firms, the National Industry Confederation and the World Bank were invited to present complaints and proposals in a meeting held in SEAE. Officials from other Secretariats of Ministry of Finance and Central Bank were also present at this meeting. SEAE has also requested to participate in the "Comissão Interministerial de Mudança Global do Clima" that is the Federal Government Commission that regulates the CDM approval process in Brazil. The CDM certificates must be approved both by an independent agency designated by the Kyoto Protocol Executive Board in Bonn (technical verification) and by the government of the country where the project is taking place. The objective of participating in the "Comission" led by the Ministry of Science and Technology, is to advocate for less bureaucracy and more agility in the government approval process. The role of SEAE has been to enhance the country's competitiveness in this growing market by advocating inside the government for decreasing the uncertainties to invest in carbon reduction projects in Brazil.

110. *Postal services:* SEAE has been working on a proposal to adopt a price-cap rule for tariffs of the postal services that are still government monopoly. A internal document discussing postal deregulation models in other countries and the recent performance of the Brazilian market and the state owned Postal services company is being prepared to serve as the basis for discussions that have already started with both the Ministry of Communications as well as the state monopolist.

111. *Biodiesel*: SEAE represents the Finance Ministry in the Interministerial Executive Commission, instituted by President Act of 23.12.2003, responsible for the implementation of a program to stimulate the production and use of vegetable oil (biodiesel) as alternative source of energy, mainly for social inclusion and the regional development, especially through job and income generation, and the inclusion of family based farmers in the biodiesel industry. The inclusion of a new product in the national energy structure represents an option for the consumer and it favours the competition among fuels suppliers, besides enlarging the market for agricultural products that are raw materials for biodiesel.

112. *Fertilizers*: Suspension of the anti-dumping measures for the ammonium nitrate. In November 2002, the Brazilian Foreign Trade Chamber (CAMEX), instituted anti-dumping measures for the ammonium nitrate imports, 32,1% for Russians imports and 19% for Ukrainians. This fertilizer is one of the nitrogen sources for agriculture and the Brazilian dependence of imports is estimated at 60%, mainly coming from Russia (70%). The anti-dumping measures for nitrate imports, combined with the increase in the petroleum and freights prices, contributed to the final price elevation for agricultural producers, favouring a domestic monopoly. SEAE will participate in the revision process that takes place next July 2005, recommending the elimination of the anti-dumping measures, effective since 2002.

113. *Pesticides*: Analysis of the registration system. At the governmental discussion forums on agricultural inputs, it became clear that one of the main bottlenecks in the pesticides sector is the issuance of new registrations of those products that since 2002 is too bureaucratic and requires approval from several different entities in separate Ministries. Since then, there has been no new registration of equivalent pesticides (so called 'generics'). There are already more than 100 requests for new registrations waiting approval. This technical barrier inhibits the competition in the sector, to the detriment of the rural producers that pay higher prices due to the restricted supply of those inputs. In addition to that, there has been an increase in pesticides smuggling during the last years, that can increase environmental risk and also cause tax losses to the Federal Revenue and Customs Secretariat. With the identification of this important problem, SEAE began a research on the theme, in order to gather enough information to convince other public partners (Ministry of Health, Ministry of Environment, Ministry of Agriculture) of the necessity of an enlargement of the competition at the sector, by streamlining the procedure for registration, especially for 'generic' products. Specialists estimate that there could be a significant reduction in pesticides prices, up to 30%, in a period of 5 years, in case of improvement of the procedures for registration.

114. *Railroads*: from 2000 to 2004, there weren't many competitive advocacy activities in railway sector. SEAE's recommendations for this sector are: mutual traffic right and pass through right. Both SEAE and ANTT agree that is necessary to develop some measures in order to generate incentives for a more efficient operation by railroad companies. Both agencies are working on this.

115. *Bus transportation*: As in railroads, also in bus transportation sector, SEAE and ANTT also agree that regulation changes must be made so that more competition can be observed. Both agencies are elaborating studies in order to do so. In 2003, SEAE asked IPEA (Economic Research Institute) to write a working paper recommending regulation changes in this sector. SEAE is currently working with ANTT and the Ministry of Transport to revise the Decree that establishes the guidelines for regulation in this sector.

#### IV. Resources of competition authorities

##### 1. Resources overall (current numbers and change over previous year):

###### a) Annual budget (in your currency and USD):

Annual budget*			
	Administrative Council for Economic Defense - CADE	Secretariat for Economic Monitoring - SEAE	Secretariat for Economic Law - SDE
Brazilian Real (R\$)	8,998,391.00	4,856,222	3.058.447
U.S. Dollars (US\$)	2,989,498.00	1,820,037	1.152.218

\*The amount reserved for salaries is not included in this sum.

###### b) Number of employees (person-years):

Number of Employees			
	Administrative Council for Economic Defense - CADE	Secretariat for Economic Monitoring (SEAE)	Secretariat for Economic Law (SDE)
Economists	20	43	6
Lawyers	38	6	30
Other professionals	27	17	3
<b>Total Technical Staff</b>	<b>85</b>	<b>66</b>	<b>39</b>
Support staff	89	94	16
All staff combined	174	160	55

##### 2. Human resources (person-years) applied to

Application of human resources			
	Administrative Council for Economic Defense - CADE	Secretariat for Economic Monitoring SEAE*	Secretariat for Economic Law SDE
Enforcement against anticompetitive practices	CADE does not assign a separate staff for enforcement activities.	7 <sup>1</sup>	33
Merger review and enforcement	CADE does not assign a separate staff for merger control.	59	6

<sup>1</sup> Excluding unfair or misleading practices, which fall under consumer protection provisions of the law, where these exist.

Application of human resources			
	Administrative Council for Economic Defense - CADE	Secretariat for Economic Monitoring SEAE*	Secretariat for Economic Law SDE
Advocacy efforts	CADE does not assign a separate staff for advocacy efforts.	SEAE does not assign a separate staff for advocacy efforts.	SDE does not assign a separate staff for advocacy efforts.

\* From 2000 to October 2004, approximately 65% of the budget and of the staff was allocated to competition policy. From October 2004 on SEAE is emphasizing its regulatory oversight function. The information presented refers to the period until October.

3. *Period covered by the above information: January 1st, 2004 – December 31st, 2004.*

V. **Summaries of or references to new reports and studies on competition policy issues**

116. The BCPS has a partnership with two research institutions to revise routines in their current guidelines so as to improve the use of quantitative and econometric techniques in the analysis of antitrust cases as well as to study specific markets. Subjects covered include specification and estimation of cost and demand functions, simple routines for post-merger simulation, tests for delimitation of relevant markets and tacit collusion, and guidelines for investigations of cartels, predatory pricing and other anti-competitive practices and definition of relevant market in the pharmaceutical sector. Several Brazilian research teams have been commissioned with papers surveying the most recent mainstream literature and proposing additions or modifications to the current guidelines. To present and discuss these commissioned reports, a Conference involving BCPS members, as well as lawyers, economists and academics will be held in Brasilia from April 25th to the 28th, 2005 – possibly, within a few months after the Conference those reports will be made public.

117. SEAE published 2 studies in 2004:

- *The Supplementary Health Market* – The paper has the objective to present a general view of the Supplementary Health market in Brazil before and after its regulation. The Federal Government intervention on this market and the National Agency of Supplementay Health creation with the intend of regulate the sector are just two of the various institutional initiatives took into account during the 1990's. So, this paper analyses the supplementary health market before and after its regulation.
- *Buyer Power of Supermarkets: an Antitrust Approach* – The paper discusses the exercise of buyer power by retailers, mainly supermarkets, over suppliers. The possible effects of these practices on competition are related to abuses from big retailer chains that, buying products in large scale, can fix prices and impose several kinds of undue requirements over their suppliers. Based on the international literature, the paper presents the most common anticompetitive practices played by retailers, as well as the solutions for the problem already implemented by some governments, like codes of practice and specific legislations.

118. Since 1975, CADE publishes a bulletin, which used to be called as “Revista de Direito Econômico” (Journal of Economic Law) and “Revista do CADE”. On 2004, it was reformulated and released together with a publisher called Thompson-IOB, under the name of “Revista de Direito da Concorrência” (Competition Law Journal), quarterly. The Journal is divided in three parts: doctrine, jurisprudence and legislation. It is published in book and CD-ROM formats and distributed to governmental bodies, universities and sold under annual subscription. From 2005, the Journal will have an Executive Director and articles will be submitted to a double blind review of ad hoc experts.



**Articles**

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\_\_\_\_\_. “Tutela coletiva da livre concorrência”, *Revista de Direito do Consumidor*, nº 49, São Paulo, Revistas dos Tribunais, 2004. “Coletive Protection of Free Competition”

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**Books Released on 2004**

OLIVEIRA, G. & RODAS, J. G. *Direito e Economia da Concorrência*. Renovar, 1ª ed. 2004, 592 pp. “Law and Economy on Competition”

GOMES, C. J. V. *Ordem Econômica Constitucional e Direito Antitruste*. Sérgio Fabris, 1ª ed., 2004, 280 pp. “Constitutional Economic Order and Antitrust Law”