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

-- 2010 --

*This report is submitted by Brazil to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 29-30 June 2011.*

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## Executive Summary

1. The Brazilian Competition Policy System (BCPS) comprehends three government bodies: Council for Economic Defence (CADE), the Secretariat for Economic Law (SDE), both linked to the Ministry of Justice, and the Secretariat of Economic Monitoring (SEAE) of the Ministry of Finance. Those institutions have undergone numerous improvements in the last 20 years with the aim of enhancing and enforcing competition in order to protect the Brazilian consumer market.

2. A remarkable change in the BCPS occurred in 1994 with the approval of the Law no. 8.884, 11 June, 1994. This new legislation modernized national competition policy by creating the three abovementioned bodies that form the BCPS nowadays. Since then, the System has advanced significantly and, in order to continue to improve competition and enforce competition law in Brazil, the BCPS has supported new advances within the System.

3. In the last two years, the BCPS has focused all its efforts in approving Bill 06/09. The bill was partially approved by the House of Representatives in 2009 and it is currently being analyzed by the Senate. This new legislation will consolidate the BCPS into one agency, impose pre-merger notification and provide the agency with a significantly more staff.

4. Brazil requested to be submitted to a Peer Review conducted by OECD Competition Committee, whose assessments and conclusions were discussed during the last Global Forum on Competition, on February 18th, 2010. The report recognized BCPS achievements and strongly recommended the approval of the Bill which is expected to 2011.

5. According to the Peer Review report, the BCPS has become more efficient, especially in the analysis of mergers and in its fight against cartels. An example of such progress is the BCPS anti-cartel program was developed and made effective in little time.

6. Investments on staff capacity building continued to be one of the BCPS strengths. The staff has benefited from a wide range of training opportunities, from a permanent training programme with graduate courses to participation in international courses and internships.

7. In 2010, the BCPS continued to suffer the same problems of scarcity of financial, human and material resources faced in 2009. Notwithstanding, substantial efforts were made to advance the BCPS's recognition as a transparent and efficient system working in harmony with the Federal Government.

8. CADE's standing before the Judiciary has been strengthened as a response to the increasing judicial review of CADE's decisions. Before 2006, litigation was not a priority for CADE's Attorney General (Chief Attorney) Office. Since then, CADE's Legal Service has become more proactive, by proposing an increasing number of lawsuits either to require the payment of fines imposed by the Council, or to obtain a judicial order for the compliance of remedies imposed by CADE. Furthermore, the follow-up of judicial procedures involving CADE has become a priority, and frequently CADE's attorneys go personally before courts to explain the merits of the decisions. Such initiatives contribute to strengthen the relationship among judges, the legal community and CADE, as well as promote increasing recognition and confidence in relation to the work performed by CADE.

9. The Attorney General Office in CADE is composed by nine attorneys, including the General Attorney, who is appointed by the Ministry of Justice and commissioned by the President of the Republic after Senate's approval, what assures him certain autonomy before the Council. The Office's main functions are to offer legal opinions to CADE in all cases submitted to the Council, to prepare and follow

CADE's defense before Brazilian Courts, and to enforce CADE's decisions administratively. The office remains as one of the best of Brazil due to its utmost qualified staff. This Office's close collaboration with all departments of CADE has guaranteed Brazil to be widely considered the leader in prosecuting cartels in Latin America.

10. During the past years SDE has been improving its role and functions by concentrating on anticompetitive agreements and abuse of dominance investigations, focusing its resources on cracking cartels. As a consequence, every year the number of investigations on anticompetitive practices, leniency applications and dawn raids increased.

11. The SDE has continued to spend its resources to ensure that criminal authorities would enforce Brazil's Economics Crime Law and kept strengthening the cooperation with the Brazilian criminal authorities, in order to increase the impact of its anti-cartel enforcement policy, establishing a close cooperation since 2007 with the Federal Police and the Public Prosecutor's Office of 23 Brazilian States (out of 27).

12. Advocacy also played a major part in the SDE's work as it is deemed especially important in a jurisdiction like Brazil, which only very recently has been introduced to an open market. In the context of the Brazilian Anti-Cartel Enforcement Programme, which was designed by SDE for the four-year term of 2007-2010, aimed at continuing four-year term 2011-2014, several actions had been carried out in order to increase the yield of bid-rigging detection, leniency agreements and dawn raids aimed at obtaining evidence of anticompetitive behavior.

13. During the year of 2010 SDE kept its efforts on concluding its investigations and has been focusing its resources in reducing backlog, in despite of the reduced staff and increasing number of reports of anticompetitive conduct.

14. In 2010, SEAE has continued to consolidate its institutional role, especially in the areas of economic regulation and competition advocacy – particularly in the infrastructure sectors. As to competition advocacy activities related to urban infrastructure, it is noteworthy to mention: (i) SEAE's study of the cap market in the city of Vitória (ES), with recommendations for regulatory improvement in that market; (ii) the Secretariat performance, in state traffic agencies, to prevent price fixing in services provided by the Centers of Conductors Formation (CFCs). SEAE has also greatly contributed to the regulatory improvement, through its opinions on decree rules, such as the National Sanitation Law (Nº.11.445/2007) and the decree which regulates the Law Solid Waste (Nº.12.305/2010). It is noteworthy to mention the Secretariat participation in discussions regarding the new regulatory framework for the mining sector, with a view to improving competitiveness in the segment and elevation in the aggregate value, besides monitoring the deliberations of the National Committee of Hydric Resources (CNRH). SEAE had an expressive actuation in discussions related to the restructure of several sector of our economy, mainly: electrical energy, transportation, civil aviation, sanitation and telecommunications, as well as in the consolidation of a new framework for public utilities.

15. SEAE also had an importation role in competition policy within MERCOSUR. As SEAE is the main BCPS agency responsible for coordinating the competition discussions in MERCOSUR, the Secretariat developed an important role as coordinator of the Technical Committee on Competition (CT-05) and worked in a new text that would replace MERCOSUR's Protocol of Competition Policy by the end of 2010.

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

16. The passage of Bill number 06/2009 through Brazil's Senate was certainly the most significant development in antitrust legislation in Brazil in 2010. Brazil's constitution requires every bill to pass through both the House of Representatives and the Senate before being enacted by the President. This bill was initiated in the House of Representatives in 2004 and progressed to the Senate in 2009. It has now returned to the House of Representatives for final discussion of amendments proposed by the Senate. This is a faster procedure, as the House of Representatives is now only allowed to accept or reject the amendments proposed and may not innovate in any other matter in this piece of legislation.

17. The bill will have widespread effects in how Brazil's competition policy is executed. The main changes refer to (1) the unification of the authorities and (2) the merger notification procedure. Under the proposed new law, the task of investigating mergers and anticompetitive practices will shift from SDE and SEAE to CADE. SDE's staff is expected to be transferred to CADE, as well as some of SEAE's staff as well. SEAE will no longer participate in investigations and will hold only a competition advocacy role. The bill also changes the timing for submission of mergers for review. Under current law, companies may notify a merger or acquisition up to 15 days after the merger was closed. This has raised a number of difficulties in the past regarding how to undo a merger of companies that, at the time of the decision to block the merger, are already operating in conjunction. The new law addresses this issue by requiring companies to receive clearance before closing a deal.

18. The amendments under discussion refer to several distinct aspects of procedure. Some of the most noteworthy amendments to be voted in the House of Representatives refer to (1) how fines are calculated in anticompetitive practices cases, (2) what is the deadline for authorities to issue a decision on a case and (3) whether companies may submit proposals for settling a case more than once during an investigation.

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

19. In 2010, CADE undertook several initiatives to become more efficient and increase the quality of its activities. In September 2010, Resolutions No. 54 and 55 were approved by the Council. These resolutions changed Cade's book of internal regulations, by speeding administrative and judicial instruments of execution whilst the procedures after the issuance of CADE's decision were brought up to date eliminating redundant and bureaucratic stages.

20. Furthermore, CADE issued Resolution no. 57/2010, which improved methods for enforcing CADE's decisions. This resolution regulated procedures against companies that did not cooperate with BCPS' determinations. That strategy has increased efficiency in cases when companies failed to respond fully and honestly to CADE's demands for information.

21. In September 2010 CADE took another great step towards improved enforcement by issuing Resolution No. 58/2010. It created a formal program for auditing information provided by parties to the Council. This program will be executed by the Decision Enforcement Sector (DES), a division of the General Attorney's Office, and will be supported in this task by CADE's Economic Study Department. The DES selects the cases according to necessity or convenience and additional cases may also be referred by the Council or by a Council member.

22. In December 2010, Cade launched an International Antitrust Exchange Program through the issuance of Resolution no. 59/2010. This Program aims at enhancing cooperation among competition authorities in an open environment of exchange of experiences, knowledge and techniques. The Program regulates visits by international professionals to the Council, where, under a previously arranged calendar, the visitor may experience the work of our competition institutions and take part in courses and seminars.

23. On November 5<sup>th</sup>, 2010, two new *sumulas*<sup>1</sup> (understanding briefs) were issued:

- *Sumula* No. 8: for purposes of the final deadline for submitting cases for merger review, a concentration act is considered executed on the date of the celebration of the judicial business and not on the date of the implementation of the condition for suspension.
- *Sumula* No. 9: for purposes of the final deadline for submitting cases for merger review, in the case of purchase options, a concentration act is considered executed on the date the option is exercised and not on the date the option was vested, except if from the corresponding terms derive rights and obligations that, by themselves, are capable of affecting, even if only in potential, the competition dynamics between companies.

24. In 2010 SDE issued two Ordinances:

- SDE's Ordinance No. 456: On March 15th, 2010, SDE issued an Ordinance that revokes the Ordinance No. 4/2006, which regulates the administrative proceedings within the Law n. 8.884, of 1994, modernizing some procedures and giving special focus to the SDE leniency programme.
- SDE's Ordinance No. 65: On June 10th, 2010, SDE issued an Ordinance which created the Permanent Council for the Brazilian Anti-Cartel Enforcement Programme, aimed at promoting actions to regulate the functioning of the Programme and discuss themes of common interest of the national meetings.

## **1.2 Other relevant measures, including new guidelines**

### *1.2.1 Cooperation Agreements*

25. During 2010 SDE enhanced cooperation between competition and criminal authorities, having signed several technical cooperation agreements and agreements amongst governmental bodies and education institutions, including 27 agreements with criminal State and Federal Public Prosecutors, in order to increase anti-cartel enforcement.

### *1.2.2 Committees and working group units:*

26. SDE's representatives have joined several working groups and committees within the executive government and the Congress in order to disseminate good practices of competition defense, e.g., the Interministerial Group of Intellectual Property (GIPI) aimed at discussing sensitive issues regarding intellectual property policies within the Government.

### *1.2.3 Exchange Programme:*

27. During the months January and July, 2010, SDE recruited national and international Economics and Law students as interns, providing them with theoretical debates and practical experience of competition defense, allowing them to experience the agency's daily work as a means to provide the interns a broader knowledge of competition topics.

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<sup>1</sup> The *sumulas* are specific decisions that state a concrete understanding of the Council constituted after the trial of many similar cases. Those decisions contribute greatly for the consolidation of jurisprudence and increase stability and predictability in the implementation of the Brazilian competition law and policy.

#### 1.2.4 *Participation in events*

28. During the months of 2010, SDE has been present in several events, nationally and worldwide, including the participation of its Secretary, Directors and Coordinators of the staff, including the Annual ICN Conference, OECD Meeting on the Brazilian Leniency Program.

29. Also, SDE's representatives have been present over 6 times in Public Consultations and meetings held by the Brazilian Congress which discussed topics related to competition law and policies.

#### 1.2.5 *Technical Cooperation Agreement to foster competition policy*

30. On July 21, 2010, CADE, SDE and SEAE and the Brazilian Electricity Regulatory Agency (ANEEL) signed a Technical Cooperation Agreement to foster competition policy. The main objective was to establish an institutional cooperation with technical and operational characters, in order to eliminate conflicts, the standardization of agreements, and do delimitate the legal competences and information exchanges, in view of aligning the decisions regarding the prevention and repression of violations against the economic order in the electric sector.

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

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

#### 2.1.1 *Summary of activities of Competition Authorities*

- Increased Criminal Prosecution of Cartel Conduct

In 2010, the SDE continued to spend its resources to ensure that criminal authorities would enforce Brazil's Economics Crime Law. As mentioned above, SDE established a close cooperation since 2007 with the Federal Police and the Public Prosecutor's Office of 23 Brazilian States (out of 27), which culminated in the "*National Anti-Cartel Strategy (Estratégia Nacional de Combate a Cartéis – ENACC)*," launched in October 2009 as a part of the second national Anti-Cartel Enforcement Day. Two hundred prosecutors and police officers from 26 Brazilian states gathered to discuss the implementation of the country's criminal anti-cartel law and policy. ENACC also provides for a permanent forum for cooperation and exchange of expertise and information. At the end of the 2009 meeting the authorities signed the "Brasilia Declaration," dedicated to re-affirming and enhancing the cooperation among these authorities in the anti-cartel program (English version available at [www.mj.gov.br/sde](http://www.mj.gov.br/sde)). The second ENACC reunion took place in June 2010, when the campaign "**Fair Play**" was launched.

As recognized by the OECD Peer Review of February 2010, "In a few short years Brazil has developed a program for criminally prosecuting cartels that places it as one of the most active of all countries in this area". Since SDE's cooperation with the criminal authorities began, individuals have been criminally convicted, who were participants in local or regional conspiracies, including particularly retail fuel cartels. The increased criminal prosecution of cartel activity has a positive effect in the number of leniency application received every year by the SDE.

- Administrative Proceedings:

Since 2006 SDE has shown big efforts in reducing its backlog by initiating administrative proceedings, among others, following complaints related to matters which are, in theory, undoubtedly anticompetitive. As of September 2010, 50 administrative proceedings had been initiated and 65 were closed.

- Dawn Raids

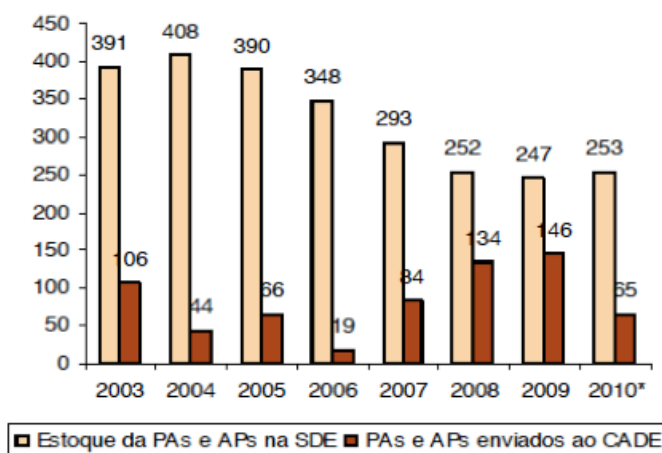
As of September 2010, SDE, in cooperation with the General-Attorney’s Office, State and Federal Police and States’ Public Prosecutors, had carried out 3 antitrust dawn raids where several court orders were issued in correlation with these operations, which are described hereunder:

- Blue Flame Operation: This operation took place in March 2010 in the Federal States of Paraíba, Pernambuco, Ceará, Bahia and São Paulo simultaneously. It looked into an alleged cartel among distributing and retailing companies of liquefied petroleum gas (LPG) in the Northeastern Region of Brazil. According to investigations, cartel participants agreed on price fixing and market allocation schemes.
- Jupiter Operation: This operation took place in April 2010 in the cities of Brasília and Goiânia. It was headed by SDE and carried out in cooperation with the Federal District’s Police and the Federal District’s State Procurement. Aim of the operation was to dismantle a cartel that also acted in the retail and distribution of LPG.
- Clean Dishes Operation: This operation took place in July 2010 headed by SDE in cooperation with São Paulo and Minas Gerais State Prosecutors, the São Paulo State Police and both State’s Revenue Departments. Aim of the operation was to investigate an alleged cartel among companies which supplied school food for 30 municipalities. In addition, the operation aimed at unveiling a corruption scheme related to illegal kickbacks to public servants.

- Efforts to reduce backlog: Focus in the number of closed investigations

During the year of 2010 SDE kept its efforts on concluding investigations, which resulted in 65 cases being sent to CADE for final judgment. Since 2007, the SDE has been focusing its resources in reducing backlog, in despite of the reduced staff and increasing number of reports of anticompetitive conduct. The figures below show a consistent gain of performance of SDE Competition Division in the last four years: 429 cases were sent to CADE from 2007 to 2010. This result was possible through priority setting and task forces.

**Backlog and Investigations Closed, Yearly, 2004-10**



\* Dados consolidados até 30.09.2010



- Competition Advocacy

Advocacy also plays a major part in the SDE's work as it is deemed especially important in a jurisdiction like Brazil, which only very recently has been introduced to an open market. In the context of the Brazilian Anti-Cartel Enforcement Program, which was designed by SDE for the four-year term of 2007-2010, several actions had been carried out in order to increase the yield of leniency agreements and dawn raids aimed at obtaining evidence of anticompetitive behavior. As of September 2010, following actions had been implemented by SDE in the realm of such Program:

- The “Fair Play” Program (Programa “Jogando Limpo”): This campaign was launched on July 11th, 2010, on the occasion of the 2nd Meeting of the Brazilian Anti-Cartel Enforcement National Strategy (ENACC). Its main goals are to prevent cartel formation and to enhance competition in public bids leading to the 2014 FIFA World Cup and the 2016 Olympic Games.



- The “Fair Play” Stamp (Selo “Jogando Limpo”): Also on the occasion of the 2nd Meeting of ENACC, SDE has issued a postage stamp in celebration of the “Fair Play Programme”, jointly with the Brazilian Postal Service.
- Cartel Investigation Techniques: SDE has delivered lectures for members of the Judicial Police of the Public Security National Force (SENASP). Such lectures took place in the premises of the National Police Academy in Brasília and its purpose was to capacitate the professionals of the Judicial Police of each of the Federal States in matters related to cartel investigation and its prosecution. Also, other lectures have been scheduled, namely in the Federal States of Goiás, Rondônia, Minas Gerais and Rio Grande do Norte.
- Bid Rigging Prevention Trainings: SDE has promoted a series of trainings aimed at qualifying public procurement officials. The purpose of such trainings is no other than providing public staff with means of increasing competitiveness in bidding processes, as well as detecting evidence of collusive behavior among bidders. In cooperation with the Government of the State of Rio de Janeiro, for instance, SDE has provided training for circa 70 government officials involved in bidding processes related to the 2014 FIFA World Cup and the 2016 Olympic Games.

In addition, SDE has carried out a capacity building project targeted at the personnel of the National Land Transport Agency (ANTT), in order to discuss ways of preventing and detecting collusive behavior among participants of public bids in the context of both road and rail transport.

- *Capacity Building in the context of Bid Rigging:* In 2010 SDE has devoted special attention to the diffusion of its methods and techniques on bid rigging among Federal and State’s Policemen, as well as to Federal and State Prosecutors and other public staff responsible for monitoring and investigating bid rigging and fraud. Such capacity building, by reaching more than 800 public servants, has substantially contributed to strengthen the relationship between administrative and criminal authorities that deal with bid rigging in Brazil.
- *Show Bid Rigging a Red Card” Campaign:* SDE has launched and distributed circa 18,000 folders containing information on how to detect collusive behaviour in public bids. Also, it has brought public awareness on how to report bid rigging to public authorities. Approximately 135 public entities – including federal, state and local bodies – have been provided with the material. Also, the SDE published in 2010 one new issue of its full colour *Brochures and Folders Series*: “Competition Defense in the Courts” (jointly with CADE), in order to emphasize the relevance of the necessary interface between the Brazilian competition authorities and the courts.



“Competition Defense in the Courts”

31. CADE continues to have an active participation in relevant international forums, such as the OECD, ICN and UNCTAD, among others, has showed to be a very useful tool for fomenting debate and lessons to be learned from the experience of other agencies.

32. CADE’s efforts to develop and maintain a close and positive interaction with some major foreign competition authorities also propitiates the development of joint projects for capacity building and exchange of experiences. It is noteworthy the interchange of CADE’s technical staff to other competition authorities during 2010, when we have welcomed, as part of the **Project Brazil Sectors Dialogues – EU**, the Italian Consultant Paolo Buccirossi, from the *Laboratorio di Economia, Antitrust, Regolamentazione – LEAR*, and the Italian Economist Giovanni Notaro, da *Autorità Garante della Concorrenza e del Mercato*. This kind of exchange, between our staff and from that of other countries, contributes greatly to comparative analysis on how other authorities operate in competition policy, becoming an important channel to evaluate our work and foresee new scenarios and tendencies.

33. It is noteworthy that CADE has had a leading role, in Latin America, in organizing conferences and traineeship programmes in competition policy. In June, 2010, CADE along with the other BCPS bodies promoted an International Seminar on Intellectual Property and Competition Policy in Rio de Janeiro. In addition, in November, Cade in a joint initiative with the Brazilian Institute of Competition, Consumerism, and International Commerce organized the 16<sup>th</sup> International Seminar of Competition Defense. Cade also took part in the organization of the II Regional Seminar UNCTAD-SELA about Commerce and Competition.

34. On what concerns the cooperation between CADE and Europe we must point out the signature of an understanding for Technical Cooperation between BCPS and Competition Authority in Portugal, afar from CADE's constant participation in the OECD Forums.

35. The first Semester of 2010 was also marked by the BCPS Peer Review launch, which occurred on 14 May, 2010, during the Annual Antitrust Enforcement Global Conference: The Perspective from Latin America, in São Paulo.

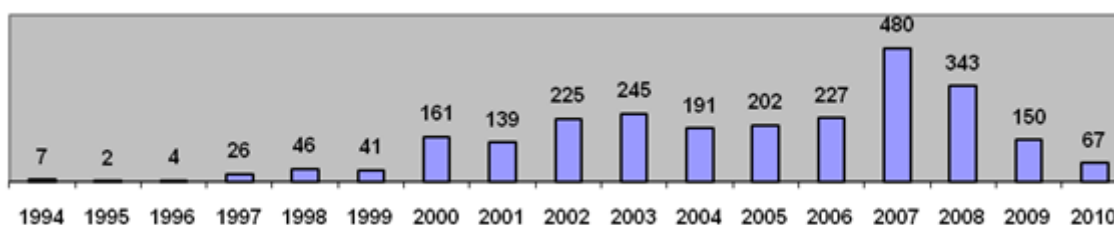
36. As mentioned previously, CADE has a internship programme which is open, twice a year, for representatives from other Latin American competition authorities. In 2010, the programme brought up great interest among competition authorities in Latin America, as concluded from the increase in the number of interested authorities.

37. A Technical Group for International Relations was created aiming at assisting CADE's international activities. This Group should become an important basis for the activities of CADE's International Advisor's Office.

38. CADE's work group on negotiation is responsible for providing support for CADE's negotiation program. The group is responsible for training negotiators and for following and evaluating negotiations. The group's accumulated expertise has shown good results, as the number and value of settlements have both increased considerably in the last year.

39. In the past 5 years, several changes in CADE's Attorney General Office (ProCADE) took place in relation to its role before the Judiciary. CADE started to have a more proactive role in judicial cases brought against its decisions, which contributed significantly to make the coercive measures established by CADE more effective.

#### Distribution of lawsuits, appeals and judicial procedures involving CADE



40. In regards to the modification of its role before the Judiciary and of the working structure of the Attorney's Office, two major aspects should be stressed.

41. In the last few years there has been a substantial change in the case law of the Regional Federal Court of the 1st Region in regards to the judicial deposit of fines or the offer of a suitable guarantee to suspend CADE's decision until the issuance of a decision by courts. Previously, the Judiciary suspended

CADE’s decisions through the concession of injunctions, without requesting any counterpart from the interested undertakings. This was in frontal violation of articles 56 and 66 of Law No. 8884/94 (Brazilian Competition Law).

42. Nowadays, as a result of competition advocacy made by ProCADE before judges, injunctions which suspend the liability of the penalties and decisions adopted by CADE are conditioned to the judicial deposit, by the undertaking, of an appropriate amount before courts. This decreases the company’s incentive to litigate against CADE, therefore favouring the effectiveness of antitrust policy.

43. In 2010, CADE signed an agreement with IPEA (Instituto de Economia Aplicada), a government institute that aims to conduct researches in the economic sector. This agreement aimed at developing studies concerning antitrust in Brazil the sharing of economic information. In 2010, two research projects were conducted in tandem by CADE and IPEA. One of the projects concerned the development of studies on the regulation of intellectual property and antitrust, with emphasis in patent licensing. The second project aimed to map entry and exit of formal firms in different industries. This agreement is expected to result in significant gains to Brazil’s antitrust system. These potential gains include the development of research in the area and an increase in the data available to the antitrust authorities.

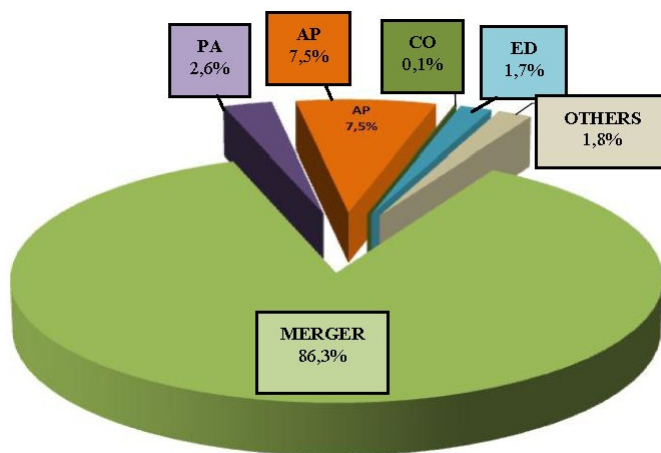
44. In May 2010, CADE signed an agreement with Brazil’s Central Bank (BACEN – Banco Central do Brasil). This agreement focus on the exchange of knowledge and experiences in issues concerning antitrust enforcement in the financial system. The agreement regulates the relationship between the parties in a myriad of issues, such as exchange of information, joint research, join publications and mutual sharing of technical knowledge. This agreement is benefits CADE by making available specific technical information on financial markets.

2.1.2 *Trials*

45. The Council has had 24 judgment sessions in 2010, in those sessions 765 cases were tried, according to the following chart:

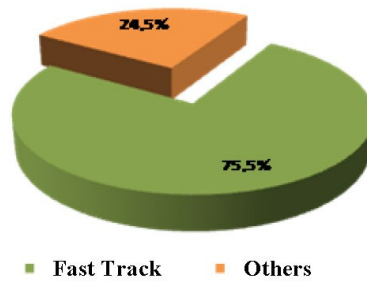
- Mergers: 660;
- Administrative Proceedings: 20;
- Preliminary Proceedings: 57;
- Declaratory Embargoes: 13;
- Other Proceedings: 15.

**Number of cases tried by the Council**

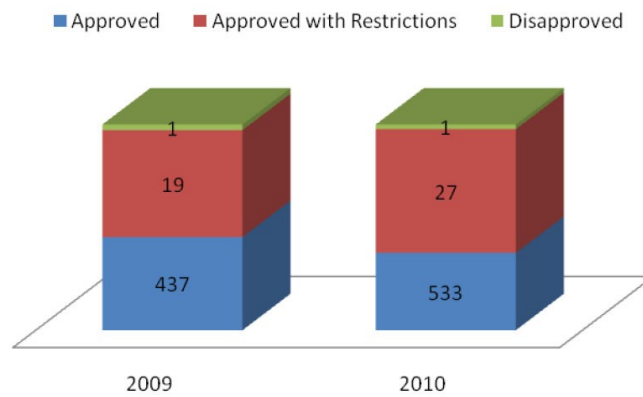


46. Since 2003, SDE and SEAE formally adopted the fast track procedure to speed up merger review analysis. Afterwards, CADE adopted the same procedure and nowadays more than 75% of merger reviews analyzed by CADE are under this instrument.

**Type of Procedure in Merger Analyses**

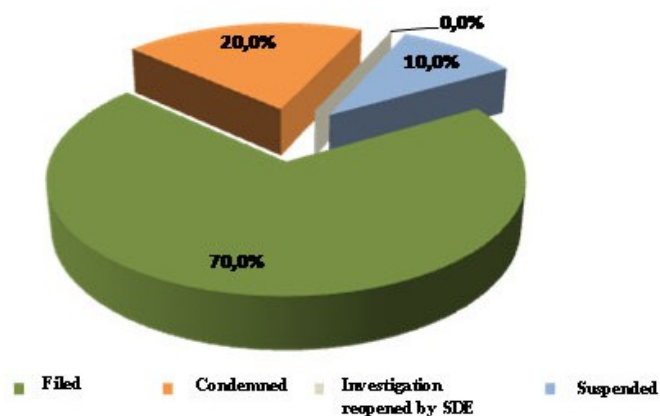


**Decisions in Merger Analyses**



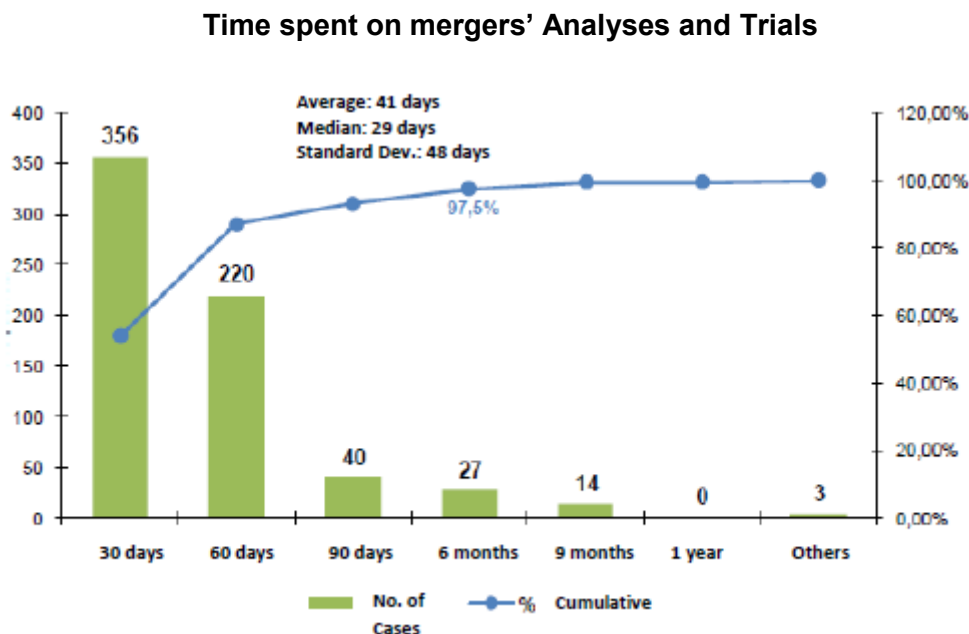
47. The charts below show how conduct cases were decided in 2010. Cade decided 20 cases and, in 4 of them, found the defendants guilty. Two cases were suspended, i.e., had its trial delayed for an unspecified period of time.

**Decisions in Administrative Proceeding**



2.1.3 Time spent on mergers' Analyses and Trials

48. The chart below informs how much time a merger spends in the Council until its trial. The average time of analyses of the 660 mergers was of 41 days in 2010. It is noteworthy that most cases are tried in the Council before the 60-day-deadline established by law, it is also important to note that 50% of the cases are tried in 30 days.

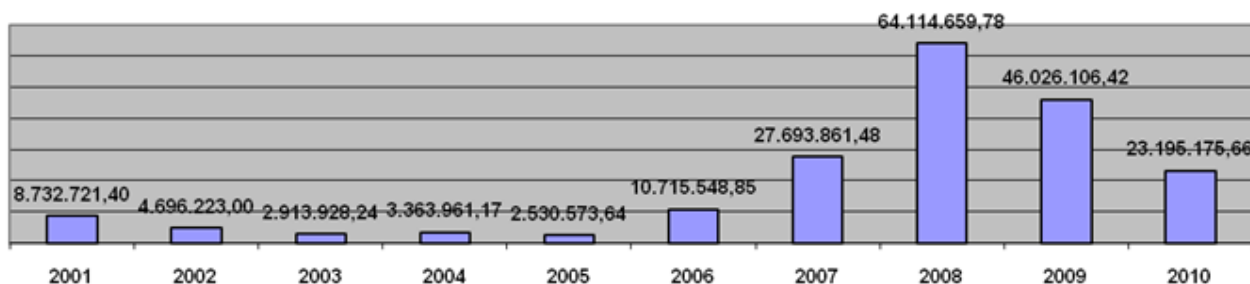


2.1.4 Fines Collection

49. In 2010, CADE filed 12 new law suits demanding the payment of fines. This number has declined steadily over the years, as companies have rushed to challenge decisions in the courts even before the deadlines for voluntary payment are over. The total sum of cartel fines in 2010 was R\$ 2.348.570.764. The average fine per cartel was R\$ 587.142.691. Notwithstanding, CADE collected approximately BRL 23 million.

50. That is a smaller amount than in the previous years. However, due to a new policy on settling litigation cases, CADE has assured a steady inflow of fines over the next few years. Several companies have agreed to pay fines in exchange for the right to pay in installments. These installments are adjusted by Brazil's risk-free government rate (SELIC) and are scheduled to be paid until 2015. Companies have signed deals committing themselves to collect more than R\$ 20 million for the next five years. These numbers are expected to be greatly increased as a few high profile cases progress through Brazil's courts.

**Fines Collection (BRL)**





### 2.1.5 PinCADE

51. CADE's Exchange Program – PINCADE reached in 2010 its tenth anniversary. The program brings undergraduate and graduate (master and PhD) students from different fields and from all parts of Brazil to a four week internship in CADE's headquarters. The students get to work directly with Commissioners and their staffs in handling real cases. CADE also brings several distinguished professionals in the field to lecture the students on novel issues in antitrust enforcement. The students are required to be at CADE in a full time basis and to help the staff with cases.

52. The selected interns received a World Bank scholarship, which covered costs of transport to Brasilia, and also accommodation and living expenses during the Programme. Now every student, regardless of her economic means, may apply to the Programme even if she cannot economically afford spending one month in Brasilia. This action was particularly aimed to exclude non-meritocratic aspects during the Selection Process. With the support of World Bank every selected student receives round-trip tickets to Brasilia and also a sufficient amount of money to finance her sojourn along the Internship Programme.

53. The program is part of an outreach effort in promoting the culture of competition in Brazil. Few people in the country know that CADE exists, and even fewer understand what the antitrust authorities do. By hosting these students, CADE is able to send a direct message to young professionals all over the country. CADE expects these students to return to their home cities and spread the message that competition is important and that there are government agencies devoted to making it work.

54. The program has been enormously successful in its goals. Hundreds of students have been hosted by CADE through the years. One measure of how effectively our message was spread is the amount of new candidates for the program every year. A great number of candidates heard of the program through former exchange students. CADE believes that every new program multiplies the number of Brazilians that acknowledge the importance of competition in the markets.

**PinCADE**  
Programa de Intercâmbio do CADE

Conselho Administrativo de Defesa Econômica  
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**O PinCADE**

O Conselho Administrativo de Defesa Econômica ("CADE") possui o Programa de Intercâmbio do CADE ("PINCADE"), realizado, há mais de dez anos, em duas edições, em janeiro e julho de cada ano. O Programa objetiva a difusão e a compreensão da cultura da concorrência, visando proporcionar aos estudantes uma experiência com a teoria e a prática jurídica e com o debate e informação veiculada nos processos de defesa da concorrência, de sorte a contribuir com a formação acadêmica e pessoal dos participantes.

Estudantes selecionados de todo o Brasil tem a oportunidade de conhecer o cotidiano da instituição e participar de uma série de atividades, como palestras de especialistas, inclusive membros do próprio Conselho, pesquisas econômicas e jurídicas, estudos e análises de casos concretos, elaboração de notas técnicas e participações na elaboração de relatórios de atos de concentração e processos administrativos atualmente em trâmite perante o Sistema Brasileiro de Defesa da Concorrência, além de outras atividades correlatas.

**XXXII PinCADE**  
04 a 29 de julho de 2011

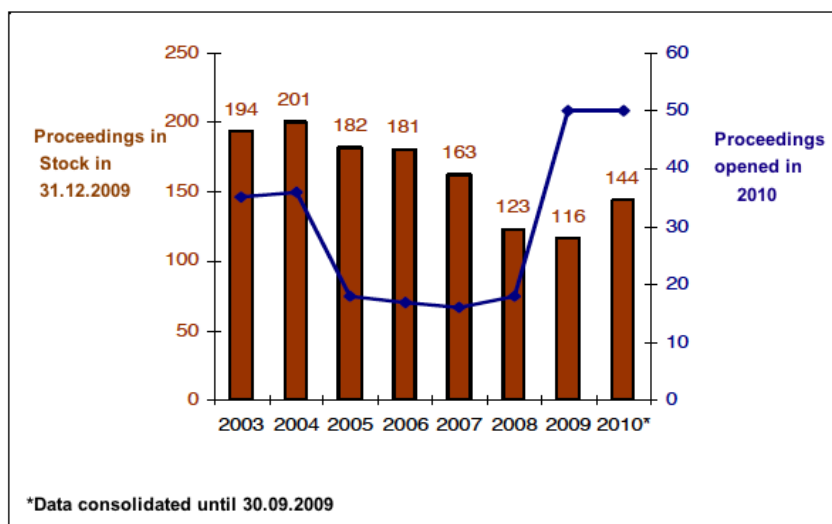
**Inscrições**  
De 16 a 30 de maio de 2011

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

2.1.6.1 Main Administrative Proceedings opened in 2010

55. During the year of 2010, SDE opened 50 administrative proceedings and closed 22 administrative proceedings.

**Number of Administrative Proceedings in Stock and sent to CADE**



- **Administrative Proceeding n° 08012.005255/2010-11**

**Complaint:** SDE *ex-officio*

**Defendants:** Elpida Memory, Inc.; Hitachi Ltd.; Hynix Semiconductor, Inc.; Infineon Technologies, AG; Micron Technology, Inc.; Mitsubishi Electric Corp.; Nanya Technology Corporation; NEC Corporation; Samsung Electronics Company, Ltd.; Samsung Semiconductor, Inc.; Toshiba Corporation; Sun Woo Lee; Yeongho Kang; Young Woo Lee; Il Ung Kim; Thomas Quinn, Young Hwan Park,; T. Rudd Corwin; Heinrich Florian; Günter Hefner; Peter Schaefer; Dae Soo (D.S.) Kim; Chae Kyun (C.K.) Chung; Kun Chul (K.C.) Suh; Choon Yub (C.Y.) Choi; Alfred P. Censullo; e D. James Sogas

**Summary:** Administrative proceeding opened to investigate the effects and implications of an international cartel in Brazil, involving the sales of Dynamic Random-Access Memories (DRAM) for the storage and recovering of electronic information.

- **Administrative Proceeding n° 08012.001127/2010-07**

**Complaint:** SDE *ex-officio*

**Defendants:** Charles Gillespie, Jacques Cognard, Christian Caleca, David Brammar, Bryan Allison, Peter Owen Whittle, Romano Piscioti, Giovanni Scodiggio, Misao Hioki e Franco Guasti.

**Summary:** Administrative Proceeding opened to investigate certain executives' liabilities related to companies already investigated by SDE for international cartel formation in the market of marine hoses with potential effects in Brazil.



### 2.1.6.2 *Main Administrative Proceedings tried by CADE in 2010:*

- **Administrative Proceedings n° 08012.009888/2003-70**

**Complainant:** SDE ex officio

**Defendants:** Newton de Oliveira, Walter Pilão, Vitor de Andrade Perez, Moacir de Almeida, José Antônio Bortoleto de Campos, Hélio de Franceschi Junior, Gilberto Gallo, Carlos Alberto Cerezine, Indústria Brasileira de Gases Ltda, White Martins Gases Industriais Ltda., AIR Products Brasil Ltda, AIR Liquide Brasil Ltda, AGA S.A

**Reporting Commissioner:** Fernando de Magalhães Furlan

**Summary:** In 2003, SDE started an investigation on a cartel among the main players in Brazil's industrial and medicinal gas markets: White Martins Gases Industriais Ltda (a subsidiary of Praxair, Inc), AGA S/A (currently Linde Gases Ltda.), Air Products Brasil Ltda., Air Liquide Brasil Ltda and Indústria Brasileira de Gases Ltda. SDE conducted dawn raids that collected vast amounts of evidence against the companies. SDE sent the product of investigation to CADE with a recommendation for steep fines.

The evidence was extremely compelling. SDE found lists of duties of cartel members. The lists, which in their more advanced forms were called "golden rules" were found in similar versions in the headquarters of different companies. SDE found thorough lists of obligations dated from 1998, which indicates that the cartel was functional well before that time.

SDE also found, in all of the raided companies, lists of gains and losses of clients to competitors. This was part of the "current account" system, a method the cartel created to allocate clients and revenue among its members. The "golden rules" list set out specific instructions regarding how each client's value should be calculated in order to be provide clear accounting of gains and losses for each company.

Also compelling were documents recording discussions among the cartel members regarding how clients were allocated. There was evidence of cheating between cartel members. The current account method was seen as a way of monitoring defection and reestablishing the cartel's equilibrium. CADE found the companies guilty and set fines of 25% of each company's revenue in 2003. White Martins Gases Industriais Ltda's fine was doubled because it had already been previously found guilty of a anticompetitive practice. CADE's decision also raised the importance of private law suits for reparation of damages caused by cartels.

- **Merger no. 08012.002467/2008-22 (Votorantim/Polimix and Tupi)**

**Applicants:** Polimix Concreto Ltda., Cimento Tupi S/A

**Reporting Commissioner:** Fernando de Magalhães Furlan

**Summary:** Polimix purchased several assets in markets for concrete for construction in the states of Sao Paulo and Rio de Janeiro. The most important feature to this case was the fact that Votorantim, a large industrial conglomerate with assets in concrete and cement all over the country, held approximately 25% of Polimix equity. CADE decided that Votorantim and Polimix were not effective competitors and calculated the market share for both combined. This method resulted in high concentration levels for all the markets involved in the acquisition. CADE perceived a significant threat to competition as a result of this merger. To make matters worse, no compensating efficiencies were found. In October 6th, 2010, CADE decided to block this acquisition and demanded the reversal of all actions taken to operate the deal.

- **Merger no. 53500.012477/2008 (Oi/Brt)**

**Applicants:** Invitel S.A. Brasil, Telecom S/A, Banco de Investimentos Credit Suisse (Brasil) S.A., Telemar Norte Leste S.A. "OI".

**Reporting Commissioner:** Vinícius Marques de Carvalho

**Summary:** This case deals with the acquisition of equity control of the Group Brasil Telecom by the Telemar Group, known as 'Oi'. The operation created a group that participates in numbers telecommunications segments such as telephones, mobiles, internet and data transmission. It was first celebrated by CADE an injunction (*medida cautelar*) in order to avoid any competitive risks until CADE's final decision. In the end, CADE approved the operation, but with the condition of signing a *Termo de Compromisso de Desempenho* (TCD). This settlement intended to create a monitoring mechanism by CADE of the company's conduct regarding some specific markets.

- **Merger no. 53500.012487/2007 (TIM/Telefônica)**

**Applicants:** Mediobanca - Banca di Credito Finanziario S.p.A, Intensa Sanpaolo S.p.A, Sintonia S/A Assicurazioni Generali, S.p.A Telefônica S.A.

**Reporting Commissioner:** Carlos Emmanuel Joppert Ragazzo

**Summary:** This case concerns the Brazilian mobile market. The group Telefônica purchased minority interest in the company Telecom Itália, both companies have license (*concessão*) from Brazilian Government to act in the mobile market. The main concern of SBDC was that this merger would imply in a reduction of the competing incentives or with the possibility of facilitate collusion in the relevant market. With this perspective, CADE adopted some measures' in order to avoid, in an effective way, the information exchange between the two companies involved regarding their business in Brazil. The settlement involved, among other dispositions, prohibition of information exchange between companies, of participation in the each other's decisions and the obligation to present annual reports to CADE.

- **Merger no. 08012.011736/2008-41 (Banco do Brasil/Nossa Caixa)**

**Applicants:** Banco Nossa Caixa S.A., Banco do Brasil S.A.

**Reporting Commissioner:** César Costa Alves de Mattos

**Summary:** The case analyzed the purchase of 71,25% of the social and voting capital and incorporation of the Bank *Nossa Caixa* by a brazilian public Bank (*Banco do Brasil*). It was discovered that in 157 cities in the country the incorporation resulted in a market concentration of more than 40%. In the non financial activities such as insurances, private social security or capitalization, it was considered that the operation didn't imply in any anticompetitive effects. However, regarding the financial activities, some concerns were raised due to the presence of imperfect information in the sector. A settlement was made in order to reduce the exchange costs from clients in a way to stimulate bank competition in those cities. It stipulated the creation of a free call center in which clients could obtain information about *portabilidade de cadastros e créditos*. The operation was then approved with this settlement that objective to foment competition, increasing the possibility of a bank client obtaining more favorable negotiation conditions.

- **Administrative Proceedings n° 08012.006504/1997-11**

**Complainant:** Rogério Santos Muniz, José Cândido de Carvalho Júnior, Chandre de Arújo Costa

**Defendants:** Associação Brasileira dos Clubes de Futebol - Clube dos Onze, Associação dos Clubes de Futebol - Clube dos Treze, Confederação Brasileira de Futebol – CBF, TVA, Globosat, Rede Bandeirantes de Televisão, Rede Globo de Televisão

**Reporting Commissioner:** César Costa Alves de Mattos

**Summary:** The case, started in 2002, involved Brazilian soccer biggest teams and cable and open television companies. The concern was about the acquisition of broadcasting rights of the main soccer matches, with the presence of anticompetitive practices such as the elimination of rivals or cost increase. Another relevant aspect was Rede Globo's preemptive rights (*direitos de preferência*) of transmission. It was celebrated a settlement with some of the defendants in order to create incentives for competitive self regulation in the sector. The agreement, among others aspects, states the resign of Rede Globo of the *exclusive rights* of transmission.

## 2.2 *Mergers and acquisitions*

### 2.2.1 *Statistics on number, size and type of merger notified and/or controlled under competition laws*

56. In 2010, 691 (six hundred ninety-one) new mergers were submitted for analysis in SEAE which represents a number 47% higher than in 2009 (471). From these cases, 677 (six hundred and seventy seven) were dispatched, of which 122 (one hundred and twenty-two) entered in the years 2007, 2008 and 2009. During this year, 70% of total mergers were dispatched by fast track procedure while the remaining 28% were analyzed through the regular procedure of analysis.

57. Since February 2010, SEAE started issuing confidentiality technical reports for initial appeals which previously was subject of elaboration by SDE. The Secretariat issued a total number of 662 (six hundred and sixty-two) technical reports. However, despite the increased number of processes, as well as new techniques, due to the increased participation of fast track procedure, there was an increase in the average length of time analysis in SEAE - about 7% over the year 2009.

58. The restrictions recommended by SEAE were relatively small over this period, and in general, no major differences were observed between CADE's decisions and SEAE's recommendations.

59. Therefore, in 2010, some cases that were analyzed through the regular proceeding involved additional complexity. For these cases, SEAE turned to more sophisticated economic studies, always based in the economic literature, in order to support its recommendations for approval and / or disapproval of the operation. That was the tone adopted for the analysis of mergers involving the following companies: New Logistics and Mesquita, Merck and Schering Plough, Sadia and Perdigão, Bradesco and Mediservice; Braskem and Quattor.

### 2.2.2 *Summary of significant cases*

- **Nova Logística / Mesquita**

This case was about the acquisition of the *Empreendimentos Comerciais Mesquita Ltda.* by *Nova Logística S/A* which is a company of the *Santos Brasil* group. The later is a company that operates in the customs bonded warehouses sector in the port of Santos.

This operations implied in a expressive horizontal concentration in warehousing of containers in the region of Santos, as well as vertical integration within the activity of containers movement exercised by *Santos Brasil*.

As to its market entry conditions based in the information provided by the plaintiffs and competitors, it was concluded that the entry was possible. However, as consequence of the deadlines to the implementation and effective operation of a new agent, as well as by the overcapacity hold by the plaintiffs, the entry would be neither timely nor sufficient.

In regard to the rivalry conditions, it was observed that the most part of the overcapacity would be held by the plaintiffs, and therefore the competitors would have a limited capacity in absorbing and eventual deviation of demand as the result of a possible exercise of market power. Therefore, there were elements that would be indicating unilateral and coordinate market power.

Thus, the efficiencies presented by the plaintiffs could not be considered as specifics to the operation and it was recommend the full reversion of operation in the way it was presented.

- **Sadia/Perdigão**

*Sadia* and *Perdigão* are two important enterprises in the Brazilian poultry market. The operation was about the acquisition of *Sadia S.A.* by *Perdigão S.A.* with the posterior creation of *BRF Brasil Foods S.A.*

It was observed from this operation expressive horizontal concentration in the following markets:

- Regional slaughter of chickens (Mato Grosso) and turkeys (Paraná).
- National offer of turkey *in natura* meat, frozen food (lasagna/ready dishes, frozen pizzas, hamburgers, breaded, kibes and meatballs), processed food (ham, salami, cold cuts, smoked sausage, bacon), party *kits* (poultry and swine) and margarines.

As to the analysis of its entry market conditions, those in spite of being timely, would not be probable or sufficient, taking into consideration the entry barriers:

- Degree of vertical integration of the meat chain (creators, slaughter, processing and distribution);
- Scale economies and scope in the production and distribution;
- The relevant presence of brands, with the existence of an internal logic of valorization, finance and refinance.

In regard to the rivalry, there were two important combined elements that were observed, and it was concluded that this rivalry would not be enough to mitigate the exercise of market power. These two elements were: the overcapacity held by the competitors comparatively to the deviations of demand (portion of market's demand that would migrate before a price increase); and the behavior historical of several market agents, concerning the takeover of market share, as well as the brand positioning.

For the efficiencies presented by the plaintiffs could not be considered antitrust efficiencies, once that these same efficiencies could be obtained through other means that the acquisition of the sole competitor company in the market.

Thus, the net result of this operation would be negative, being recommended that the approval of the operation should be subject to a set of behavioral and structural measures concerning the affected relevant markets. It was proposed two alternatives:

(a) Temporary licensing of the principal brand with the divestiture of the corresponding set of assets, associated with the divestiture of chicken and turkey slaughter assets in Mato Grosso and Paraná, respectively;

(b) Divestiture of the set of assets encompassed in combat brands and productive assets, as well as the chicken and turkey slaughter assets in Mato Grosso and Paraná, respectively, added brands and productive assets of margarine acquired previously by Unilever.

It was suggested, as complement, behavioral measures while publicizing loyalty and bonus programmes in resealing stores.

- **Merck/ Schering-Plough**

This operation referred to the worldwide acquisition of *Schering-Plough* by *Merck*.

This operation resulted in consequential horizontal concentrations in relevant markets that regulate cholesterol and triglycerides, lipids regulators and combinations, defined by the therapeutic subclasses C10A9 and C10C0, as established by the IMS-Health institute.

Based in previous analyses of pharmaceuticals in the human health sector, the conclusion reached was that there were no conditions for a timely and sufficient entry in this market. Additionally, it was observed the absence of significant competitors in the market, indicating the absence of rivalry.

In regard to the alleged efficiencies by the plaintiffs, they could not be proved because it was not demonstrated how these efficiencies could be obtained, in such a way that they could not be considered in this operation.

Considering all the aforementioned, the recommendation was for the approval of the operation, as long as – heard *National Agency for Sanitary Surveillance* (ANVISA) and *the National Institute of Intellectual Property* (INPI) – was promoted the compulsory licensing of the pharmaceuticals of the previous mentioned subclasses of pharmaceuticals belonging to the plaintiffs.

- **Braskem/Quattor**

An operation lead in order to reorganize the share control in seven steps and that basically consisted in the purchase by *Braskem* (whose capital belongs to *Odebrecht* and *PETROBRÁS*) of the *Unipar/Quattor* equity control participation. By the end of the operation, were also predicted alterations in the management of the petrochemical complex of Suape and Rio de Janeiro (Comperj).

Seven analyses of relevant market were lead in the first generation of petrochemistry and three in the second. Furthermore, another eleven lateral markets of this industry were identified. Be by the low participation of the plaintiffs in international markets; be by the inner technical issues of the petrochemistry market, it was verified a low possibility of exercise of market power by *Quattor* or by *Braskem*.

Thereby, in its opinion, SEAE recommended that the operation should be approved by CADE, without remedies.

- **Bradesco/Mediservice**

It was about the acquisition of *Mediservice* by the *Bradesco Group* with impact over the economic activities of the supplemental human health sector: health and odontologic plans that could be collective or individual.

The operation resulted in an expressive horizontal overlapping, featuring the following relevant markets:

(a) Collective health plan in two sets of municipalities in Rio de Janeiro (Itatiaia, Porto Real, Resende and Quatis) and Santa Catarina (Joinville, Araquari e Guaruva);

(b) Odontologic plan in municipalities in the Brazilian states of Goiás and Tocantins (Minaçu, Campinaçu, Colinas do Sul, Porangatu and Palmeirópolis).

When analyzed, the entry conditions were not found timely and sufficient. The historical of this sector has demonstrated a reduction in the number of health plans companies. Furthermore, the sector would be characterized by some specificity which could be characterized as possible barriers to entry.

As for market rivalry in the collective medical plans, the analysis of evolution of market shares of the major competitors indicated that *Mediservice* presented an increased trajectory, while *Bradesco* had a reduced market. Additionally, information contained in the plaintiffs' records showed the activity post-established plans offering, while other competitors offered pre-established plans, this overwhelmingly suggested that the closer competitors would be *Bradesco* and *Mediservice*. In this sense, there were no post-operation conditions of rivalry in those markets.

In regard to the dental plan market, there was the presence of similar size competitors, the biggest competitor would have less than 5% of the market, so that could not be concluded, in principle, that the necessary conditions for rivalry would be present.

Despite the request made by SEAE, the plaintiffs did not present the efficiencies arising from this transaction. Therefore, we concluded that the transaction would result in negative net effects in the aforementioned markets.

Therefore, this merger was approved by SEAE, with the following restrictions:

(a) Divestiture of the portfolio of dental plan beneficiaries gained by *Mediservice*, in the mentioned market, to a competitor of similar size and that was not present in this market;

(b) Divestiture of portfolios of medical insurance beneficiaries acquired by *Mediservice*, in discussed market, to competitor of similar size and that was not present in this market;

### **3. The role of competition authorities in the formulation and implementation of other policies**

60. SEAE plays an important role on issues that come out as consequence of the interface between the enforcement of the Brazilian Antitrust Law in all economy sectors and the application of rules issued by regulatory agencies, as well as the measures related to trade and industrial policies.

61. In 2010, SEAE had an intensive participation in the field through its analytical opinions on regulatory rules in the following sectors:

#### **3.1 Highway Sector**

62. In the highway sector, it can be highlighted the monitoring of governmental works through the participation in a situation room of Brazil's Growth Acceleration Program (PAC), introducing a new model

for planning, management and implementation of public investment, articulation public and private infrastructure projects and monitoring institutional measures with the main objective of increasing the pace of economic growth. Such monitoring aimed to set goals and priorities at all stages, monitoring the implementation of projects in the roads sector, from project design, environmental permits, procurement of works, biddings, service orders and execution, from earthwork to signalization.

### **3.2 *Railway Sector***

63. In the railway sector, SEAE monitored PAC's actions, attending rooms of situation conducted by the Civil House of Brazil's Presidency of Republic where problems and solutions inherent to the implementation of the works were discussed. Developments such as the North/South connecting Açailândia/MA to Estrela d'Oeste/SP, Integration Railroad Midwest, from Uruaçu/GO to Vilhena / RO, the New Transnordestina Railway connecting the ports of Suape/PE and Pecém/EC to Eliseu Martin /IP, the extension of Ferronorte until Rondonópolis/MT and the construction of several outlines and adaptations for the existing lines, were the subject to analysis, criticism and suggestions from quite a few number of administrative bodies.

### **3.3 *High speed train – "TAV"***

64. The high speed train was one of the works that was detached in 2010. The "TAV", connecting Rio de Janeiro, São Paulo and Campinas is an ambitious project. Regional development, the reduction of bottlenecks and postponement of investments in other transportation modes, reduction of environmental impacts and the generation of direct jobs are some of the advantages associated with this project, which can bring great economic changes in its area of influence. The way of delivering a complex project like the TAV resulted in several discussions, having SEAE participated and contributed on topics such as definition of the modeling of concession, allocation of risks between public and private partners, the criteria for auction, aspects of competition between the "TAV" and other modes of transportation and tallies of the price cap and the internal rate of return to be used.

### **3.4 *Air Sector***

65. The air sector in Brazil has been through an increasing development and demanded a strong attention from SEAE during 2010. SEAE is represented in the Commission of Technical Coordination of Aerial Activities (COTAER), of the Ministry of Defence, being a representative of the Ministry of Finance in this Commission. Therefore, SEAE analyzed resolutions proposed by the Council of Civil Aviation (CONAC) related to the international market between Brazil, the African continent and India; to the South-American intraregional market; to bird danger; the approval of 2009 CONAC's annual report, besides proceedings concerning the elaboration of the National Aviation Plan (PAN). It is noteworthy to mention the formulation of opinions in the following issues: (a) simplification of biddings proceedings for the procurement of works, utilities, leasing, concessions for the use of areas, airport installations and equipments, concessions and divestiture of assets and other acts of interest for the Brazilian Company for Airport and Aviation Infrastructure (INFRAERO); (b) regulatory opinion about the establishment of airport tariffs.

66. SEAE also participated, in 2010, on the group that discussed the rules for the São Gonçalo do Amarante Airport concession, in the State of Rio Grande do Norte. This is the first case of a BOT airport in Brazil, which contract is expected to be signed in 2011 and last for 28 years. In the same way of other sectors, SEAE has been taking part on the permanent forum that improves the PAC's initiatives at the air sector.

### **3.5 Port Sector and Waterway transportation**

67. In regard to the port sector, SEAE has monitored recovery works, as well as the modernization and amplification that were carried out in this sector, in 2010. It is noteworthy to mention as important activities lead during this year the several drainage and demolishing works in order to deepen access channels, basins and berths developments underway in the main Brazilian ports under the National Dredging Programme.

68. As to the regulation of waterway transportation, SEAE prepared technical reports and technical advices on regulatory proposals and rules developed in the sphere of Federal Government. In this sense, SEAE drafted an opinion about the proposed rule for the exploitation of operational and non-operational areas and port facilities in structured ports.

### **3.6 Energy Sector**

69. SEAE has carried out important activities in the Energy Sector through the monitoring of discussions concerning regulatory models within regulatory agencies, ministries and other agencies that follow the debates on the thematic of energy and climate change. Concerning the activity of monitoring public hearings and public consultations, SEAE issued two (2) analytic opinions on regulatory rules.

70. In regard to its pronouncements on legislative bills, executive orders and resolutions from regulatory agencies, it is noteworthy to mention the recent adoption of the Regulatory Impact Analysis Methodology suggested by the OECD Competition Assessment Principles (2007 version).

71. In 2010, SEAE participated in several internal discussions and preparatory conference calls for the G-20 meetings about important definitions, in the Pittsburgh Agreement, related to the gradual reduction of subsidies to fossil fuels. Therefore, in order to support the Brazilian position, SEAE produced a report about the characteristics of the subsidies to coal. Furthermore, it has integrated situation rooms of Brazil's Growth Acceleration Program (PAC) in the following areas: electric energy, petroleum and gas; and also has participated in the room of situation related to the actions developed by the Brazilian National Agency of Petroleum, Natural Gas and Biofuels.

72. In the area of Biofuels, SEAE maintained a constant monitoring of prices, offers and demand of ethanol, with the aim of identifying whether it would be necessary to adopt measures to guarantee the market supply during the off-season. SEAE also represents the Ministry of Finance in the Interministerial Executive Committee of Biodiesel (CEIB).

73. SEAE had an important role while participating in the development of several proposals and initiatives related to climate change, especially in the Working Group on Climate Changes of the Ministry of Finance which held an expressive number of meetings during this year. Another important initiative of SEAE was its participation in the Interministerial Committee on Climate Change which is the main body in charge of approving projects that will be developed in the scope of the Clean Development Mechanism. It is also important to stress its evaluation made of a World Bank study entitled Study of Low Carbon to Brazil which the main objective was to serve as basis to the development and implementation of public policies in Brazil, with the finality of reducing emission of greenhouse gases.

74. Likewise, SEAE has also elaborated fortnightly and quarterly reports about energy and fuels markets, aiming to monitoring its tariffs evolution and describe the important facts that happened in these markets. The fortnightly reports have the objective of accompanying the principal variables related to electric energy and fuels, such as prices, electric energy consumer, levels of reservoirs and impact of the adjustments and revisions of electric energy tariffs in the Extended National Consumer Price Index of the



Brazilian Institute of Geography and Statistics. (IPCA/IBGE). The quarterly reports encompassed a wide range of subjects that are strategic of the energy sectors and relevant for the period.

### **3.7 Telecommunications Sector**

75. In the Telecommunications sector, SEAE monitors new regulatory proposals and also those concerning universalization and technological innovation within the sector, with special emphasis newly given to the diffusion of broadband in Brazil. Thus, representing the Ministry of Finance, SEAE participated in the Working Group composed to make public the Broadband National Plan (PNBL). In this area, SEAE has also made contributions to several public consultations, including to Brazilian Agency of Telecommunications (ANATEL).

76. One of the analyses published by SEAE, as a response to a public consultation, was related to a draft law that will establish the Civil Legal Framework for Internet in Brazil. In this document, SEAE's position was in line with the proposals of the draft, but considered that the inclusion of rules enforcing network neutrality was extremely opportune and benefic to the permanent development of Internet in Brazil.

77. In regard to radio broadcasting, SEAE participated in a working group created to elaborate the Public Notice for the concession of a public-private partnership for the Single Operator of Digital TV for the public broadcasting services. SEAE also represents the Ministry of Finance in the Digital TV Development Forum, as well as in the working group pursuing the reduction of the costs of digital set-top box devices that are necessary to the analog-digital transition of television sets that do not contain integrated receptors. In the end of 2010, SEAE integrated a working group that was created to establish a new regulatory framework for both telecommunications and radio broadcasting in Brazil.

### **3.8 Media Sector**

78. SEAE also contributed in the media and culture sectors by issuing an opinion on a public consultation, led by the National Film Agency (ANCINE), in respect to a proposal to alter the movie quota rules for domestic productions. It also issued analyses on proposals, made by Brazil's Ministry of Culture, regarding the incentives to the building and modernization of movie theaters.

79. Besides that, SEAE has participated in the discussion to update and modify the values and criteria for payment of CONDECINE, a tax over media products that funds the production, distribution and exhibition of new movies and also in the elaboration of a bill that creates institutional mechanisms for collaboration between the audiovisual regulatory agency and the Brazilian Competition Protection System.

### **3.9 Financial Sector**

80. Concerning the Financial Sector, SEAE, working with Brazil's Central Bank (BACEN), the Ministry of Justice and the Public Prosecutor Office has greatly contributed in discussions and studies about payment cards fees resulting in new regulations that were approved by National Monetary Council (CNM). SEAE was also responsible for organizing the International Seminar on Payment Cards, sponsored by the European Union (EU) and by the Brazilian government in a partnership that reunited the BCPS and BACEN.

### **3.10 Postal Sector**

81. The Minister of Finance's Portaria N° 244/2010 is an ordinance that greatly advances the definition of a methodology for the readjustment of the postal tariffs collected for services provided by Brazilian Post and Telegraph Corporation ("Correios") in a monopolistic regime. The aforementioned

ordinance established, for the first time, rules in order to discipline the subject matter by creating the Postal Service Index (ISP) which will be utilized in the price-cap methodology for postal services prices.

### **3.11 Health and Sanitary Surveillance Sectors**

82. SEAE's mission in the health sector, especially in the pharmaceutical and health plans markets, is contributing to the regulatory improvement of these markets by means of competition advocacy. SEAE has participated in several meetings of the Health Insurance Chamber (CSS) and the Pharmaceuticals Regulatory Chamber (CMED), interministerial bodies that provides stewardship to the regulatory agencies.

83. In 2010, SEAE participated in 4 (four) important technical chambers implemented by the National Agency of Supplementary Health (ANS). In regard to the health insurance market, SEAE has an important role once it must be heard on price adjustments of health insurance. Therefore, SEAE issued a technical report (Nota Técnica N°43/2011) where it analyzed and consented with the methodology enforced by ANS, estimating the impact of this readjustment on the market and inflation.

84. In regard to the draft bills that are in the Brazilian Congress, SEAE issued several opinions and since August 2010, were all based in the Regulatory Impact Analysis Methodology suggested by the OECD Competition Assessment Principles. It is important to emphasize that most of these bills referred to the inclusion or alteration of provisions that rule the health insurance market. In all its opportunities, SEAE manifested against those initiatives that restrained competition and whose social costs would surpass the benefits of the proposal.

### **3.12 Urban Infrastructure and Natural Resources**

85. In these two areas, SEAE actions were oriented to promote a better regulatory environment and enforce its competition advocacy role in sectors related to urban infrastructure (cabs market, basic sanitation, habitation and urban transportation, among others) and natural resources (hydic resources, mining and others). In this manner, during 2010 several reports involved the following analyses: (i) normative rulings on legislative propositions; (ii) cabs market in Vitória (ES); (iii) price targeting in traffic state agencies; (iv) basic sanitation; (v) mining; (vi) hiydric resources; and (vii) urban mobility.

86. SEAE also has adopted the Regulatory Impact Analysis Methodology suggested by the OECD Competition Assessment Principles in the opinions and reports made by this sector. In the analyses lead by SEAE regarding legislative propositions, in 2010, were not identified impacts on competition, but strong impacts showed to be present in the welfare of consumers and in the consumer market. Within the last year, SEAE analyzed 20 (twenty) legislative proposals that potentially could have impact in the consumer market or public utilities users. SEAE has made an important study concerning the cap market in Vitória (ES) with recommendations to the regulatory improvement of this market.

87. SEAE has also take part on discussions regarding the new regulatory landmark on the mining sector, in view of increasing the competitiveness in this segment, including the development of productive chains with more aggregate value. In regard to the economic regulation, SEAE was involved in activities related to the resale and distribution of fuels.

### **3.13 International Trade and Competition**

88. SEAE plays an important role while assuring coherency between trade policy instruments and competition policy principles through its participation in: (i) MERCOSUR's fora of analysis on tariff changes;(ii) technical fora of discussion which give support to the Chamber of Foreign Trade (CAMEX) decisions concerning the application of antidumping measures.

89. In several occasions, CADE's final decisions on anticompetitive practices or merger reviews lead to the recommendation to CAMEX of reductions in importation tariffs or suspension of antidumping measures, in order to improve the competition in the relevant markets analyzed. Also as a matter of competition advocacy, several regulatory or legal aspects positively affecting entry barriers (investments barriers) have been publicly appointed by CADE, SDE and SEAE in their respective decisions or instructions, as well as in several public consultations done by sectional agencies (public rule-making hearings conducted by federal (or state) agencies).

90. In MERCOSUR, SEAE is the Brazilian coordinator of the Technical Committee on Competition n° 5, the so-called CT-5. MERCOSUR is a customs union established by Brazil, Argentina, Paraguay, and Uruguay, in 1991 (Venezuela recently signed a protocol of accession to the bloc, presently pending approval by the parliaments of the current members). The main role of CT-5 is to facilitate cooperation on competition policy matters. For instance, in 2007 Uruguay had its competition law ratified and in 2009 its competition agency began working; Brazil, throughout CT-5, has been giving all assistance concerning guidelines and methodology for analyzing mergers and cartels.

91. As for its representative role in MERCOSUR, SEAE was invited to participate in negotiations carried out to settle commercial agreements between Brazil and México and MERCOSUR-European Union, both still ongoing. SEAE has the main role of coordinating, within the BCPS, the Brazil's position on competition policy chapters that are present in the scope of these agreements.

#### **CT-05: MERCOSUR's Competition Policy Agreement**

In December 1996 it was approved the Decision of the Council of the Southern Common Market - CMC 1 / 1996 concerning the Protocol of Competition Policy in MERCOSUR (PDC). Notwithstanding, Brazil, through the decree No. 23,602, of 18.09.2010, ratified the Protocol and internalized. In 2004, through a mandate issued by the MERCOSUR Trade Commission - CCM, CT-05 worked on PDC's revision, in order to identify aspects that needed modification. The tasks were completed in 2006, but only in May 2010 the committee instructed CT-05 to work a new text for the protocol, so that it could be internalized by the four countries.

The new proposal, approved in the form of Agreement by Decision CMC No. 43/2010 gives a cooperation character to the PDC, removing any reference to supranational bodies. Moreover, it defines the CT-05 as the competent body to deal with MERCOSUR competition matters, being the dialogue held by the country which holds the pro tempore presidency. The new MERCOSUR Agreement on Competition Policy recognizes the importance of cooperation and coordination of activities for the implementation of competition laws and establishes a formal mechanism for consultation and information exchange among Member States.

92. Since 2005, SEAE also has a role in monitoring technical standards of products issued by Brazilian Association of Technical Standards – ABNT, in order to prevent harm to competition and/or consumers due to introduction of technical barriers or unfair patterns of competition. Currently, SEAE is participating, under ABNT's special commission, in the revision of the technical standards concerning pre-fabricated steel lattice reinforcement for concrete structures.

#### 4. Resources of competition authorities

##### 4.1 Resources overall

###### 4.1.1 Annual Budget (in Reais and USD)

	<b>Council for Economic Defense CADE</b>	<b>Secretariat for Economic Monitoring - SEAE</b>	<b>Secretariat of Economic Law - SDE</b>
Brazilian Real (BRL)	BRL 15.662.561,00	BRL 4.800.000,00	BRL 2,250,430,00 <sup>2</sup>
U.S Dollars (USD)	USD 8.798.090,66	USD 2.966.992,21	USD 978,826.00

###### 4.1.2 Number of Employees

	<b>Council for Economic Defense - CADE</b>	<b>Secretariat for Economic Monitoring- SEAE</b>	<b>Secretariat of Economic Law- SDE</b>
Economists	11	41	04
Lawyers	26	14	24
Other Professionals	5	25	02
Total Technical Staff (working on Competition Enforcement)	42	30	30
Support Staff	126	71	35
All staff combined	168	170 <sup>3</sup>	105 <sup>4</sup>

#### 4.2 Human Resources

	<b>Council for Economic Defense - CADE</b>	<b>Secretariat for Economic Monitoring - SEAE</b>	<b>Secretariat of Economic Law SDE</b>
<b>Enforcement against anticompetitive practices</b>	CADE does not assign a separate staff for enforcement activities	0	23
<b>Merger review and enforcement</b>	CADE does not assign a separate staff for merger analysis and enforcement	30	0
<b>Advocacy Efforts</b>	CADE does not assign a separate staff for advocacy efforts	Information not available	03

#### 4.3 Period Covered by the above information

January 1<sup>st</sup>, 2010 – December 31<sup>st</sup>, 2010

<sup>2</sup> The SDE's approved budget to 2009 was of R\$ 14.8 million. It should be noted that R\$1.7 million can be used by Competition Division under its own discretion. The remaining R\$13.11 might be allocated to the Competition Division upon request to and authorization of the head of the Secretariat of Economic Law.

<sup>3</sup> It includes support employees.

<sup>4</sup> It includes support employees that work in both Competition and Consumer Divisions.

## 5. Summaries of or references to new reports and studies on competition policy issues

**Table - Brazilian Papers on Competition submitted to the OECD**

Title	Year	Committee	Code
Standard Setting	2010	WP2	DAF/COMP/WP2/WD(2010)30

### 5.1 *Articles Published by CADE's Commissioners in 2010*

MENDONÇA, E. C. ; PITELLI, M. M. ; MACHADO, L. C. . Produtividade Total dos Fatores na Indústria Brasileira de Alimentos. In: XLVIII Congresso da Sober, 2010, Campo Grande/MS. XLVIII Congresso da Sober, 2010.

PITELLI, M. M. ; MENDONÇA, E. C. . Eficiência Técnica e de Escala da Usinas Brasileiras de Açúcar e Alcool: uma aplicação utilizando-se a metodologia DEA. In: XLVIII Congresso da Sober, 2010, Campo Grande/MS. XLVIII Congresso da Sober, 2010.

RIBEIRO, Leonardo ; RUIZ, R. M. ; BERNARDES, Americo Tristão ; ALBUQUERQUE, Eduardo da Motta . Matrices of science and technology interactions and patterns of structured growth: implications for development. *Scientometrics*, v. 83, p. 55-75, 2010.

RIBEIRO, Leonardo Costa ; Ruiz, Ricardo Machado ; Bernardes, Américo Tristão ; Albuquerque, Eduardo da Motta e . Modeling economic growth fuelled by science and technology. *Estudos Econômicos (USP. Impresso)*, v. 40, p. 319-340, 2010.

RIBEIRO, Leonardo Costa ; Bernardes, Américo T. ; da Motta e Albuquerque, Eduardo ; Ruiz, Ricardo M. The diffusion of technological knowledge through interlaced networks. *Computer Physics Communications*, v. Dez, p. 1-4, 2010.

### 5.2 *Published Chapters of Books*

RUIZ, R. M. ; DOMINGUES, Edson Paulo . Poder de Compra da Petrobras: Impactos Econômicos nos seus Fornecedores. In: João Alberto De Negri; Fernanda De Negri; Lenita Turchi; Marcio Wohlers; José Mauro de Moraes; Luiz Ricardo Cavalcante. (Org.). Poder de Compra da Petrobras: Impactos Econômicos nos seus Fornecedores. Brasília: IPEA, 2010, v. 1, p. 1-106.

RUIZ, R. M. . Inovação e Estratégias de Acumulação de Conhecimento na Indústria Brasileira. In: Fernanda De Negri; Mansueto Almeida. (Org.). Estrutura Produtiva Avançada e Regionalmente Integrada: desafios do desenvolvimento produtivo brasileiro. 1 ed. Brasília: IPEA, 2010, v. 1, p. 35-88.

### 5.3 *Communications and Abstracts published in Annals of Congresses or Journals*

ALBUQUERQUE, Eduardo da Motta ; LEMOS, Mauro Borges ; NEGRI, João Alberto de ; RIBEIRO, Leonardo ; RUIZ, R. M. . Comparação dos Campos Científicos de Excelência no Brasil e no Exterior. 2010.

LEMOS, Mauro Borges ; RUIZ, R. M. ; NEGRI, João Alberto de ; ALVES, P. ; NEGRI, F. . O FNDCT e o Núcleo da Indústria Brasileira. 2010.

### 5.4 *Articles in Magazines and Newspapers*

ANDRADE, M. V. ; GAMA, Marina Moreira da ; RUIZ, R. M. ; MAIA, A. C. ; MODENESI, B. ; TIBURCIO, D.M. . Estrutura de Mercado do Setor de Saúde Suplementar no Brasil. Belo Horizonte: CEDEPLAR/UFMG, 2010 (Texto para Discussão).

RUIZ, R. M. . Inovação e Estratégias de Acumulação de Conhecimento na Indústria Brasileira. Brasília: CEPAL-IPEA, 2010 (Texto para Discussão CEPAL-IPEA (num. 39)).