

**Memorandum of Understanding between the Competition Commission of
South Africa and the Administrative Council for Economic Defense of
Brazil**

PREAMBLE

The COMPETITION COMMISSION OF SOUTH AFRICA (CCSA) and the ADMINISTRATIVE COUNCIL FOR ECONOMIC DEFENSE OF BRAZIL (CADE), henceforth referred jointly as “the Sides” and separately as “the Side”,

RECOGNIZING the long-term relationship between the Sides;

EXPRESSING their will to strengthen cooperation in the field of Competition Law and Policy;

NOTING that the enforcement of Competition Law is quintessential for promoting economic growth and consumer welfare;

CONSIDERING that the cooperation between the Sides will contribute to improve the effectiveness of Competition Law enforcement within their jurisdictions; and,

AIMING at the creation of favourable conditions to development of bilateral relations on competition matters,

HAVE REACHED the following understanding:

1. COOPERATION

- 1.1. Cooperation between the Sides under the present Memorandum of Understanding shall be subject to the respective laws of the Sides, and in

particular the protection of confidential information and business secrets as provided under their relevant competition laws.

- 1.2. The Sides acknowledge that it shall be in their mutual interest to exchange non-confidential information, experiences and views with regard to:
 - 1.2.1 Competition policy and enforcement developments in their respective jurisdictions, including with regard to investigations of competition law infringements;
 - 1.2.2 Operational issues affecting the efficiency and/or effectiveness of the respective Sides;
 - 1.2.3 Multilateral competition initiatives, such as interactions with the International Competition Network, the Organization for Economic Cooperation and Development, the World Intellectual Property Organization and the United Nations Conference on Trade and Development;
 - 1.2.4 Competition advocacy including raising awareness of companies and the wider public about competition legislation and enforcement.
- 1.3 Technical cooperation initiatives in the area of development of competition policy and law and its enforcement are subject to the availability of resources on both Sides. These initiatives may include:
 - 1.3.1 Exchange of staff;
 - 1.3.2 Organisation of capacity building activities such as seminars and training workshops.
- 1.4. Should the Sides pursue enforcement activities concerning the same or related cases they shall endeavour to coordinate their enforcement activities, where this is possible.

2. ASSISTANCE TO BE PROVIDED BETWEEN THE SIDES

- 2.1. If one of the Sides believes that anti-competitive actions carried out within the national borders of the other Side adversely affect competition within the national borders of the first Side, it shall communicate this to the other Side.
- 2.2. The Side which was informed of the anti-competitive actions shall consider the possibility of initiating enforcement activities or expanding on-going enforcement activities with respect to these actions, in accordance with the requirements of its legislation and shall inform the other Side about the results of such consideration.
- 2.3. Nothing in this Memorandum of Understanding shall limit the discretion of the Sides to decide whether to undertake enforcement activities with respect to the anti-competitive actions identified in the communication.

3. AVOIDANCE OF CONFLICTS

- 3.1. The Sides acknowledge that it shall be in their common interest to minimize any potentially adverse effects of one Side's enforcement activities on the other Side's interests in the application of their respective competition laws.
- 3.2. Should one Side inform the other Side that enforcement activities of the latter may affect the informing Side's interests in its application of its competition law, the other Side shall endeavour to provide an opportunity to exchange views and conduct consultations on the issues raised by the informing Side consistent with the interests of the Sides.
- 3.3. The Sides shall endeavour to discuss between them any questions arising from the implementation of the present Memorandum of Understanding, including questions on the interpretation or application of the present Memorandum of Understanding in as timely a manner as circumstances permit.

4. MEETINGS

- 4.1. The Sides shall endeavour, in case of need, to schedule calls or conduct meetings to:
 - 4.1.1 discuss current issues, experiences and new developments of mutual interest with respect to competition policy development, legislation and enforcement or the operation of the present Memorandum of Understanding;
 - 4.1.2 exchange non-confidential information on the competition environment in economic sectors of common interest;
 - 4.1.3 exchange views with respect to multilateral competition initiatives.
- 4.2. The Sides shall take advantage of the opportunities to meet within the framework of the international events in which both Sides take part as well as use, where appropriate, telephone and electronic mail as means of communication.

5. EXISTING LEGISLATION AND CONFIDENTIALITY OF INFORMATION

- 5.1 Nothing in the present Memorandum of Understanding shall require any Side to take any actions or to refrain from acting in a manner inconsistent with the existing legislation of the Sides or shall require any change to that legislation.
- 5.2. Neither Side shall be required to communicate information to the other Side if communication of such information is prohibited by the legislation of the Side possessing this information or if it would be incompatible with the interests of that Side in its application of the competition law.

6. COMMUNICATIONS UNDER THE PRESENT MEMORANDUM OF UNDERSTANDING

Each Side shall designate a liaison office to which the information necessary for the effective execution of the present Memorandum of Understanding shall be communicated. The working language shall be English.

7. COSTS

The Sides shall, with regard to the implementation of this Memorandum of Understanding and any activities arising from it, bear its own expenses, unless otherwise agreed upon by the Sides.

8. OBLIGATIONS UNDER INTERNATIONAL LAW

- 8.1. The present Memorandum of Understanding shall not be considered as an international treaty and does not establish or purport to establish any legal rights or obligations.
- 8.2. The Sides shall apply the provisions of this Memorandum of Understanding on a voluntary basis.

9. AMENDMENT

This Memorandum of Understanding may be revised or amended in writing by agreement between the Sides.

10. TAKING EFFECT, DURATION AND TERMINATION

- 10.1. This Memorandum of Understanding shall come into effect on the date of its signing and shall remain in effect for a period of four (4) years, with the option to renew or extend it further, in such manner and for such periods as agreed by the Sides in writing.
- 10.2. The documents derived from the initiatives regarding the implementation of the current Memorandum of Understanding shall be jointly owned by the Sides.
 - 10.2.1 If any of the aforementioned documents is to be published, the Sides shall be previously and formally consulted and explicitly mentioned in the published document.
- 10.3. This Memorandum of Understanding may be terminated by either Side by giving two (2) months' written notice in advance to the other Side of its intention to terminate it.
- 10.4. The termination of this Memorandum of Understanding shall not affect any activities, programs and projects undertaken by the Sides prior to the termination thereof, or the full execution of any cooperative activity that

has not been fully executed at the time of termination, unless otherwise agreed upon in writing by both Sides.

10.5 CADE shall provide the publication of an excerpt of this Memorandum of Understanding in the Brazilian Official Gazette.

Signed in _____ on _____, 2016 in two original copies, each in both Portuguese and English versions. In case of divergence of interpretation of text of the present Memorandum of Understanding, the English version shall prevail.

FOR THE COMPETITION
COMMISSION OF SOUTH AFRICA
(CCSA)

FOR THE ADMINISTRATIVE
COUNCIL FOR ECONOMIC DEFENSE
(CADE)