

**Brazilian antitrust laws
Law # 8.884
of June 6th, 1994**

LAW # 8884 OF JUNE 11, 1994
(OFFICIAL GAZETTE OF THE FEDERAL EXECUTIVE, JUNE 13, 1994)

Changes the Administrative Council for Economic Defense — CADE into an independent agency, regulates antitrust measures, and makes other provisions.

THE PRESIDENT OF THE REPUBLIC:

I hereby make known that the Congress decrees and I sanction the following Law:

TITLE I
GENERAL PROVISIONS
CHAPTER I
OBJECT

Article 1. This Law sets out antitrust measures in keeping with such constitutional principles as free enterprise and open competition, the social role of property, consumer protection, and restraint of abuses of economic power.

Sole Paragraph. Society at large is entrusted with the legal rights protected herein.

CHAPTER II
TERRITORY

Article 2. Without prejudice to any agreements and treaties to which Brazil is a party, this Law applies to acts wholly or partially performed within the Brazilian territory, or the effects of which are or may be suffered therein.

~~Sole Paragraph. Foreign companies that operate or have a branch, agency, subsidiary, office, establishment, agent or representative in Brazil shall be deemed situated in the Brazilian territory.~~

§ 1. A foreign company is deemed resident in the Brazilian territory if it operates or has a branch, affiliate, subsidiary, office, place of business, agent or representative in Brazil.

§ 2. The person in charge of the branch, affiliate, subsidiary, office, or place of business in Brazil shall be notified and informed on behalf of the foreign company of all procedural acts, notwithstanding any power of attorney or contractual or statutory provision"

TITLE II
THE ADMINISTRATIVE COUNCIL FOR ECONOMIC DEFENSE — CADE
CHAPTER I
INDEPENDENT AGENCY

Article 3. The Administrative Council for Economic Defense — CADE, an agency with authority throughout the Brazilian territory and created by Law # 4137 of September 10, 1962, shall henceforth become a federal independent agency (*autarquia federal*) reporting to the Ministry of Justice, with headquarters and jurisdiction in the Federal District, and duly commissioned for performance of the duties set forth herein.

CHAPTER II THE CADE BOARD

Article 4. The CADE Board shall be composed of a President and six Board Members chosen from among citizens older than thirty years of age reputed for their legal or economic knowledge and unblemished reputation, duly appointed by the President of the Republic after their approval by the Senate.

Paragraph 1. The term of office of the President and Board Members shall be two years, one reelection being hereby permitted.

Paragraph 2. The President and Board Member duties shall be discharged on an exclusive basis; accordingly, no overlapping of positions will be permitted, unless otherwise provided for in the Constitution.

Paragraph 3. In the event of resignation, death or termination of a CADE President, the senior or eldest Board Member (in this order) will take office as President until further appointment thereof, without prejudice to his/her corresponding duties as Board Member.

Paragraph 4. In the event of resignation, death or termination of a CADE Board Member, a new Board Member shall be appointed for the remaining term of office of the replaced member.

Paragraph 5. In the events set forth in the preceding paragraph or upon expiration of the terms of office of the councilmembers, the Council shall be reduced to less than the number established in article 49, the time frames set out in articles 28, 31, 32, 33, 35, 37, 39, 42, 45, 46, sole paragraph, 52, paragraph 2, 54, paragraphs 4, 6, 7 and 10, and 59, paragraph 1 of this law shall be considered automatically interrupted, and the case development shall be suspended, and the new terms shall begin immediately after restructuring of the quorum.

Article 5. The CADE President or Board Members may only be ousted by a decision of the Senate, a request of the President of the Republic, as a result of unappealable criminal sentencing of any such member for malicious crime, or in light of disciplinary action as set forth in Law # 8112 of December 11, 1990 and Law # 8429 of June 2, 1992, as well as owing to violation of any of the limitations dealt with in article 6 hereof.

Sole Paragraph. Any CADE Member's absence at three consecutive ordinary meetings, or twenty intermittent ordinary meetings, shall cause automatic termination of his/her term of office, except for leaves of absence duly approved by the CADE Board.

Article 6. The President and Board Members shall not:

- I - receive fees, percentages or other compensation in any way or on any pretext;
- II - act as a self-employed workers;
- III - participate--as controlling parties, officers, managers, agents or attorneys in fact--in any civil, commercial or like companies;
- IV - render opinions on matters of their specialty, even if on a theoretical basis, or act

as advisors to companies of any kind;

V - avail themselves of the media to render opinion on cases pending decision, or otherwise disparage orders, votes or sentences handed down by the courts, except for critique in case records, technical works or in the exercise of court duties; and

VI - carry out politics- or party-oriented activities.

CHAPTER III

AUTHORITY OF THE CADE BOARD

Article 7. The CADE Board shall:

I - ensure compliance with this Law and its regulations, as well as with the Board inhouse rules;

II - resolve on purported violations of the economic order, and apply the penalties provided for by law;

III - resolve on proceedings instituted by the Economic Law Office - SDE of the Ministry of Justice;

IV - resolve on *ex officio* appeals from the SDE Secretary;

V - order that action be taken in restraint of violations of the economic order within the term scheduled therefore;

VI - approve both the cease-and-desist commitment (*compromisso de cessação de prática*) and the performance commitment, as well as order SDE to monitor compliance therewith;

VII - judge appeals against preventive action adopted by SDE or by the Board reporting official;

VIII - make its decisions known to interested parties;

IX - request information from individuals, agencies, authorities and other public or private entities, with due regard for the confidentiality ensured such information pursuant to law, if any, as well as determine the investigations required for performance of its duties;

X - request from the Federal Executive Branch agencies and from state, municipal, the Federal District and territorial authorities the taking of all acts required for compliance with this Law;

XI - retain the performance of examinations, inspections and studies, approving the respective professional fees and other expenditures on a case-by-case basis, all of which shall be borne by the company if it is eventually punished under this Law;

XII - analyze acts or conducts under any circumstance, subject to approval thereof pursuant to article 54 below, and establish a performance commitment as the case may be;

XIII - request court execution of its decisions pursuant to this Law;

XIV - request services and staff from any federal public agencies or entities;

XV - determine the adoption of administrative and court action by the CADE Attorney General Office;

XVI - sign contracts and agreements with Brazilian agencies or entities, and advance to the Minister of Justice for approval any such documents that are to be signed with foreign or international organisms;

XVII - answer consultations on matters within its sphere of authority;

XVIII - make the forms of violation of the economic order known to the public;

XIX - draft and approve its in-house rules on operations, criteria for resolutions, and organization of in-house services, including for the purpose of establishing the recess of

the Board and the Attorney General Office on account of vacation; during such period, the statute of limitations as well as the term set forth in article 54, paragraph 6 hereof shall be suspended;

XX - draft the structure applying to the CADE staff, with due regard for article 37, II of the Constitution;

XXI - draft budgetary proposals pursuant to this Law; and

XXII - appoint the possible substitute of the Attorney General in the event of absences, dismissal or impairment.

CHAPTER IV AUTHORITY OF THE CADE PRESIDENT

Article 8. The CADE President shall:

I - act as the CADE legal representative in and out of court;

II - preside over the CADE Board meetings, with the right to vote thereat, plus a casting vote;

III - distribute processes by lot at the Board meetings;

IV - call meetings and organize the corresponding agenda;

V - comply and cause compliance with the CADE decisions;

VI - determine that the CADE Attorney General Office take all court action required for execution of the CADE decisions and sentences;

VII - sign the cease-and-desist commitments, as well as performance commitments;

VIII - submit to the CADE Board for approval the budgetary proposal, as well as the intended assignment of the staff that is to render services to CADE; and

IX - guide, coordinate and supervise the CADE administrative activities.

CHAPTER V AUTHORITY OF THE CADE BOARD MEMBERS

Article 9 - The CADE Board Members shall:

I - vote on cases and matters submitted to the CADE Board;

II. - issue orders and decisions on the cases for which they act as reporting members;

III. - submit to the CADE Board any requirements as to data and documents from individuals, agencies, authorities and other public or private entities, which data and documents are to be kept confidential pursuant to law, as the case may be, as well as order all investigations deemed required for performance of their duties;

IV - adopt preventive action, and establish a daily fine for noncompliance therewith; and

V - discharge all further duties ascribed thereto under the applicable rules.

CHAPTER VI THE CADE ATTORNEY GENERAL OFFICE

Article 10. An Attorney General Office shall be commissioned with CADE to:

I - render legal assistance to CADE, and provide for defense thereof in court;

II - arrange for judicial execution of CADE decisions and sentences;

III - subject to the CADE Board preliminary approval, request court measures with a view to curbing violations of the economic order;

- IV - arrive at court settlements for cases involving violations of the economic order, subject to the CADE Board preliminary approval after hearing a representative of the Attorney General of the Republic;
- V - render opinion on cases under the CADE authority;
- VI - ensure compliance with this Law; and
- VII - perform all further action incumbent thereon under the in-house rules.

Article 11. The Attorney General--appointed by the Minister of Justice, and duly commissioned by the President of the Republic after consultation and approval of the Senate--shall be a Brazilian citizen with unblemished reputation and renowned legal expertise.

Paragraph 1. The Attorney General shall attend the CADE meetings, with no right to vote thereat.

Paragraph 2. The Attorney General shall be subject to the same rules on term of office, reelection, disqualification, termination and replacement as those applying to the CADE Board Members.

Paragraph 3. In the event of absences, temporary separation or impairment of the Attorney General, the plenary body will indicate and the CADE President will appoint a possible substitute to act for a period not exceeding ninety (90) days, with no need for Federal Senate approval; such substitute shall be entitled to compensation for the position held during such substitution.

TITLE III

THE ATTORNEY GENERAL OF THE REPUBLIC AND CADE

Article 12. The Attorney General of the Republic, after hearing the Higher Council, shall appoint a member of the Attorney General Office of the Republic to handle the cases submitted to CADE for review.

Sole Paragraph. CADE may request that the Attorney General Office of the Republic cause enforcement of the CADE decisions or of the cease-and-desist commitments, as well as that it adopt all court action provided for in article 6, XIV (b) of Supplementary Law No. 75 of May 20, 1993.

TITLE IV

THE ECONOMIC LAW OFFICE

Article 13. The Economic Law Office of the Ministry of Justice — SDE, as structured pursuant to law, will be headed by a Secretary appointed by the Minister of Justice from among Brazilian citizens of renowned legal or economic expertise and unblemished reputation, duly commissioned by the President of the Republic.

Article 14. SDE shall:

- I - ensure compliance with this Law by monitoring and following up on market practices;
- II - provide for ongoing follow-up on business activities and practices from individuals or legal entities with overriding control over a relevant market for a certain product or service, in order to prevent violations of the economic order; for such purposes, all pertinent data and documents may be required, with due regard for the confidential status thereof pursuant to law, if any;

- III - carry out preliminary investigations on purported violations of the economic order, for further instatement of administrative proceedings;
- IV - acknowledge the lack of grounds or evidence, and shelve the preliminary investigation records;
- V - request data from individuals, agencies, authorities and other public or private entities, with due regard for the confidential status thereof under the law, if any, as well as determine the action required for exercise of its duties;
- VI - commence administrative proceedings intended to investigate and restrain violations of the economic order;
- VII - appeal *ex officio* to CADE for shelving of preliminary investigations or administrative proceedings;
- VIII - send on to CADE, for review, any cases commenced by SDE, if a violation of the economic order has been duly evidenced;
- IX - sign a cease-and-desist commitment on the agreed conditions and submit it to CADE, as well as monitor compliance therewith;
- X - advise CADE of certain conditions for signing of a performance commitment, and monitor compliance therewith;
- XI - adopt preventive measures intended to cease the act characterized as a violation of the economic order, and establish the deadline for compliance therewith as well as a daily fine applying to default thereon;
- XII - receive and substantiate cases to be judged by CADE, including consultations, and monitor compliance with the CADE decisions;
- XIII - advise the public authorities as to the adoption of any action required for compliance herewith;
- XIV - carry out studies and researches with a view to improving antitrust policies;
- XV - advise the public of the various forms of violation of the economic order, as well as the means to curb such violations; and
- XVI - perform other duties as provided for by law.

TITLE V
VIOLATIONS OF THE ECONOMIC ORDER
CHAPTER I
GENERAL PROVISIONS

Article 15 - This Law applies to individuals, public or private companies, as well as to any individual or corporate associations, established *de facto* and *de jure* — even on a provisional basis — irrespective of a separate legal nature, and notwithstanding the exercise of activities regarded as a legal monopoly.

Article 16. The company and each of its managers or officers shall be jointly liable to the various forms of violation of the economic order.

Article 17. The companies or entities within a same economic group *de facto* and *de jure* shall be jointly liable to violations of the economic order.

Article 18. The legal nature of any party charged with violation of the economic order may be disregarded whenever any such violation entails abuse of power and rights, violation of the law, illicit facts or acts, or any breach of bylaws or articles of association. This legal nature shall also be disregarded in the event of bankruptcy,

insolvency, discontinuance or suspended operations of the underlying company owing to poor management thereof.

Article 19. The antitrust measures set forth herein do not exclude any punishment inflicted on other legal acts pursuant to law.

CHAPTER II VIOLATIONS

Article 20. Notwithstanding malicious intent, any act in any way intended or otherwise able to produce the effects listed below, even if any such effects are not achieved, shall be deemed a violation of the economic order:

I - to limit, restrain or in any way injure open competition or free enterprise;

II - to control a relevant market of a certain product or service;

III - to increase profits on a discretionary basis; and

IV - to abuse one's market control.

Paragraph 1. Achievement of market control as a result of competitive efficiency does not entail an occurrence of the illicit act provided for in item II above.

Paragraph 2. Market control occurs when a company or group of companies controls a substantial share of a relevant market as supplier, agent, purchaser or financier of a product, service or related technology.

Paragraph 3. The *dominant position* mentioned in the preceding paragraph is presumed when a company or group of companies controls twenty percent (20%) of the relevant market; this percentage is subject to change by CADE for specific sectors of the economy.

Article 21. The acts spelled out below, among others, will be deemed a violation of the economic order, to the extent applicable under article 20 and items thereof:

I - to set or offer in any way--in collusion with competitors--prices and conditions for the sale of a certain product or service;

II - to obtain or otherwise procure the adoption of uniform or concerted business practices among competitors;

III - to apportion markets for finished or semi-finished products or services, or for supply sources of raw materials or intermediary products;

IV - to limit or restrain market access by new companies;

V - to pose difficulties for the establishment, operation or development of a competitor company or supplier, purchaser or financier of a certain product or service;

VI - to bar access of competitors to input, raw material, equipment or technology sources, as well as to their distribution channels;

VII - to require or grant exclusivity in mass media advertisements;

VIII - to agree in advance on prices or advantages in public or administrative biddings;

IX - to affect third-party prices by deceitful means;

X - to regulate markets of a certain product or service by way of agreements devised to limit or control technological research and development, the production of products or services, or to dampen investments for the production of products and services or distribution thereof;

XI - to impose on distributors, retailers and representatives of a certain product or service retail prices, discounts, payment conditions, minimum or maximum volumes, profit margins, or any other marketing conditions related to their business with third parties;

XII - to discriminate against purchasers or suppliers of a certain product or service by establishing price differentials or discriminatory operating conditions for the sale or performance of services;

XIII - to deny the sale of a certain product or service within the payment conditions usually applying to regular business practices and policies;

XIV - to hamper the development of or terminate business relations for an indeterminate period, in view of the terminated party's refusal to comply with unreasonable or non-competitive clauses or business conditions;

XV - to destroy, render unfit for use or take possession of raw materials, intermediary or finished products, as well as destroy, render unfit for use or constrain the operation of any equipment intended to manufacture, distribute or transport them;

XVI - to take possession of or bar the use of industrial or intellectual property rights or technology;

XVII - to abandon of cause abandonment or destruction of crops or harvests, without provenly good cause;

XVIII - to unreasonably sell products below cost;

XIX - to import any assets below cost from an exporting country other than those signatories of the GATT Antidumping and Subsidies Codes;

XX - to discontinue or greatly reduce production, without provenly good cause;

XXI - to partially or fully discontinue the company's activities, without provenly good cause;

XXII - to retain production or consumer goods, except for ensuring recovery of production costs;

XXIII - to condition the sale of a product to acquisition of another or contracting of a service, or to condition performance of a service to contracting of another or purchase of a product; and

XXIV - to impose abusive prices, or unreasonably increase the price of a product or service.

Sole Paragraph. For the purpose of characterizing an imposition of abusive prices or unreasonable increase of prices, the following items shall be considered, with due regard for other relevant economic or market circumstances:

I - the price of a product or service, or any increase therein, vis-à-vis any changes in the cost of their respective input or with quality improvements;

II - the price of a product previously manufactured, as compared to its market replacement without substantial changes;

III - the price for a similiar product or service, or any improvement thereof, on like competitive markets; and

IV - the existence of agreements or arrangements in any way, which cause an increase in the prices of a product or service, or in their respective costs.

Article 22. (VETOED)

Sole Paragraph. (VETOED)

CHAPTER III

PENALTIES

Article 23. The following antitrust penalties shall apply:

I - for companies: a fine from one to thirty percent of the gross pretax revenue thereof as of the latest financial year, which fine shall by no means be lower than the advantage obtained from the underlying violation, if assessable;

II - for managers directly or indirectly liable to their company's violation: a fine from ten to fifty percent of the fine imposed on said company, which shall be personally and exclusively imposed on the manager; and

III - in the case of other individuals and other public or private legal entities, as well as any *de facto* or *de jure* associations of entities or persons, even temporary ones, with or without legal identity, that do not engage in business activities, when it is not feasible to use the gross sales value, the fine will be 6,000 (six thousand) to 6,000,000 (six million) UFIR or any other index replacing it.

Sole Paragraph. Fines imposed on recurring violations shall be doubled.

Article 24. Without prejudice to the provisions of the preceding article, the fines listed below may be individually or cumulatively imposed on violations, whenever the severity of the facts or the public interest so requires:

I - at the violator's expense, half-page publication of the summary sentence in a court-appointed newspaper for two consecutive days, from one to three consecutive weeks;

II. - ineligibility for official financing or participation in bidding processes involving purchases, sales, works, services or utility concessions with the federal, state, municipal and the Federal District authorities and related entities, for a period equal to or exceeding five years;

III. - annotation of the violator on the Brazilian Consumer Protection List;

IV - recommendation that the proper public agencies:

(a) grant compulsory licenses for patents held by the violator; and

(b) deny the violator installment payment of federal overdue debts, or order total or partial cancellation of tax incentives or public subsidies;

V - the company's spin-off, transfer of corporate control, sale of assets, partial discontinuance of activities, or any other antitrust measure required for such purposes.

Article 25. If any acts or situations detrimental to the economic order are not discontinued after a CADE Board decision to this effect, or in the event preventive measures or any cease-and-desist commitment set forth herein are not complied with, a daily fine equal to or higher than 5,000 (five thousand) Fiscal Reference Units — UFIR or replacing index shall apply, which fine may be increased as many as twenty times in accordance with the severity of the violation and the violator's economic status.

Article 26. In the event any data or documents requested by CADE, SDE, SEAE or other public entity acting under this Law are unreasonably denied, concealed, tampered with or delayed, this shall constitute a violation subject to a daily fine of 5,000 (five thousand) UFIR, which fine may be increased up to twentyfold in keeping with the violator's economic status.

§ 1. The amount of the daily fine mentioned in the opening paragraph of the present article shall be included in the document containing the request of the competent authority.

§ 2. The fine provided for in the present article is calculated daily until ninety days after the date set in the document mentioned in the previous paragraph.

§ 3. The requesting authority is fully responsible for imposing the fine provided for in the opening paragraph of this article.

§ 4. The branch, affiliate, subsidiary or office of the foreign company in Brazil is jointly liable for the payment of the fine provided for in the

present article.

§ 5. Should the principal or a third party unjustifiably fail to appear when summoned to provide oral clarification during the course of administrative procedure, preliminary inquiry or administrative proceeding, he shall be subject to fine ranging from R\$ 500.00 (five hundred reais) to R\$ 10,700.00 (ten thousand seven hundred reais) depending on his economic situation, which shall be imposed by means of a notice of violation issued by the competent authorities.

Art. 26-A. Any attempt to impede, hinder or prevent the inspection authorized by SDE or SEAE (the Secretariat for Economic Monitoring — *Secretaria de Acompanhamento Econômico*) under a preliminary inquiry, administrative procedure or proceeding shall subject the inspected entity to fine ranging from R\$ 21,200.00 (twenty-one thousand two hundred reais) to R\$ 425,700.00 (four hundred and twenty-five thousand, seven hundred reais), depending on the offender's economic situation, by means of a notice of violation issued by the competent authorities.

Article 27. The penalties provided for in this Law shall apply with due regard for:

I - the severity of the violation;

II - the violator's good faith;

III - the advantages obtained or envisaged by the violator;

IV - actual or threatened occurrence of the violation;

V - the extent of damages or threatened damages to open competition, the Brazilian economy, consumers, or third parties;

VI - the adverse economic effects on the market;

VII - the violator's economic status; and

VIII - recurrences.

CHAPTER IV

STATUTE OF LIMITATIONS

Article 28. (REPEALED).

CHAPTER V

CAUSE OF ACTION

Article 29. Injured parties may — for themselves or for the privies under article 82 of Law #. 8078 of September 11, 1990 — defend their individual or diffuse interests in court by way of antitrust measures and the awarding of losses and damages suffered in connection therewith, irrespective of the corresponding administrative proceeding which shall not be stayed in view of the court action.

TITLE VI

ADMINISTRATIVE PROCEEDINGS

CHAPTER I

PRELIMINARY INVESTIGATIONS

Article 30. The SDE shall carry out preliminary inquiries, in the discharge of official duty or upon written, justified request by any interested party,

when all circumstantial evidence of the infringement of the economic order do not suffice for the institution of an administrative proceeding.

Paragraph 1. During the preliminary inquiries, the SDE Secretary is entitled to take any measures provided for in articles 35, 35-A and 35-B herein, including summoning the principal or third parties to provide explanations in writing or in person.

Paragraph 2. Commencement of administrative proceedings out of formal complaints addressed by the Senate or the House of Representatives is not conditioned to preliminary investigations.

Paragraph 3. At the discretion of the SDE Secretary, preliminary inquiries shall be kept confidential in the interest of the investigations.

Article 31. After conclusion of preliminary investigations within sixty days, the SDE Secretary shall order commencement of a corresponding administrative proceeding or the shelving thereof, subject to *ex officio* appeal to CADE in this latter case.

CHAPTER II

COMMENCEMENT AND DISCOVERY OF ADMINISTRATIVE PROCEEDINGS

Article 32. Administrative proceedings shall be instituted no later than eight days after cognizance of the underlying fact, formal complaint or closing of the preliminary investigations, as per order issued by the SDE Secretary providing for the facts to be verified thereunder.

Article 33. The defendant shall be summoned to file a defense within fifteen days.

Paragraph 1. The initial summons shall bear the entire tenor of the order providing for institution of the administrative proceeding and the corresponding formal complaint, as the case may be.

Paragraph 2. The defendant shall be first personally summoned by mail against receipt or, in case of failure thereof, by notice published in the Official Gazette of the Federal Executive and in a newspaper widely circulated in the state in which the defendant is resident or headquartered, with due regard for the periods required for attachment of the receipt notice or publication, as the case may be.

Paragraph 3. Any summons under subsequent proceedings shall be made by publication in the Official Gazette of the Federal Executive, in which the name of the defendant and respective attorney shall be mentioned.

Paragraph 4. The defendant's holders, officers or managers, or duly appointed attorney, may follow up on administrative proceedings, with full access to the case records at SDE and CADE.

Article 34. Failure to file a defense in due course after duly notified to that effect will entail the defendant's judgment by default and acknowledgment of the charges against it/him, subject to all further terms irrespective of prior notice in that respect. The *in absentia* defendant may take part in any phase of the proceeding without recourse of preceding acts.

Article 35. Upon the end of the period for defense, the SDE shall call for investigations and the production of evidence in the interest of the SDE to be submitted within 15 days. The SDE is also entitled to exercise its

fact-finding powers as provided for herein, maintaining confidentiality when necessary.

Paragraph 1. All investigations and evidence gathering procedures called for by the SDE Secretary, including the inquiry of witnesses, are to be concluded within 45 days, with the possibility of a 45-day extension if deemed justifiably necessary.

Paragraph 2. In compliance with the object of the preliminary inquiry, administrative procedure or proceeding, the SDE Secretary is entitled to authorize, by means of a substantiated decision, the inspection of the head office, place of business, headquarter, branch or facilities of the company under investigation. The company shall be given at least 24 hours' notice and the investigation shall not start before 6 a.m. or after 6 p.m.

Paragraph 3. Under the circumstances of the previous paragraph, inventories, objects, papers of any nature, books and records, computers and magnetic files are subject to inspection. In addition, copies of any document or electronic data can be made or requested

Article . 35-A. The Federal Attorney's Office (*Advocacia-Geral da União*), upon request by the SDE, may ask the Judiciary to issue a search warrant to seize objects, papers of any nature, books and records, computers and magnetic files of individuals and corporations in the interest of the production of evidence under the administrative procedure, preliminary inquiry or administrative proceeding, with the enforcement, when applicable, of the provisions of article 839 and following articles of the Code of Civil Procedure, the proposal of main action being unclaimable.

Paragraph 1. During the course of administrative procedure aiming at the production of evidence for representation to be brought to SDE, SEAE may exercise, when applicable, the powers provided for in the opening paragraph of the present article and in art. 35 herein.

Paragraph 2. At the discretion of SEAE, the administrative procedure mentioned in the previous paragraph may be kept confidential in the interest of the investigations.

Article 35-B. The SDE, on behalf of the Brazilian Federal Government, may enter into a leniency agreement with individuals or corporations who have committed infringement of the economic order, which will either extinct the punitive action of the public administration or reduce one to two thirds of the applicable penalty, under the terms of the present article, provided that they effectively collaborate with both the investigations and the administrative proceeding and that such collaboration results in:

- I – the identification of the coauthors of the infringement; and
- II – the gathering of information and documents that are proof of the alleged or investigated infringement.

Paragraph 1. The provisions of the present article are not applicable to corporations or individuals who have been found to be the leaders of the conduct deemed illegal.

Paragraph 2. The agreement mentioned in the opening paragraph of the present article can only be executed if the following requirements are fulfilled cumulatively:

I – the corporation or individual is the first to qualify with regards to the alleged or investigated infringement;

II – the corporation or individual fully stops their involvement with the alleged or investigated infringement as of the date the agreement is proposed;

III – the SDE does not hold sufficient evidence to ensure the condemnation of the corporation or individual at the time the agreement is proposed; and

IV – the corporation or individual confesses to their participation in the infringement and fully collaborates with the investigations and the administrative proceeding by appearing at their own expense and whenever summoned until the conclusion of the proceeding.

Paragraph 3. The leniency agreement entered into by the SDE on behalf of the Brazilian Federal Government shall stipulate the conditions deemed necessary to ensure the effective collaboration of the beneficiary and the fruitful result of the proceeding.

Paragraph 4. The execution of the leniency agreement is not dependent on the approval by CADE. Nevertheless, at the time of the administrative proceeding trial, after the agreement is complied with, CADE is responsible for:

I – declaring the extinction of the punitive action of the public administration in favor of the offender in the circumstance that the agreement proposal was submitted to the SDE when it was previously unaware of the alleged infringement; or

II – in all other circumstances, reducing one to two thirds of the applicable penalties in accordance with the provisions of art. 27 herein.

When deciding on the penalty, CADE must also consider the actual effectiveness of the collaboration and the good faith of the offender in the compliance with the leniency agreement.

Paragraph 5. Under the circumstances of item II of the previous paragraph, the reduced penalty shall not be severer than the mildest of the penalties imposed to the other coauthors of the infringement taking into account the proportions set for the application of penalties provided for in art. 23 herein.

Paragraph 6. The effects of the leniency agreement shall be extended to the directing and managing staff of the eligible company involved in the infringement provided that they also sign the agreement along with the company and being observed the conditions mentioned in items II to IV of § 2 of the present article.

Paragraph 7. The corporation or individual that fails to obtain eligibility to enter into the agreement described in this article during the course of investigations and the administrative proceeding may enter into another leniency agreement with SDE regarding another infringement that the SDE was previously unaware of before the original case is sent for trial.

Paragraph 8. Under the circumstances of the previous paragraph, the offender shall benefit from a reduction of one third of the applicable penalty in

the original proceeding without prejudice to securing the benefits provided for in item I of § 4 of the present article in relation to the new alleged infringement.

Paragraph 9. The proposal mentioned in the present article shall be kept confidential except in the interest of the investigations and the administrative proceeding.

Paragraph 10. The leniency agreement proposal rejected by the SDE Secretary, which shall be kept confidential, does not mean a confession to having committed the infringement or the acceptance of the unlawfulness of the conduct under analysis.

Paragraph 11. The enforcement of the provisions in the present article shall comply with regulation to be issued by the Ministry of Justice.

Article 35-C. In respect of crimes against the economy under Law No. 8137 of 27th of November, 1990, the execution of the leniency agreement, under the terms herein, calls for the suspension of the prescription period and prevents the case from being brought to court.

Sole Paragraph. Upon the fulfillment of the leniency agreement by the offender, the punishability of the crimes listed in the opening paragraph of the present article is automatically canceled.

Article 36. Federal authorities, as well as officers of independent agencies, federal government-owned companies and mixed-capital companies, shall render all assistance and collaboration required by CADE or SDE, including as regards preparation of technical reports on the matters under the authority thereof, under penalty of liability.

Article 37. The defendant shall produce any evidence within forty-five days after submission of defense, as well as put forth new documents at any time before the discovery phase lapses.

Sole Paragraph. The defendant may ask the SDE Secretary to set out a date, time and place for hearing of a maximum of three witnesses.

Article 38. The Economic Policy Secretariat of the Ministry of Finance (SEAE) shall be informed by official letter of the institution of any administrative proceedings, and the Secretariat may elect to render an opinion on the matters within its sphere of authority, before the discovery phase lapses.

Article 39. Upon conclusion of the discovery phase, the defendant will be summoned to put forth his/its final arguments within five days, after which the SDE Secretary will issue a substantiated report resolving on forwarding of the case records to CADE for review or shelving thereof, subject to an *ex officio* appeal to CADE in this latter case.

Article 40. The SDE Secretary, the CADE members, and their civil servants and officials shall exert their best efforts to develop and conclude preliminary investigations and administrative proceedings in the interest of proper expedition as required for clarification of the facts, under penalty of liability.

Article 41. The SDE Secretary decisions cannot be appealed to higher ranks.

CHAPTER III

CADE JUDGMENT ON ADMINISTRATIVE PROCEEDINGS

Article 42. Once the proceedings have been found admissible, the CADE President will randomly distribute such proceedings to the Reporting Official, who will be afforded a twentyday term to render an opinion thereon.

Article 43. The reporting official may order supplementary investigations or request further information pursuant to article 35 hereof, as well as allow for the production of new evidence to the case whenever he/she considers the existing data insufficient for a final determination on the case.

Article 44. Upon invitation of the CADE President in response to an indication of the reporting official, any person may provide CADE with clarifications on relevant matters.

Article 45. Upon board judgments--the date of which will be made known to the parties at least five days in advance--the Attorney General and the defendant, or his/its attorney, will be respectively offered the floor for fifteen minutes each.

Article 46. The CADE decision--which in any event shall be duly substantiated against violations of the economic order--shall contain:

I - a detailed report on the violating acts, and an indication as to the antitrust action to be taken by the proper authorities;

II - the terms for commencement and conclusion of the action referred to in the preceding item;

III - the applicable fine; and

IV - a daily fine to apply while the violation is in effect.

Sole Paragraph. The CADE decision shall be published within five days in the Official Gazette of the Federal Executive.

Article 47. CADE shall monitor compliance with its decisions.

Article 48. Total or partial noncompliance with the CADE decision shall be reported to the CADE President, who will ask the Attorney General to provide for execution thereof via court channels.

Article 49. The CADE decisions shall be taken by majority vote, with the attendance of a minimum of five members.

Article 50. The CADE decisions do not qualify for Executive Branch review; accordingly, any such decisions shall be promptly executed, the Attorney General Office being then advised in this respect for the purpose of taking all legal action within its sphere of authority.

Article 51. The CADE regulations and in-house rules shall further regulate

administrative proceedings.

CHAPTER IV PREVENTIVE MEASURES AND CEASE-AND-DESIST ORDERS

Article 52. The SDE Secretary or reporting official may--upon his/her own initiative or at the request of the CADE Attorney General--adopt preventive measures in any instance of

administrative proceedings, whenever there are signs or sound reasons to believe that the

defendant directly or indirectly caused or may cause irreparable or substantial damages to the market, or that he/it may render the final outcome of the proceedings ineffective.

Paragraph 1. The preventive measures issued by the SDE Secretary or reporting official shall order prompt cessation of damaging acts and the resumption of the preceding situation, if

reasonably feasible, as well as impose a daily fine pursuant to article 25 hereof.

Paragraph 2. The SDE Secretary or CADE reporting official decision on adoption of preventive measures may be voluntarily appealed to the CADE Board within five days, without

suspensive effects.

CHAPTER V CEASE-AND-DESIST COMMITMENTS

Article 53. In any sort of administrative proceedings, CADE may seize from the represented the commitment of cessation of the acts under investigation or of its harmful effects, always when, in the sense of convenience and opportunity, understands that it meets the interests protected by law.

Paragraph 1. The commitment agreement shall provide the following clauses for:

I - The specification of the obligations of the represented to stop the acts under investigation or its damaging effects, as well as obligations considered appropriate;

II - The fixing of the fine value in case of total or partial breach of the committed obligations;

III - The fixing of the value of the contribution to a Fund for the Defense of Diffuse Rights when included appropriate;

Paragraph 2. Dealing with the investigation of infraction related to or stemming from conducts provided for in items I, II, III and VIII of art. 21 herein, among the obligations refer to in item I of paragraph 1 of the article figures, necessarily, the obligation to collect to the Fund for the Defense of Diffuse Rights a value that cannot be inferior to the minimum stated in the article 23 of this law.

Paragraph 3. The signing of the **commitment agreement** may be proposed until the beginning of the judgment session of the administrative proceeding related to the investigated act.

Paragraph 4. The **commitment agreement** constitutes an extrajudicial execution instrument.

Paragraph 5. The administrative proceedings will be suspended during the accomplishment of the **commitment agreement** and will be filed by the end of the fixed term if all the established conditions are attended.

Paragraph 6. The administrative proceedings suspension referred to in the paragraph 5 herein will affect only to the represented which has signed the **commitment**, while to the other represented parties the proceeding will follow its regular path.

Paragraph 7. Declared the non-fulfillment of the **commitment**, CADE will apply the sanctions therein stated and will determine the continuity of the administrative proceedings and other appropriate administrative and judicial measures to its execution.

Paragraph 8. CADE may change the **commitment agreement** conditions if proved an excessive burden to the represented, provided that the changes do not harm third parties or the society.

Paragraph 9. CADE will define the complementary resolution laws about suitability, time and manner of the signing of the **commitment agreement of cessation**.

Note: Article 53 was changed by law No 11.482/2007

TITLE VII. MONITORING MECHANISMS

CHAPTER I. MONITORING OF ACTS AND AGREEMENTS

Article 54. Any acts that may limit or otherwise restrain open competition, or that result in the control of relevant markets for certain products or services, shall be submitted to CADE for review.

Paragraph 1. CADE may authorize any acts referred to in the main section of this article, provided that they meet the following requirements:

I - they shall be cumulatively or alternatively intended to:

- (a) increase productivity;
- (b) improve the quality of a product or service; or
- (c) cause an increased efficiency, as well as foster the technological or economic development;

II - the resulting benefits shall be ratably allocated among their participants, on the one part, and consumers or end-users, on the other;

III - they shall not drive competition out of a substantial portion of the relevant market for a product or service; and

IV - only the acts strictly required to attain an envisaged objective shall be performed for that purpose.

Paragraph 2. Any action under this article may be considered lawful if at least three of the requirements listed in the above items are met, whenever any such action is taken in the

public interest or otherwise required to the benefit of the Brazilian economy, provided no

damages are caused end-consumers or -users.

Paragraph 3. The acts mentioned in the opening paragraph include those aiming at any form of economic concentration, be it mergers, incorporations, the creation of a society to control other companies or any other type of corporate grouping that guarantees for the resulting company or group of companies a share of at least 20% of a relevant market, or that results in a gross revenue of R\$ 400,000,000.00 (four hundred million reais) as shown in the most recent financial statement of any of the participating companies.

Paragraph 4. The acts dealt with in the main section of this article shall be submitted to SDE — duly accompanied by three counterparts of the corresponding documentation — in

advance or no later than fifteen business days after the occurrence thereof, and SDE shall

promptly forward one such counterpart to CADE and another to SEAE.

Paragraph 5. Noncompliance with the deadlines set forth in the preceding paragraph will be punishable with a fine in an amount between 60,000 (sixty thousand) UFIR and 6,000,000 (six million) UFIR, imposed by CADE without prejudice to the opening of an administrative proceeding pursuant to article 32 hereof.

Paragraph 6. Upon receipt of the SEAE technical report issued within thirty days, SDE shall pronounce thereon within this same period and then send the case and evidentiary documents on to the CADE Board, which shall resolve thereon within sixty days.

Paragraph 7. The effectiveness of any acts dealt with in this article will be conditioned to approval thereof, which approval shall be retroactive to the date of occurrence of such acts;

if not looked into by CADE within the sixty-day period established in the preceding paragraph,

the acts referred to above will be deemed automatically approved.

Paragraph 8. The terms set forth in paragraphs 6 and 7 hereof will be stayed while the clarifications and documents considered essential for review of the case by CADE, SDE or

SEAE are not submitted as requested.

Paragraph 9. In the event the acts specified in this article are subject to suspensive conditions or have already caused fiscal or other effects to third parties, the CADE Board--if it

elects to deny approval thereof--shall determine that all applicable action be taken to totally or

partially revert — by way of dissolution, spin-off or sale of assets, partial cessation of

activities, among others — any action or procedure damaging to the economic order, notwithstanding any civil liability for losses and damages caused third parties.

Paragraph 10. Without prejudice to the obligations of the parties involved, any change in the stock control of publicly-held companies or registration of amalgamations shall be

reported to SDE by the Securities Commission - CVM and by the Brazilian Commercial Registry Department of the Ministry of Industry, Trade and Tourism - DNRC/MICT, respectively, within five business days for the SDE review, if applicable.

Article 55. The approval dealt with in the preceding article may be reviewed by CADE *ex officio* or at the SDE request, if this approval was based on false or misleading information

rendered by the interested party, in the event of default on obligations assumed hereunder, or if

the intended benefits have not been attained.

Article 56. The commercial registries or corresponding state entities cannot file any acts related to organization, transformation, amalgamation, merger or grouping of companies, as

well as changes in incorporation acts, unless all such acts contain:

I - a clear-cut and detailed statement as to the subject matter thereof;

II - the interest of each partner, and the term for capitalization thereof;

III - full name and identification of each partner;

IV - the place where the headquarters is located and its respective address, including as regards any declared branches;

V - full name and identification of the company's officers;

VI - the term of duration of the company; and

VII - the number, type and value of the outstanding stock.

Article 57. Articles of dissolution shall state the reasons thereof, apart from a statement re the amount ascertained among the partners and an indication of the persons that are to assume the company's assets and liabilities.

CHAPTER II

PERFORMANCE COMMITMENT

Article 58. The CADE Board will define performance commitments to be assumed by any interested parties that submitted acts for review pursuant to article 54 hereof, so as to

ensure compliance with the conditions established in paragraph 1 thereof.

Paragraph 1. Performance commitments will take into consideration the extent of international competition in a certain industry and their effect on employment levels, among

other relevant circumstances.

Paragraph 2. Performance commitments shall provide for volume or quality objectives to be attained within predetermined terms, compliance with which will be monitored by SDE.

Paragraph 3. Failure without good cause to comply with performance commitments shall cause the CADE approval to be revoked pursuant to article 55 hereof, followed by the

opening of an administrative proceeding for the adoption of the applicable measures.

CHAPTER III CONSULTATION

Article 59. (REPEALED)

TITLE VIII COURT EXECUTION OF CADE DECISIONS CHAPTER I PROCESSING

Article 60. The CADE Board decisions imposing fines, as well as obligations to do or not to do, constitute an extrajudicial execution instrument.

Article 61. Executions exclusively intended to collection of fines shall be carried out pursuant to Law # 6830 of September 22, 1980.

Article 62. In the event of executions intended to collection of fines and compliance with obligations to do or not to do, the courts shall order specific performance of any such obligations, or otherwise provide for acts that ensure an outcome equivalent to compliance therewith in practical terms.

Paragraph 1. An obligation to do or not to do can only lead into a suit for losses and damages its specific performance or obtainment of an equivalent outcome in practical terms is not possible.

Paragraph 2. Losses and damages shall be paid without prejudice to any applicable fines.

Article 63. Execution shall be carried out by all means, including by way of intervention in the company, if necessary.

Article 64. The CADE decisions shall be executed at the federal courts of the Federal District, or at the courts with jurisdiction over the executed party's headquarters or domicile, at the CADE discretion.

Article 65. Motions or like action against an execution instrument shall not stay the execution itself, unless an amount corresponding to the fines imposed is deposited in court, and a bond is posted as determined by the courts to ensure compliance with a final decision on the case, including as regards daily fines.

Article 66. Depending on the severity of the violation of the economic order, and should there be sound reasons to believe in irreparable or substantial damages, the courts may order prompt adoption of all or a portion of the action required under the execution

instrument, notwithstanding the deposit of fines in court or the posting of bonds.

Article 67. Daily fines on an ongoing violation shall be apply as from the deadline established by CADE for voluntary compliance with the CADE decision, up to the day of actual performance thereof.

Article 68. The execution of CADE decisions shall be afforded priority over other kinds of action, except for habeas corpus and writ of mandamus.

CHAPTER II JUDICIAL INTERVENTION

Article 69. The courts shall order intervention in a company whenever required to ensure specific performance hereunder, and appoint a receiver.

Sole Paragraph. The court decision on intervention shall be duly substantiated, as well as accurately establish the action to be taken by the appointed receiver.

Article 70. If the executed party rebuts a court-appointed receiver within forty-eight hours on the arguments of ineptitude or lack of good standing, and if this claim is duly evidenced in three days, the courts shall render a decision thereon within this same period.

Article 71. If the rebuttal is granted, the courts shall appoint another receiver within five days.

Article 72. The intervention may be terminated early if the obligation that gave rise thereto has been provenly complied with in full.

Article 73. The court intervention shall be limited to those acts required for compliance with the court decision that gave rise thereto, and shall be effective for a maximum period of one hundred and eighty days; the receiver shall be held liable for his/her acts and omissions, especially in the event of abuse of power and departure from the original purposes of his/her appointment.

Paragraph 1. The receiver will be subject to articles 153 through 159 of Law # 6404 of December 15, 1976, to the extent applicable.

Paragraph 2. The receiver will be entitled to a compensation stipulated by the courts, which may replace him/her at any time and whenever the receiver becomes insolvent, is charged with active or passive corruption or malfeasance in office, or violation of his/her duties.

Article 74. The courts may withdraw the company's managers from their duties if they are provenly preventing performance of acts incumbent on the receiver. Any such managers shall be replaced as provided for in the company's bylaws or articles of association.

Paragraph 1. If any managers still prevent the receiver from taking proper action after adoption of the procedures set forth in the main section of this article, then the courts shall

proceed as per paragraph 2 below.

Paragraph 2. If a majority of the company's managers deny assistance to the court-appointed

receiver, the courts shall order that the receiver take over the company's management.

Article 75. The receiver shall:

I - perform or order performance of all acts required under the execution process;

II - advise the courts of any irregularities committed by the company's management and of which the receiver may become aware; and

III - submit to the courts a monthly report on his/her activities.

Article 76. The expenses arising from the intervention hereunder shall be borne by the executed party.

Article 77. Upon lapse of the intervention, the receiver shall provide the federal courts with a detailed report on his/her action, and either propose the dismissal or shelving of the case

or ask for an extension of the intervention period should the execution decision have not been

fully performed in due course.

Article 78. Whoever opposes or prevents any intervention or, after termination thereof, performs any acts that directly or indirectly annul its effects in whole or in part, or even fails to

comply with legal orders from the court-appointed receiver, will be held criminally liable for

resistance, disobedience or coercion under the execution process, pursuant to articles 329,

330 and 344 of the Penal Code.

TITLE IX

FINAL AND TEMPORARY PROVISIONS

Article 79. (VETOED)

Sole Paragraph. (VETOED)

Article 80. The CADE Attorney shall henceforth become an Attorney General official duly commissioned to the independent agency created hereunder, jointly with the CADE

President and Board Member positions.

Article 81. The Executive Branch shall send to the Congress within sixty days a bill of law on the permanent staff of the new independent agency, as well as on the duties and compensation applying to the CADE President, the Board Members, and the Attorney General.

Paragraph 1. While CADE is not provided with staff of its own, civil servants may be

temporarily assigned to this independent agency by commission or otherwise, without prejudice to the remuneration and other benefits originally afforded thereto, including for the

purpose of representing this independent agency in court.

Paragraph 2. The CADE President shall prepare and submit to the Board for approval a list of servants required for the independent agency, who may be placed at SDE disposal.

Article 81 –The Administrative Council for Economic Defense - CADE, according to the article 37, item IX, of the Brazilian Constitution and in attention to the contents of the Law 8.745 of December 9th, 1993, may hire for a determinate period of time, 12 (twelve) months, technical personnel essential to the development of its institutional scope, not exceeding 30 people.

Sole Paragraph. The referred contracting *caput* may be postponed as long as its total duration does not surpass the time span of 24 (twenty four) months, with its validity limited in any situation to December 31st of 2005. It will take place through a simplified selective process, which must comprehend a written exam and an optional CV analysis without loss of others.

Article 82. (VETOED)

Article 83. The Code of Civil Procedure, as well as Laws # 7347 of July 24, 1985 and 8078 of September 11, 1990, also apply to the administrative and court proceedings set forth herein.

Article 84. The fines provided for herein shall be converted into Brazilian currency on the date of actual payment thereof, duly collected to the Fund dealt with in Law # 7347 of July 24, 1985.

Article 85. Article 4, VII of Law # 8137 of December 27, 1990 shall henceforth read as follows:

"Article 4. (...)

VII - increase without good cause the price of a certain product or service, in view of one's market control."

Article 86. Article 312 of the Code of Criminal Procedure shall henceforth read as follows:

"Article 312. - Preventive imprisonment may be decreed so as to safeguard public or economic order in the interest of the criminal process, or to ensure enforcement of criminal

laws, whenever a crime was provenly committed, or if there is sufficient evidence as to its

perpetrator."

Article 87. - Article 39 of Law # 8078 of September 11, 1990 shall henceforth read as follows, with the additional items below:

"Article 39. The supplier of a certain product or service cannot, among other abusive practices:

(...)

IX - refuse to sell products or render services directly to whomever is willing to purchase them against prompt payment, except for intermediation cases duly regulated by

special laws; and

X - increase without good cause the price of a certain product or service."

Article 88. - Article 1 of Law # 7347 of July 24, 1985 shall henceforth read as follows, with the additional item below:

"Article 1. - Without prejudice to class actions, this Law applies to actions for moral and property damages arising from:

(...)

V - violation of the economic order."

Sole Paragraph. Article 5, II of Law # 7347 of July 24, 1985 shall henceforth read as follows:

"Article 5. (...)

II - include in its institutional purposes the protection to the environment, consumers, economic order, open competition, or the artistic, aesthetic, historical, tourism, and landscape

heritage;

(...)"

Article 89. CADE shall be invited to take part as assistant in court actions involving application of this Law.

Article 90. The periods for consultations submitted under article 74 of Law # 4137 of September 10, 1962, as amended by article 13 of Law # 8158 of January 8, 1991, are hereby

interrupted, with due regard for Title VII, Chapter I hereof.

Article 91. This Law does not apply to dumping and subsidies cases dealt with in the Accords for Implementation of Article VI of the General Agreement on Customs Tarrifs and

Trade, duly enacted by Decrees # 93941 and 93962 of January 16 and 22, 1987, respectively.

Article 92. All provisions to the contrary are hereby revoked, as are Laws # 4137 of September 10, 1962; 8158 of January 8, 1991; and 8002 of March 14, 1990, except for article

36 of Law # 8880 of May 27, 1994, which remains effective.

Article 93. This Law takes effect on the date of its publication.

ITAMAR FRANCO

President of the Republic

ALEXANDRE DE PAULA DUPEYRAT MARTINS

Minister of Justice

R. Dir. Econ., Brasília, ago./dez. 1998 25