



**DIRECTORATE FOR FINANCIAL, FISCAL AND ENTERPRISE AFFAIRS
COMMITTEE ON COMPETITION LAW AND POLICY**

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ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN BRAZIL

-- 2000 --

This annual report is submitted by the Brazilian Delegation to the Committee on Competition Law and Policy FOR CONSIDERATION at its forthcoming meeting to be held on 31 May-1 June 2001.

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ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN BRAZIL

(2000)

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

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

1. Important legislative changes took place in the antitrust field in 2000. On December 21, 2000, Law No. 10.149/2000 was enacted, laying down changes to the Brazilian Antitrust Law (Law No. 8.884/94). In the new law, improvement to the instruments available to antitrust agencies was accomplished on four fronts: i) establishment of a leniency program; ii) definition of criteria to establish personal jurisdiction over foreign enterprises; iii) an increase in available powers and instruments of investigation; and iv) raising the procedural fee for examining concentrations acts.

2. The leniency program encourages the voluntary communication of information on anti-competitive practices, guaranteeing to the collaborator immunity from punishment by antitrust agencies, where the Secretariat of Economic Law – SDE at Ministry of Justice has no previous knowledge of the illicit practice or a reduction by two thirds of the penalty where investigations are already underway, but without sufficient evidence for conviction. The leniency agreement also provides for automatic immunity from criminal prosecution for the antitrust crimes established by Law No 8,137/90.

3. The criteria to establish personal jurisdiction over foreign enterprises was clearly defined with a view to facilitating subpoenaing and giving legal notice to foreign companies operating, even though indirectly, in Brazil, thus allowing SDE to speed up investigation into anti-competitive conducts. The increase in fact finding powers involved greater detail in applying fines for omission, delay and furnishing misleading information, as well as instituting monetary penalties for the unjustified absence of people to make oral depositions to SDE. Also on this point, legal inspection powers without a warrant and search and seizure of documents with a warrant were instituted.

4. Finally, Law No. 10.149/2000 raised the procedural fee for examining concentration acts. The procedural fee, which previously was R\$ 15,000, paid solely to the Administrative Council of Economic Defense - CADE, became R\$ 45,000, to be shared between the other two agencies of the Brazilian Antitrust System, the Secretariat of Economic Law – SDE and the Secretariat of Economic Monitoring – SEAE.

I.2. Other relevant measures, including new guidelines

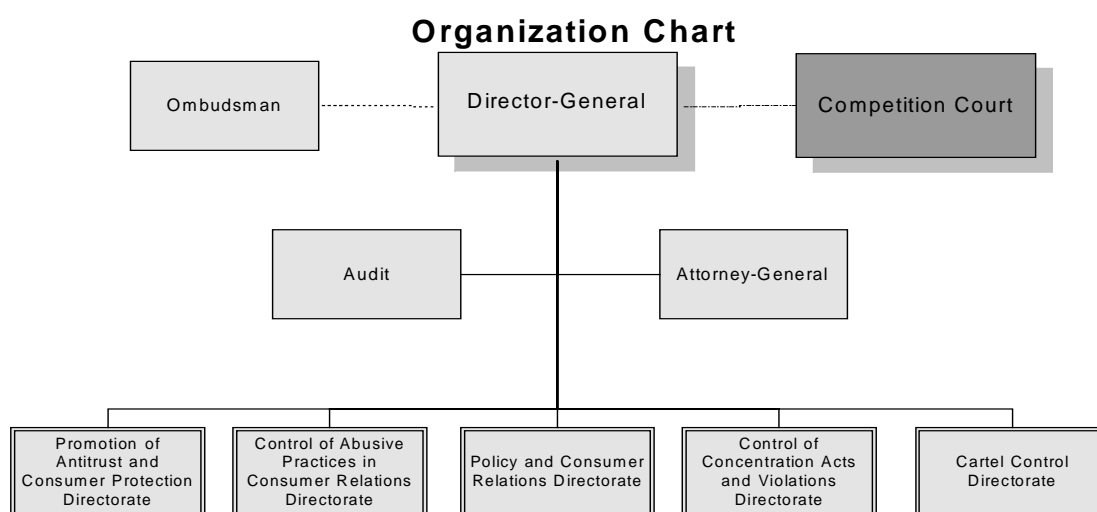
5. Ministry of Justice Ordinance no. 849/2000 came into force on September 22, 2000, regulating SDE's areas of authority in investigating infringements of the Antitrust Law, replacing MJ-Ordinance no. 753/1998. Prominent in its wording is the regulation of the criteria for granting confidentiality of business information furnished by interested parties, guaranteeing a greater degree of legal security in handling this kind of information.

6. In the field of Concentration Acts, SDE has issued with SEAE a draft joint Horizontal Mergers Guidelines for public comment.

1.3. Government proposals for new legislation

7. At the end of October 2000, a proposal for creating a National Consumer and Competition Defense Agency (ANC), prepared by an inter-ministerial group set up specifically for the purpose, was opened for public discussion. The period for the public discussion ended in January 2001, and the project is in the final stage of preparation before submission to the National Congress.

8. The ANC is expected to be an independent agency, with the Executive Branch being unable to revise its acts. Internally, the ANC will operate with a clear division between accusation and judgment functions. An independent administrative Competition Court will be included in its structure, as shown in the organization chart below:



9. The Director-General and the other Directors will be appointed by the President of the Republic and approved by the Federal Senate, to serve terms of office of 4 years, coinciding with the President of the Republic's term of office. Just one reappointment will be permitted. The Director-General will have, among his or her chief responsibilities, the power to establish an accusation before the Competition Court and to assess Concentration Acts submitted to the ANC, challenging before the Competition Court those that may be damaging to competition.

10. The proposed structure also provides for the creation of a specific directorate for combating cartels. This structure will ensure the strengthening of the fight against conduct with a highly damaging potential.

11. The Competition Court will be a collegiate body, with technical independence and independent decision making, made up of 7 members with non-coinciding, 5-year terms of office, with no reappointment. The President of the Republic will appoint its members after approval by the Federal Senate. Among its main responsibilities, will be that of deciding on Administrative Processes and on concentration acts challenged by the Director-General. The Court will also have the responsibility for approving agreements entered into by the Director-General in the field of anticompetitive practices (except leniency agreements) and also agreements in merger control procedures. Provided that legal requirements are met, the Competition Court will have the power to re-examine Concentration Acts not challenged by the Director-General.

12. In addition to the structural changes, the proposal to create the ANC also provides for improvements to the instrumental and substantive criteria as set out below:

(i) *Concentration Acts*

13. Previous compulsory notification of mergers and acquisitions will be instituted, where at least two of the groups involved have turnovers, according to the latest financial statements, equivalent to R\$ 150,000,000 and R\$ 10,000,000 respectively. It will be possible to establish by regulation cases of exemption from the obligation to notify operations that have no potentially harmful effects on competition.

14. The initial period allowed for examination of notifications by the Director-General will be 30 days, after which, in the absence of any manifestation to the contrary, the transactions will automatically be approved.

15. During this initial period, supplementary information may be requested after which a further 30 days will run before the transaction may be completed. If an operation is challenged by the Director-General, the Competition Court will have a further 60 days to decide on the case. In this way, most transactions will be decided within 30 days and examination of the rest will not exceed 120 days, under any circumstances, the operation will be deemed automatically approved.

16. In cases where notified operations are not challenged by the Director-General, any member of the Competition Court, ex-officio, as a mechanism of checks and balances, will be able to propose within five days of the non-challenging decision a re-examination of the case by the Competition Court, which will have then to reach a final decision within 60 days if the case is taken, otherwise the operation will be deemed automatically approved. This is supposed to be an exceptional mechanism.

(ii) *Administrative Processes*

17. Administrative processes will enjoy greater legal security and openness. Its proceedings will be conducted before the Competition Court, under the presidency of a Reporting Board Member, and no longer before the accusing authority. The Director-General or an appointed authority will defend the accusation before the Competition Court.

II. Enforcement of competition laws and policies

18. In Brazil, government action in the antitrust field is conducted by three bodies, making up the Brazilian Antitrust System. These are the Secretariat of Economic Law (SDE), of the Ministry of Justice, the Secretariat of Economic Monitoring (SEAE), of the Ministry of Finance, and the Administrative Council of Economic Defense (CADE), of the Ministry of Justice. SDE has also responsibility for consumer protection which is concurrent to the states under the Constitution. The antitrust authority of SDE is conducted with support of its Economic Defense and Protection Department (DPDE), headed by a Director.

19. SDE has the responsibility of fact finding in cases of economic concentration and in practices allegedly damaging competition. SEAE issues economic opinions, compulsory in economic concentration acts and optional in cases allegedly harmful to competition. CADE is the administrative court that judges the cases brought before it.

20. The acts listed below refer to SDE, excluding, therefore, action by the other antitrust agencies.

II.1

a)

Competition authorities

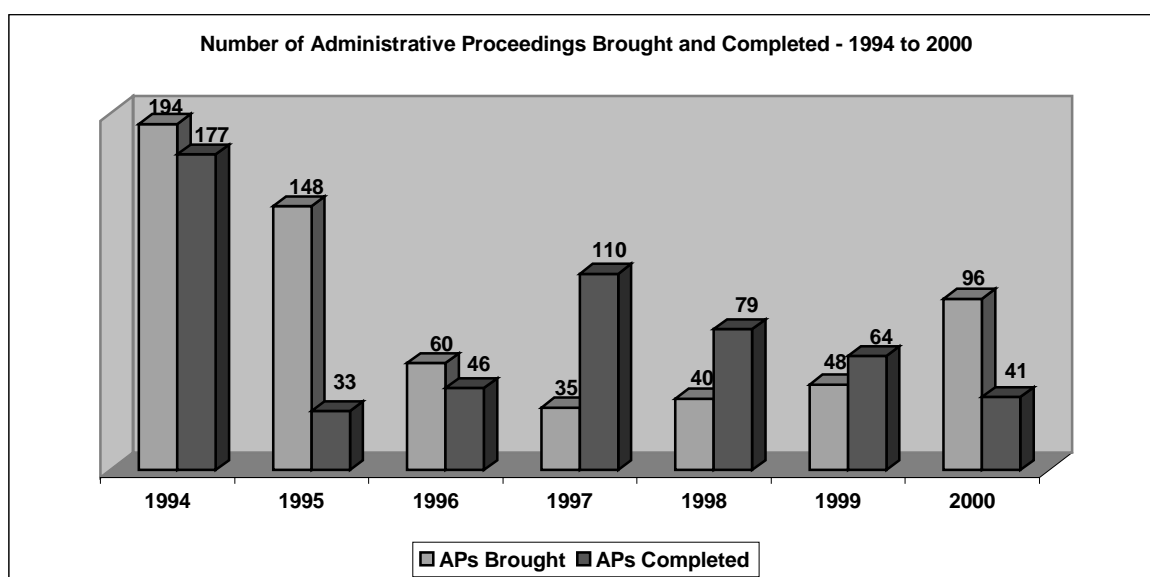
21. In the case of Administrative Proceedings, it should be emphasized that SDE has increased its efforts to achieve greater selectivity in bringing these cases. Because of this greater selectivity, one can say that for new cases, in other words, for those brought after adopting more appropriate criteria, it is now possible to adhere to more satisfactory and consistent investigation strategies, which will undoubtedly result in an improvement in the quality of the analysis and in fairer and more appropriate recommendations from SDE to the judging body.

22. At the same time, it is expected that greater selectivity in bringing these cases will lead to a higher success rate in convictions. It should be said that the new procedure should reduce the proportion of cases filed, consequently raising the number of convictions compared with the proportions seen in the period before 1996. Consequently, the antitrust authorities will be channeling their efforts toward accusations that really do have the features of antitrust violations. However, this result cannot be seen in the short term, given the nature of the fact finding and the judgment of the Administrative Proceedings.

23. Also, in terms of the number of Administrative Proceedings, it should be said that the 54 cases begun in February 2000 represented an atypical situation. They were, in fact, representations made by the Pharmaceuticals Investigative Panel of National Congress, which, by law, had to be directly brought as Administrative Proceedings with going through the preliminary checking stage.

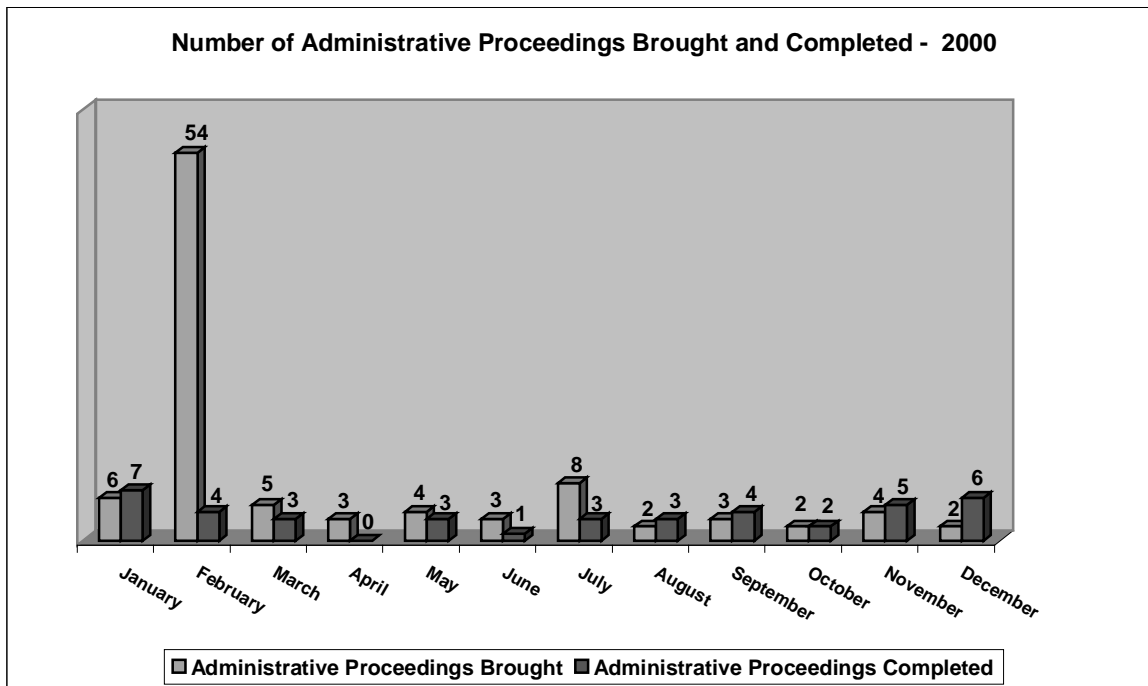
24. Charts 1 and 2 illustrate, respectively, the progress in the number of Administrative Proceedings in course in SDE from 1992 to 2000 and then month-by-month in 2000.

CHART 1



Source: DPDE's Procedural Sector and the Official Federal Gazette.

CHART 2



Source: DPDE’s Procedural Sector and the Official Federal Gazette.

Courts

25. The Judiciary Power’s participation in antitrust matters is still small. Nonetheless, some recent action by the courts has reinforced the decisions taken by SDE.

26. In July 2000, Preventive Measures were taken against gasoline stations in the cities of Florianópolis and Salvador, ruling that possible anti-competitive practices must cease until a decision has been reached on the merit of the relevant administrative cases in course. The SDE’s rulings have been challenged in court by representatives of the parties, by means of court injunctions with a request for a restraining order.

27. An examination of the restraining orders of the various court injunctions, carried out by the 1st, 6th, 8th and 21st Federal Courts of the Federal District resulted in all of them being dismissed, thus supporting the position adopted by the SDE. Some cases have come before the courts recently and, again, the SDE’s decision has been upheld.

II.1

b) Description of significant cases, including those with international implications

Preliminary Investigation nº 08012.000487/00-40

Complainant: National Federation of Motor Vehicle Distributors – FENABRAVE

Defendants: Fiat Automóveis S/A, Volkswagen do Brasil S/A, General Motors do Brasil Ltda, Ford Motor Company Brasil Ltda. and The National Association of Vehicle Manufacturers – ANFAVEA.

28. This is a preliminary investigation brought against the vehicle assemblers Fiat Automóveis S/A, Volkswagen do Brasil Ltda, General Motors do Brasil Ltda, Ford Motor Company Brasil Ltda and ANFAVEA - National Association of Vehicle Manufacturers, based on an accusation by the National Federation of Motor Vehicle Distributors – FENABRAVE. The accusation alleges possible abuse by the manufacturers who, making use of their dominant position in relation to the distribution network, were charging abusive prices in the sale of new vehicles, spare parts, and labor and parts under guarantee. It also challenges abuse in the compulsory transfer of inventory because of the financing system and the requirement that concessionaires sell only original replacement parts, the refusal to enter into contracts with the concessionaire network and the practice of matched selling, in making the delivery of a vehicle outside the initial order conditional on the purchase of difficult-to-sell vehicles and/or parts held in excess quantities.

29. SDE's conclusion, as to charging abusive prices for vehicles and parts, was based on the understanding that there is no relevant antitrust market for each brand of vehicle for this purpose. There is no sense in the argument that a manufacturer should be considered a monopolist in relation to its concessionaires. In fact, the competitive dynamics of the market is inter-brand. In other words, the manufacturers, in setting their prices and strategies, are looking at the end consumer and not the concessionaires. Hence, it is a contractual matter (a dispute for profits). With regard to the exclusivity in replacement parts, it concluded that there were no indications of infringement, and recognized that the practice benefits consumers, who thus have a guarantee of the quality of the product. Consumers are guaranteed access to information, since the manufacturer has the right to brand its original parts, and there is a wide supply of parts sold by independent retailers, who offer products of an equivalent quality to that of original parts at competitive prices.

30. Hence, no signs of infringement were found in respect of the other allegations brought. The preliminary investigation was terminated and the case was referred to CADE for confirmation.

Administrative Proceeding no. 08000-018277/95-62

Complainant: Secretariat of Economic Law, *ex-officio*

Defendant: Novo Nordisk Farmacêutica do Brasil Ltda.

31. This is an Administrative Proceeding brought *ex-officio* against the company Novo Nordisk Farmacêutica do Brasil Ltda., for the possible practice of predatory pricing in the case of human and pig insulin in the Brazilian public purchasing market.

32. After the initial proceedings of the case, SDE recognized that the defendant had charged below-cost prices in public bidding tenders. It was observed that the essential requirements for constituting predatory pricing were present. The defendant has the economic power to withstand losses arising from selling at below cost, after eliminating its Brazilian competitor, since the market has high entry barriers and inelastic demand, reinforcing the defendant's power.

33. Believing an infringement to have taken place, the Administrative proceeding was sent to CADE for judgment, pursuant to article 39 of Law No. 8,884/94.

Administrative Proceeding no. 08012.009118/98-26

Complainant: Secretariat of Economic Law, ex-officio

Defendants: Estaleiro Ilha S.A. - EISA

Marítima Petróleo and Engenharia Ltda.

34. This is an Administrative Proceeding brought to investigate an agreement between competitors in a public bidding tender, with anti-competitive effects. The investigation undertaken by SDE observed that the EISA and Marítima companies, both taking part in the auction for refurbishment of the Petrobrás P-X oil platform, entered into an agreement under which the winner of the tender would be obliged pay to the loser a variable amount that could be as high as US\$ 1 million as reimbursement of joint or single investments made.

35. In their defense, the defendants claimed that the agreement was legal from the competitive standpoint, since the Marítima company had technical knowledge only of offshore work, while EISA has technical knowledge only of ship building. In the view of the defendants, competition was not affected since both took part in the contest, and the reimbursement stipulated was a legitimate way of paying for services provided.

36. The examination concluded that there had been no fixing of prices and terms for the provision of the services. However, the stipulated variable indemnification in accordance with the price obtained in the tender process, constituted the conduct of agreeing to advantages in a public tendering process (article 21, VIII), also allowing the companies, the only participants in the process, to limit competition and dominate the relevant market in question (article 20, I and II). Thus, SDE concluded that this constituted an infringement, and sent the Administrative Process to CADE, suggesting: (i) a fine; (ii) banning the defendants from taking part in public tenders for 5 years; (iii) publication of the decision in newspapers; (iv) dispatch of the proceeding to the Public Prosecutor's office for appropriate criminal action.

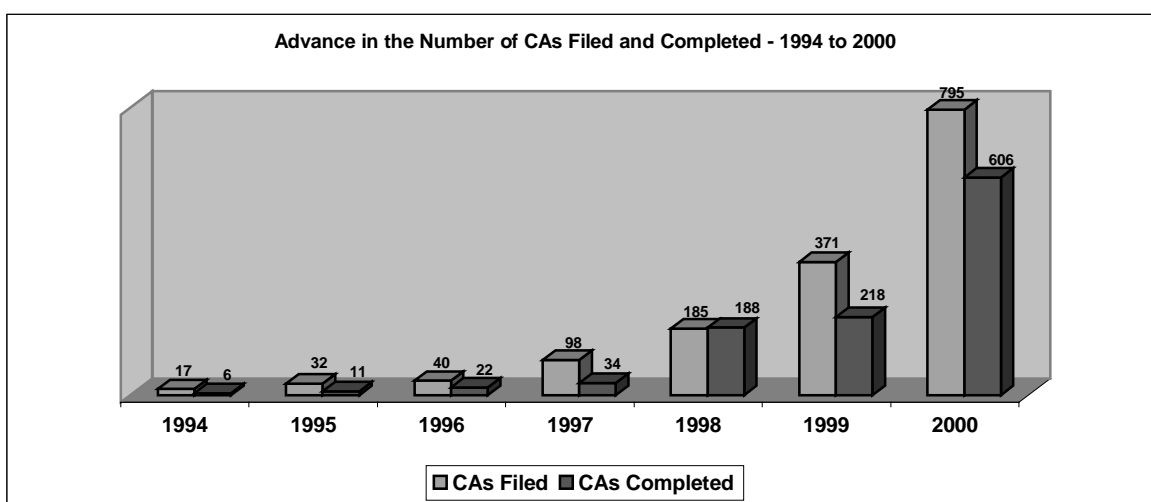
II.2. Mergers and Acquisitions

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

37. The advance of the number of Concentration Acts during 2000 not only followed the growth trend seen in recent years, but substantially exceeded all forecasts previously made. In this context, the

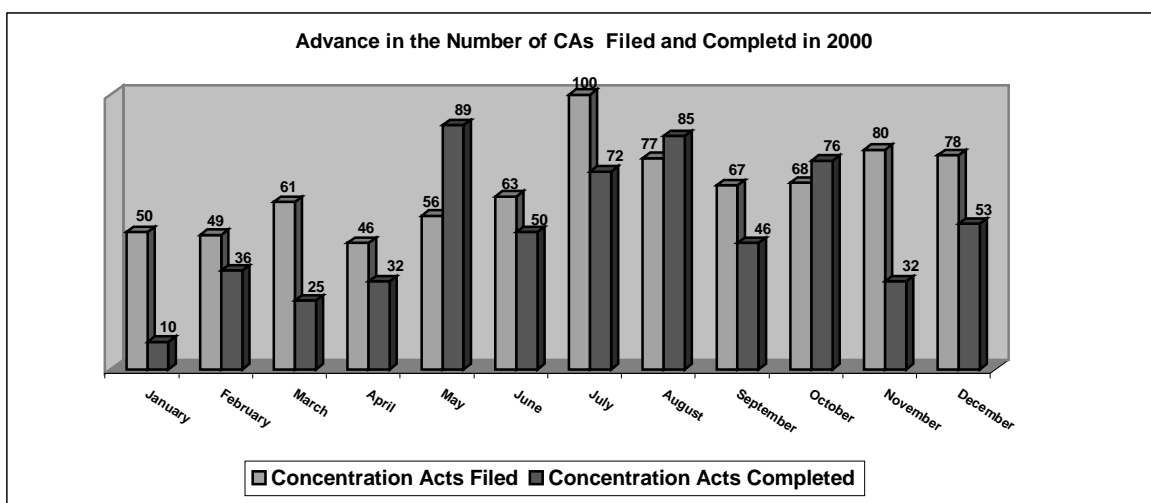
increase seen in this last year is stunning. While 371 Concentration Acts were filed in 1999, in 2000, 795 were filed with SDE. This is an increase of more than 110 percent. In terms of cases concluded, the result is no less significant. Indeed, in 2000, SDE completed and sent to CADE 606 Concentration Acts, 178 percent more than in 1999, when the number was only 218. Naturally, the figures set out here suggest a substantial reduction in the average time spent on the examination of cases. The average time for examining Concentration Acts fell from 65 days in 1999 to 44 days in 2000, in other words, a reduction of 32 percent. These same numbers, when compared with a longer historical series, show another important fact. The demands on SDE, and its ability to respond, in cases of Concentration Acts have not only increased in recent years, but the rate of increase has itself increased. Charts 3 to 5 show the figures on Concentration Acts discussed here.

CHART 3



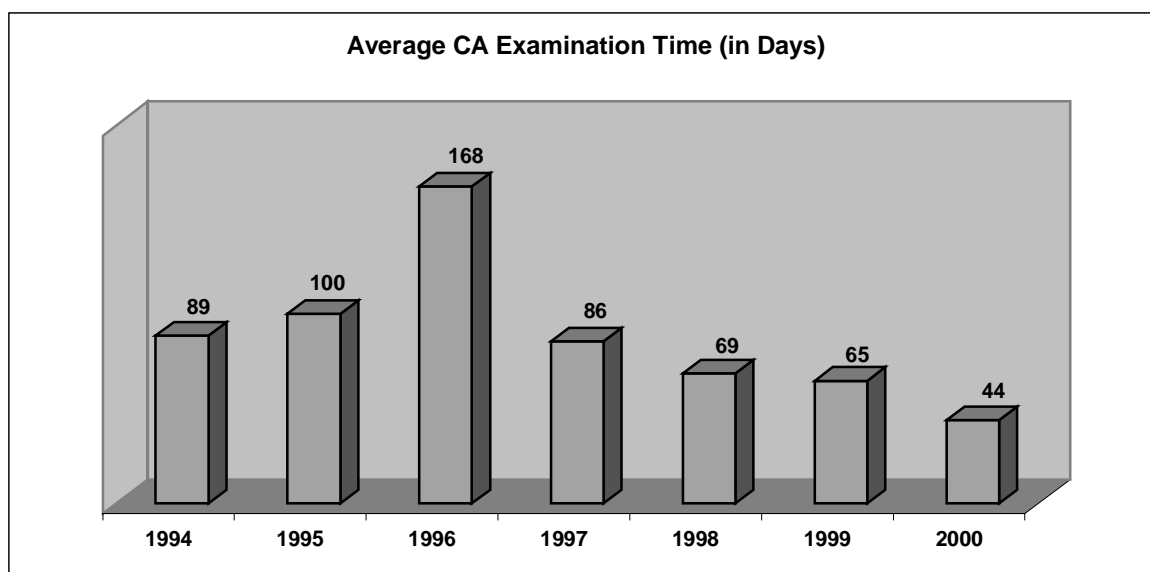
Source: DPDE's Procedural Sector and the Official Federal Gazette

CHART 4



Source: DPDE's Procedural Sector and the Official Federal Gazette

CHART 5



Source: DPDE’s Procedural Sector and the Official Federal Gazette

38. Table 1 shows the main sectors in which transactions were communicated to the antitrust agencies. The emergence of transactions involving Internet service providers and portals attracts attention. These transactions are now taking place in increasing numbers, compared with Concentration Acts in other sectors. The emergence is also emphasized, as from 1998, of Concentration Acts in the energy sector.

Table 1

MAIN ECONOMIC SECTORS WHERE CAS OCCURRED - 1994 TO 2000

SECTORS	1994	1995	1996	1997	1998	1999	2000
Food	2	6	6	9	12	20	20
Auto parts	1	2	3	9	16	28	27
Banking and Finance	0	0	0	0	1	3	14
Energy	0	0	0	0	2	27	10
Pharmaceutical Industry	0	5	1	6	10	10	21
Mechanical Industry	0	0	0	0	1	2	20
Information Technology	0	0	0	4	4	33	33
Metalworking and Steel	3	2	6	10	15	10	26
Paper and Pulp	0	0	0	2	4	1	17
Internet Service Providers and Portals	0	0	0	0	0	0	50

Source: DPDE’s Procedural Sector and the Official Federal Gazette

b) *Summary of significant cases.*

- *Concentration Act no. 08012.005846/99-12*

Petitioners: Fundação Antônio e Helena Zerrenner - Instituição Nacional de Beneficência, Empresa de Consultoria, Administração and Participações S.A – Ecap, and Braco S.A

39. This is a merger between the two largest brewers in the country, the Brahma and Antarctica companies, resulting in AmBev (Companhia de Bebidas das Américas). The markets affected by the transaction were the mineral water, soft drinks, and beer markets. In the case of the first two, this agency concluded that the act would not harm competition, since the concentration occurring in the mineral water market was insignificant and, in the soft drinks market, the act was beneficial to competition in that it strengthened the petitioners' position vis-à-vis Coca-Cola, the leading company in this market in the country.

40. On the other hand, the effects of the transaction on competition in the beer market were a source of great concern to this agency, given that the merger between the Brahma and Antarctica companies concentrated the three leading beer brands in the country under a single business, as well as a broad portfolio of products, made up of widely sold regional beers. For this reason a careful and extensive examination of the competitive dynamics of the beer market in this country was conducted.

41. The country was divided into five geographical relevant markets, based on their size and the weight of transport costs in the makeup of the final price of the product. It was seen that AmBev would have a market share of more than 65 percent in all the relevant markets, and reaching more than 80 percent in two of them.

42. The examination showed that barriers to entry in the beer market are quite high for the following reasons: a) the need for economies of scale to be able to compete with the large manufacturers; b) the idle capacity in the market; c) the requirement for high investment in building factories and launching products; d) high spending on advertising and marketing; e) the need to develop a distribution network; f) significant investment in containers (bottles) given the absolute predominance of returnable containers in the traditional and bar channels, which account for three quarters of the beer consumed in this country; and g) the high cost of bringing in imported products.

43. The high degree of concentration in the beer market deriving from the transaction, added to the structural features of the market, made it impossible, at least in a two-years-term, to offset AmBev's market power by importing, or by the rivalry between competitors and firms entering the market, and led to the conclusion that there was a real possibility of AmBev's exercising a dominant position.

44. In comparing the limitations to competition with the efficiency gains as provided for in Brazilian antitrust legislation, it was seen that the Brahma and Antarctica merger did not achieve these three efficiencies, namely: i) there was no sign that efficiencies deriving from the transaction would be shared between the petitioners and their consumers; ii) the transaction significantly reduced competition in the relevant beer market; and iii) examination showed that the act went beyond the limits strictly necessary for achieving the declared purpose of providing an international thrust for the companies' operations.

45. As a way of preserving free competition in the market and consumers from any abuse, SDE recommended that the act should be approved on the condition that all tangible and intangible assets necessary to the viability of one of the three main beer businesses controlled by the petitioners (Skol or

Brahma or Antarctica), including production capacity, brands, distribution contracts and contracts forming associations with foreign brewers, be divested.

- Concentration Act no. 08012.002315/99-50

Petitioners: Brasil Álcool S.A., Copersucar Armazéns Gerais S.A. and others.

46. This transaction was to constitute Brasil Álcool S/A, a company made up of 84 manufacturers of anhydrous alcohol and/or hydrated alcohol for use as fuel, accounting for approximately 70 percent of the production in its region, the center-south of the country.

47. The Petitioners justified the transaction by pointing out the difficulties alcohol producers were facing in this country with the fall in the price of the product to levels insufficient to cover production cost. In addition, putting off large crops to subsequent years was observed, since producers could not afford maintain their assets idle and had to produce to preserve their investment and avoid their manufacturing plants becoming scrap. As a result, prices might fall still further. As a consequence of this picture, alcohol producers decided to establish Brasil-Álcool and to export a portion of its members' production.

48. The relevant market was defined as that of automobile fuel production in this country. As for entry barriers, examination showed that they were large, mainly because of the high rates of idle capacity in the sugar and alcohol sector.

49. The examination undertaken by SDE concluded that the transaction, submitted as a concentration act, was no more than a cartel, given that the members of Brasil-Álcool got together and withdrew significant volumes of alcohol from the market (allegedly to be exported) to obtain higher prices in the domestic market. Indeed, the withdrawal of inventory took place at the time the company was being constituted, and the paying up of its capital was done with portions of the production of the stockholders themselves.

50. The agreement of a substantial proportion of the producers in the center-south region of the country to withdraw large quantities of alcohol from the domestic market, and Brasil-Álcool's bylaws, granted monopoly power to Copersucar, holder of 40 percent of the shares in the newly created company. This derived from the fact that the sale of Brasil-Álcool's inventory of alcohol on the domestic market was made conditional on the approval of stockholders holding 75 percent of the company's capital. The same thing happened with the selling policy. In other words, for Brasil-Álcool's inventory of alcohol to be sold on the domestic market, Copersucar would have to agree to the operation and to the price to be charged.

51. SDE then began to check whether the operation could be classified as what the economic literature calls a "crisis cartel", tolerated in some jurisdictions, under very specific conditions. Acceptance of the operation for this reason was ruled out in the belief that the crisis in the sugar and alcohol sector was not circumstantial but structural, and the cartel proposed was, in fact, a mechanism to regulate the market privately, to the detriment of the end consumer.

52. Thus, it was suggested among other sanctions that the operation should not be approved, and that Brasil-Álcool be immediately dissolved, given that the losses to consumers, deriving from the action of the cartel, had already been apparent in the fuel market. The Federal Government even went as far as to auction alcohol inventories to lower prices that had been raised by the cartel.

- Privatization of the Distribution of Piped Gas in the States of Rio de Janeiro and São Paulo (concessionaires CEG, CEG Rio, Comgás and Gas Brasileiro)

53. This is the privatization of the service of distribution of piped gas in the States of Rio de Janeiro (CEG and Riogás areas) and São Paulo (Comgás and Noroeste areas), submitted to the antitrust agencies.

54. SDE's examination identified various failings in good regulatory practice and in the principles free competition in the Concession Contract model employed by the State of Rio de Janeiro. Prominent among these were: 1) an absence of any separation between the distribution and selling functions making it impossible for there to be a "free consumer"; 2) the establishment of conditions making the choice by large consumers to purchase piped gas directly from the producer economically unviable; and 3) the lack of precise criteria for defining the price cap, in order to encourage increased efficiency leading to increased productivity and its sharing with consumers. A selling monopoly for this product was thus granted to a private company, with incentives and opportunities to exploit its monopoly position, to the detriment of consumers

55. In the light of this, this agency believed it was necessary to recommend behavioral measures in order to, at least, mitigate the problem created. For the approval of the act of privatization, the implementation of a legal and accounting separation between the functions of distribution and selling was recommended. It should be observed these measures did not imply any substantial alteration to the Concession Contract (and, in particular to its financial balance). In addition, it was recommended to CADE that it request the Granting Authority to introduce more sweeping changes to the Concession Contract, in the public interest.

56. On the other hand, the Concession Contract in the State of São Paulo showed the concern that this state had had in promoting competition in the potentially competitive businesses in the supply chain of piped gas, by introducing a separation of the functions of distribution and selling. This was, in this context, a considerable advance over the privatization model employed in the State of Rio de Janeiro.

57. Nonetheless, as there was no vertical separation, [Comgás and Gás Brasileiro (concessionaire in the Northwestern Region) could both be present], strong incentives were created in the business of selling piped gas for them to operate in such a way as not to allow third parties to be in a position to compete in this market. To control any possible practice of cross subsidy (between distribution and selling) and the truthfulness of the information disclosed by the regulated company, SDE recommended to CADE making approval of the two privatizations conditional on a legal separation between the businesses of distribution and selling, by creating two different companies.

58. In the opinions prepared, care was taken over the question of vertical separation between the business of supplying piped gas and electricity generation by thermoelectric power plants, since concessionaires would be able to give benefits to the plants belong to its stockholders to the detriment of the rest. To forestall problems of this sort, SDE recommended imposing the following conditions: 1) submitting the authorizations for operating thermoelectric power plants driven by natural gas to the antitrust system, under the terms of article 54 of Law No. 8,884/94; 2) implementing the recommendation to National Electricity Agency - ANEEL that it undertake constant monitoring of the vertical companies, with a view to detecting any kind of discrimination in prices or services.

59. In these two cases, SDE established the understanding that it was not up to the antitrust agencies under the Brazilian Constitution to control the privatization model chosen by the states or the federal government, since in this regard, the principle rules that apply is that this choice is guided by government criteria of expediency and circumstance beyond the scope of antitrust law. It is the legal responsibility of the antitrust agencies, however, to check whether the act of privatization will create or reinforce a

dominant position resulting in the elimination of competition in a substantial part of the relevant market for goods or services.

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

60. Brazilian law does not grant authority to the antitrust agencies to operate in formulating or implementing other policies. Nonetheless, free competition is promoted to public bodies, in other words, the antitrust agencies adopt the stance of being the so-called “competition advocate”, which consists in being proactive within the government sphere aiming at eliminating rules and policies incompatible with the principles of competition.

61. In this context, SDE has entered into reciprocal cooperation agreements with the main regulatory agencies in the country, such as the National Electricity Agency - ANEEL, the National Petroleum Agency - ANP, and the National Sanitary Inspection Agency - ANVISA. These agreements not only facilitate the exchange of information in order to help SDE in assessing cases involving overlapping sectors, but they also lead to greater coordination between the regulatory and antitrust areas. In 2000, progress was made in negotiating entering into similar agreements with the Delegated Public Services Regulatory Agency of Rio Grande do Sul and with the Energy Public Services Committee of São Paulo.

62. Also on the field of competition advocacy, SDE organized the “I International Seminar on Regulation and Competition in the Natural Gas Sector”, in December 2000, with the support of OECD. The event brought together state and federal regulatory agencies, academic researchers into the subject, and international authorities, in order to discuss the way forward for privatizing the supply of natural gas in Brazil, and publicizing the understanding of this agency on the instruments to be adopted to empower competition in the potentially competitive sectors of the natural gas chain.

IV. Resources of competition authorities

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

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

63. SDE’s budget in 2000, allocated to antitrust matters, was US\$ 150,000.

b) Number of employees (person-years):

64. The numbers of SDE staff working in the antitrust area are made up of 33 people (excluding trainees with no employment connection), and a feature of them is the relative diversity of their backgrounds. In spite of this diversity, the entire technical establishment has a high degree of knowledge of both theoretical and practical questions relating to antitrust, since they engage in constant improvement and training programs.

65. The staff of SDE's antitrust Department (DPDE) is made up as follows:

- Economists: 8
- Lawyers: 11
- Business Administrators: 2
- Accountant: 1
- Political Scientists: 1
- Administrative support staff: 10
- Law trainees: 2

IV.2. Human resources (person-year) applied to:

- a) *Personnel working on the investigation of anticompetitive practices: 15 people;*
- b) *Personnel working on examining mergers and other operations between companies: five people.*

IV.3. Period covered by the above information:

66. The information provided here refers to the period from January 1 to December 31, 2000.

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

67. SDE prepared a study on privatization, regulation, and the introduction of competition into the natural gas sector, with the intention of submitting to the government and to the private sector the different possible arrangements of regulation and antitrust in the sector. For the new institutional design being drawn up, a structural solution was advocated establishing a pro-competitive market, as opposed to merely behavioral regulatory mechanisms. In summary, the solution proposed avoids a succession of difficulties that a behavioral solution leads to. In particular, it was argued that a structural approach tends to facilitate regulation and make it more efficient, ensuring in the medium- and long-term, the development of the market and the well-being of consumers.

68. As stated above, the study culminated in holding the "I International Seminar on Regulation and Competition in the Natural Gas Sector", in December 2000, in which the OECD, the US FERC, and various federal and state regulatory agencies took part. Some presentation held on the meetings are available on the Internet at SDE's website (www.mj.gov.br/sde/dpde/seminarios/default.htm).

69. SDE has also had an active policy of advocating competition, holding seminars on the damaging effects of cartels in the economy, as well as on the instruments available for combating them. In this context, conferences were held with the legal community active in the sector in order to present the recently created leniency program and to make clear the penalties provided for in legislation.

70. Among the various presentations made, there is a presentation made by the Secretary of Economic Law and the Director of DPDE before the Consumer Protection Committee of the National Congress about the Antitrust Law reform and a conference held at the annual meeting of the IBRAC - Brazilian Institute for Studies on the Relationship between Competition and Consumption, in November 2000, on fighting cartels (both documents can be found at www.mj.gov.br/sde/dpde/document.htm).