ANNUAL REPORT ON COMPETITION POLICY 2008
BRAZILIAN COMPETITION POLICY SYSTEM[1]
April, 2009

Executive Summary

In the last years, the Brazilian Competition Policy System (BCPS), which comprises the Council for Economic Defence (CADE) and the Secretariat of Economic Law (SDE) of the Ministry of Justice and the Secretariat of Economic Monitoring (SEAE) of the Ministry of Finance, has passed through important changes aimed to improve competition and the enforcement of competition law and policy in the country. Better working methods and priority-setting have improved cartel prosecution, expedited merger review and enhanced competition culture in line with international best practices.

In 2008 the BCPS had to deal with scarce financial, material and human resources, but continued its consolidation though transparent and efficient actions, all aligned with the strategic planning of the Federal Government.

Legal and infra-legal measures were taken to better allocate the available resources and to speed up the investigative and decision-making processes. The communication within the system was improved; transparency and predictability are being addressed through the consolidation of institutional memory and publicized procedures and decisions; international insertion was a central source of technical assistance as well as an important motivator for important changes in the adopted procedures; merger analysis was boosted and the freed resources were re-allocated to the prosecution of illegal practices. Efforts in this direction were continued in 2008 – either by the creation of new instruments, and by the development of the ones already in place. In 2008, there was a record of the number of search and seizure warrants served to obtain evidence of cartels: 93 (as opposed to 84 in 2007 and 19 in 2006). Additionally, 53 executives were arrested temporarily without charges for alleged participation in cartel conduct (cartel is also a crime in Brazil). Also, CADE imposed a record fine for cartel conduct: 22.5% of the turnover of the defendants in the year preceding the initiation of the investigations (the maximum established by the law is 30%).

Furthermore, major efforts were taken in the field of competition advocacy: Brazil's President created the "*National Anti-Cartel Enforcement Day*", to be celebrated every October 8th, and brochures addressing the fight against cartels were broadly distributed in Brazil in the First National Anti-Cartel Campaign conducted in 7 airports in the country.

[1] The Antitrust law and practice in Brazil is governed primarily by Law n. 8.884, of 1994, as amended in 2000 and 2007 (the Competition Law). The so called "Brazilian Competition Policy System" (BCPS) is composed of three agencies -- namely, the Secretariat for Economic Monitoring of the Ministry of Finance (SEAE), the Secretariat of Economic Law of the Ministry of Justice (SDE), and the Council for Economic Defense (CADE). SDE is the chief investigative body in matters related to anticompetitive practices and it also issues non-binding opinions in merger cases. SEAE issues non-binding opinion in merger review and it may also issue non-binding opinions related to anticompetitive practices. CADE is the administrative tribunal, composed of seven Commissioners, which takes the final decisions regarding anticompetitive practices and merger reviews.

Investments on staff capacity building continued to be one of the BCPS' strengths. A large number of servants were benefited with a wide range of training opportunities, such as attending to classes on competition policy; the four days Program on Pre-Merger Notification taught by members of the United States' antitrust authorities, the Federal Trade Commission and the Department of Justice; and the various exchange programs with foreign competition agencies.

The Judiciary is considered as a key target of advocacy initiatives as it is being more and more called upon to analyze competition issues. As a result, the General Attorney's Office continued to obtain significant results while defending CADE's decisions before the Judiciary.

On the legislative front, representatives of SDE, SEAE and CADE continued enhancing their efforts for the approval of the Bill which establishes new rules for the Brazilian competition regime aiming at making it more responsive and efficient. The most significant institutional changes provided in the Bill affect SDE and SEAE. SDE's Competition Division is transferred to CADE and transformed into a new body, the Directorate-General, and will be responsible for investigative and preliminary enforcement responsibilities. SEAE, by its turn, will be primarily responsible for competition advocacy, mainly concerning public policies. A Department of Economic Studies will also be created within CADE. Moreover, some relevant provisions regarding merger control were included in the bill, such as pre-merger control, early termination of the waiting period, and new notification thresholds. The Bill, which is part of the Growth Acceleration Program (PAC) of the Federal Government, includes provisions on the duration and the sequence of the terms of commissioners. Final approval of the Bill by the Congress is expected by the end of 2009.

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

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

A Presidential Decree created the Anti-Cartel Enforcement Day in Brazil. The establishment of this official day – October 8th, day in which the first leniency agreement was executed back in 2003 – is a recognition of the importance of the fight against cartels by the Executive Power.

In 2008 CADE issued four Ordinances, in order to improve transparency and predictability:

- CADE's Ordinance n. 47, which establishes that the processes should be distributed to the Commissioners in public sessions, preferably on

Wednesdays. According to the aforementioned Ordinance, the processes are distributed equally among the commissioners thorough a raffle.

- CADE's Ordinance n. 48, which creates the Communication's Division, establishing its relationship with the President, the Commissioners, the General-Attorney and the press. The aforementioned division is linked to the Presidency and has various competences, such as planning, coordinating, managing and executing the social communications activities, as per internal and external communications, public relations and publicity. The guidelines to the Communication's Division work are defined by the President.
- CADE's Ordinance n. 49, which altered Annex I of CADE's Ordinance n. 15, establishes the electronic version of the merger notification form. All mergers shall be notified on an electronic version once the appropriate system which is being developed by SDE is in place.
- CADE's Ordinance n. 50, which established four technical groups to cover the following subjects: (a) regulated markets, (b) economics, (c) international affairs, and (d) settlement negotiations. Said technical groups aim at providing not only the basic support for the analysis of concrete cases, but also permanent interaction with other governmental bodies and international organizations.

Further, Directive Resolution n. 1 established guidelines to uniform work routines to the Procedural department and the Commissioner's cabinets. The Directive Resolution has also regulated the structure of the Procedural Department and its divisions and has launched the "Manual of Procedures and Routines to the Commissioner's Cabinets". These measures are very important tools towards institutional efficiency.

In 2008 CADE has approved no "understanding briefs" (*súmulas*)[2]. However, several ones are currently being developed.

1.2 Other relevant measures, including new guidelines

In February 2008, the SDE released the *Leniency Policy Interpretation Guidelines* and a *Model Annotated Agreement* (available at www.mj.gov.br/sde both in English and Portuguese) to provide more transparency to the business community with respect to its Leniency Program. The documents were presented to the legal and business community in Brazil and overseas (Brussels and Washington). Following that, the SDE also launched its policy regarding direct settlements in cartel cases (available in Portuguese at www.mj.gov.br/sde).

In October 2008, the Prosecutor Office of the State of São Paulo created, with the support of Brazil's Ministry of Justice, the first criminal anti-cartel unit in Brazil. Following that, the SDE executed an agreement with the Public Prosecutor Office of the

[2] In 2005, CADE enacted Resolution No. 39 with the purpose of consolidating CADE's case law regarding certain issues by means of the issuance of "understading briefs" or "position statements." This procedure is already available to judicial tribunals in Brazil. Although such statements are not binding on CADE commissioners, they are strictly followed in practice and provide additional assurance regarding CADE's position on controversial issues.

State of São Paulo providing for the ear-marking of certain funds to be transferred to the mentioned anti-cartel unit.

Also, in December 2008, the SDE renewed its cooperation agreement with the Federal Police, which provides for the information exchange and cooperation in cartel cases.

Cooperation agreements with foreign competition authorities were also executed in 2008. The BCPS signed agreements with Canada and Chile, countries with which an informal cooperation had already been in place. Finally, in 2008, the SDE provided technical assistance to the *Fiscalia Nacional Economica* (FNE) providing expertise in the cartel front.

1.3 Government proposals for new legislation

Despite the efforts of SDE, SEAE and CADE to improve the System and to adopt international recommended practices by taking infra-legal measures, it is clear that infra-legal changes and other administrative arrangements are limited by Law and they can only be made permanent by means of a new legal framework for the competition policy in Brazil. This new framework can result in greater legal certainty and predictability, as well as a sustainable improvement in efficiency and effectiveness of such policy.

In this sense, the Draft Bill providing for the structural reformulation of the BCPS is under analysis by Congress since 2005. In December the 17th 2008 it has been approved by the House of Representatives and a final approval by the Senate is expected by the end of 2009.

As per the last Annual Report, the Bill was inspired by OECD and ICN Best and Recommended Practices, specially the ones emerged from the three OECD assessments Brazil went through since 2000: an individual review by Mr. John Clark in 2000; a formal OECD Peer Review in 2005; and the Peer Review Follow-up in 2007.

The proposed changes consist of, basically, three most important points: (i) introduction of a pre-merger system; (ii) the change on the merger notification criteria; and (iii) the institutional restructuring of the System, by a new distribution of functions within the BCPS.

Under the Bill, (i) SEAE receives a competition advocacy mandate; (ii) there is an improvement in the relationship between the BCPS and regulatory agencies; (iii) the Competition Department of SDE is incorporated into CADE, to carry out merger review analysis and investigation of anticompetitive practices; and finally, (iv) CADE keeps its current attribution as an independent administrative tribunal, linked for budgetary purposes to the Ministry of Justice. As a consequence, CADE would have both the attributions of investigating and judging cases – the investigation role would be carried out by a Directorate General, the successor of SDE's Competition Department. The Tribunal's president and the commissioners, in the number of six, would have a four-year non-renewable mandate, instead of the current two-year mandate, renewable once.

The proposed amendments would also introduce some new important material features into the Brazilian Competition Law, such as a pre-merger notification system, the improvement of the merger notification criteria (thresholds with appropriate standards of materiality as to the level of "local nexus" required for notification), an early termination system for simple cases, and the possibility of closing a merger case by settlement.

These changes intend to provide more celerity in the analysis of conduct cases and merger reviews and to avoid the duplication of efforts among the competition authorities.

2. Enforcement of competition laws and policies

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

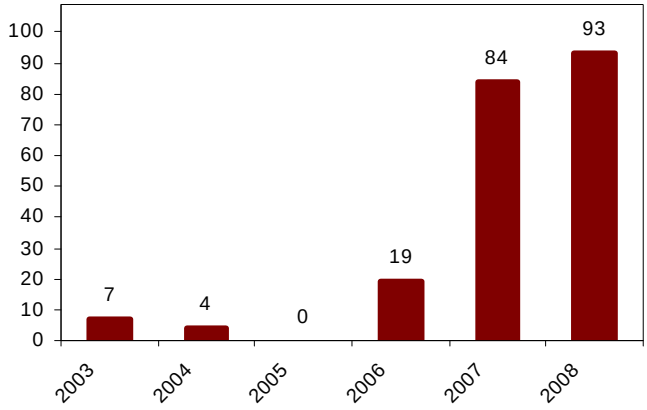
a) Summary of activities of:

- *Competition Authorities*

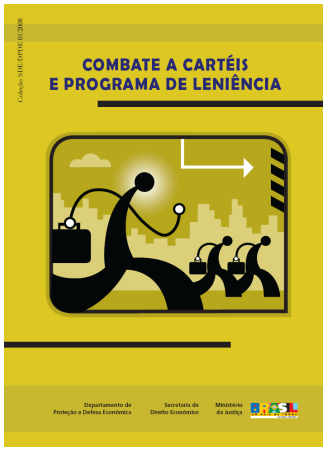
In 2008, SDE made substantial efforts to increase the impact of its enforcement actions, mainly concerning cartels. The combined developments in the previous years of higher fines applied by CADE, establishment of cartel prosecution as a major priority for SDE, increased co-operation with criminal State and Federal Public Prosecutors, and increased transparency of the Leniency Program led to a growing number of leniency applications: more than 10 agreements were signed since 2003, including with members to international cartels, and many others are currently being negotiated.

As a result, the number of search warrants served has significantly increased: from 2003 to 2005, 11 warrants were served and 2 people were arrested without charges; in 2006, 19 warrants were served; in 2007, 84 warrants were served and 30 people were arrested without charges for a ten-day period, and, finally, in 2008, 93 warrants were served and 53 people were arrested without charges

Number of search warrants served per year



In order to increase awareness of the harms caused by cartels and attract more candidates to the Leniency Program, SDE prepared brochures to be sent out to different regions of Brazil and to different publics, including business people, courts, prosecutors, consumers, and schools. Two brochures were launched, one on the Leniency Program and the other one on bid-rigging. SDE also adopted a mascot ("Mr. Fair"), to be present in all its publications related to competition matters (see below).



"*Fight against cartels and the Leniency Program*"

"*Fighting Bid-rigging*"

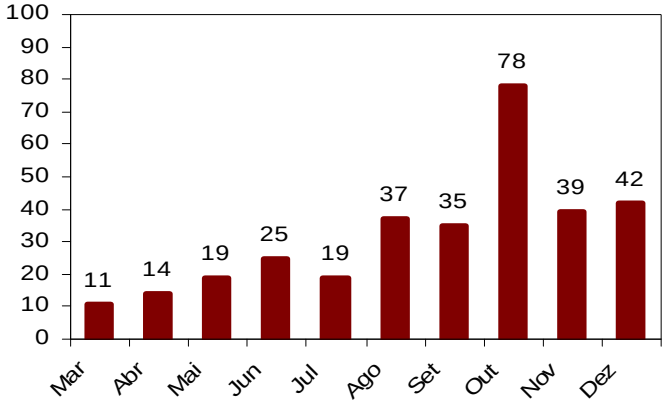
Mr. Fair

Also, a 3-day national Anti-Cartel campaign was launched in 7 Brazilian airports (São Paulo Guarulhos, São Paulo Congonhas, Rio de Janeiro, Belo Horizonte, Porto Alegre, Salvador and Brasilia) in October 2008. The Brazilian competition authorities handed-

out 450,000 brochures about the Leniency Program and a folder on how to report existing cartels. The main goal was to destabilize cartels by attracting new candidates to SDE's Leniency Program and increase awareness all over Brazil on the importance of fighting cartels.

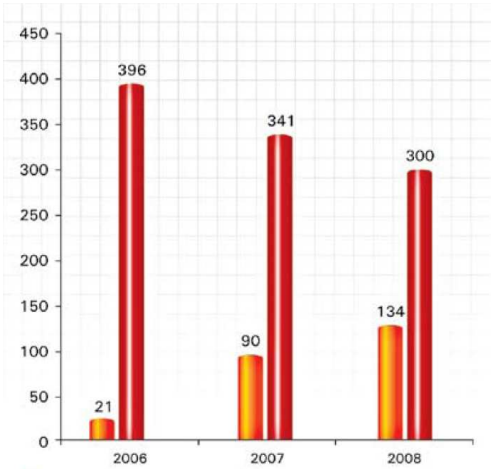
The SDE also created, in March 2008, an e-tool called "Click here to tip us" where any Brazilian citizen may report cartel activity on SDE's website and the confidentiality is guaranteed. More than 300 conducts were reported through this channel, more than 70% of which were related to alleged cartels. The table below contains the number of reports by consumers per month in 2008 since the creation of the electronic tool in March 2008:

Number of complaints received through the E-tool



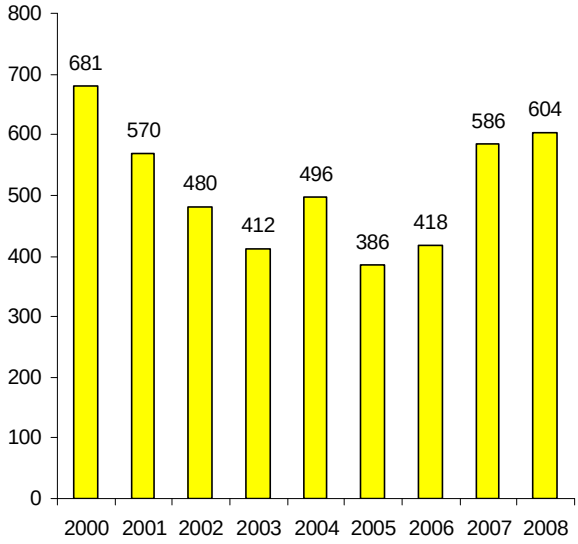
The SDE also launched a folder publicizing the existence of the E-tool, which was broadly distributed in the country.

There was also a major effort to reduce the existing backlog. In 2008, the SDE sent 134 conduct cases for CADE for final judgment as opposed to 90 cases in 2007 and 21 cases in 2006. As of December 31, 2008 there were 300 open conduct investigations at SDE, as opposed to 341 in 2007 and 396 in 2006. These figures show the ability of SDE of also putting an end to the investigations and sending the cases to CADE for final judgment, providing legal certainty to the business community.



Regarding merger review, 604 mergers were filed before the Brazilian competition authorities, which represents a record of transactions filed before the authorities, as seen below: (transaction filed by year)

Transactions filed per year



The BCPS continued being benefited of an increasing international insertion, by the exchange of experience and information with its foreign counterparts.

For the first time the BCPS received three out of five possible stars at the Global Competition Review ranking, leading the ranking among the Latin American countries. One of the reasons for said recognition is the BCPS' greater participation in international *fora* and meetings. Said international participation helps the establishment of an institutional memory, as several questionnaires and enquiries with different approaches must be responded. Besides, it also facilitates the identification of important strengths and weaknesses among the BCPS.

One good example of the international experience's importance is that many of the projects established in CADE's strategic planning for 2009-2010 were inspired on the Best and Recommended Practices of the Organization for Economic Cooperation and Development (OECD) and the International Competition Network (ICN).

Furthermore, in 2008 Brazil continued being part of the ICN's Steering Group, keeping its position as Co-Chair, together with Turkey, in the Competition Policy Implementation Working Group, having developed the questionnaire which analyzed the relation between the definition of priorities and resource allocation and effectiveness of the agency decisions. SDE, by its turn, continued to be Co-Chair of a subgroup of the Cartel Working Group.

In 2008, CADE's Ordinance n. 50 established four technical groups, on (a) regulated markets, (b) economic methods, (c) international affairs, and (d) settlement negotiations. These working groups aim at providing the basic support for the analysis of concrete cases, and also at interacting with other governmental bodies and international organizations.

The group of settlement negotiations has been very active. Its main activities are related to capacity building opportunities, discussions on concrete cases and the draft of a new Ordinance. Further, the members of the group comprise the "negotiation commission" for settlement agreements. Therefore, the group had an important participation on the Bridgestone Corporation (alleged marine hose cartel) settlement, for instance. The alleged hard core cartel was required to pay R$1.594.000,00 (US$ 714,798.20).

The economic methods technical group has developed a strategic planning which aims at enabling the group members to conciliate their ordinary antitrust analysis activities with the group's long term activities. One its main goals is maintaining and enhancing intelligence on economic analysis through proper management of information and economic knowledge. Other goals include assisting commissioners on their demand for specific economic studies and analysis; and producing technical guidelines and working papers which shall compile CADE's main precedents on strategic economic themes, such as demand estimation, merger simulation, market definition techniques, analysis of efficiencies, and calculation of cartel's damages. The group also aims at developing overviews and practical guidance for practitioners. The group has attended the London School of Economics (LSE) Summer Program in econometrics taught by LSE's prestigious Professor Christopher Dougherty. Professor Dougherty stayed in CADE's headquarters, in Brasilia, teaching econometric techniques for a group of ten professionals of the BCPS for a period of four weeks between December 2008 and January 2009.

From the examples aforementioned it is possible to conclude that investments on staff capacity building continued to be one of the BCPS strengths, and there have been a large number of staff members benefited with a wide range of training opportunities, such as attending to the specialisation course on competition policy by the Getúlio Vargas Foundation (FGV). Another example is the participation of one of the economic methods working group member in the FTC's First Annual Conference in

Microeconomics, which took place in Washington D.C., EUA. Furthermore, three members of the group on settlement negotiations attended three different courses each at Harvard University: (i) The Program on Negotiation for Senior Executives; the course (ii) Dealing With Difficult People & Difficult Situations; and (iii) Negotiating Complex Business Deals, all of them related to negotiation methods.

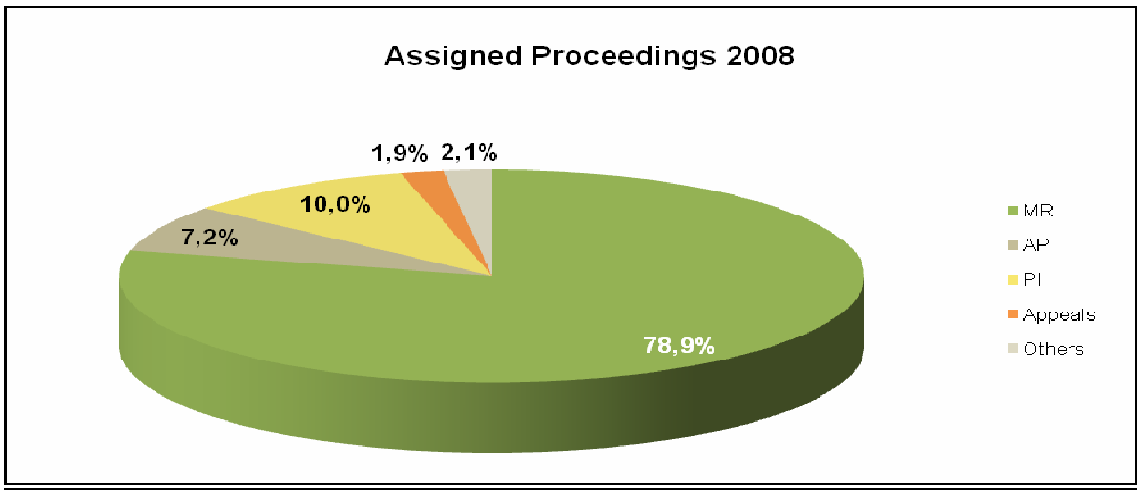
In November 2008, the Brazilian Competition Policy System received, at CADE´s Headquarters', the four days Program on Pre-Merger Notification taught by staff members of the US Federal Trade Commission and the US Department of Justice was another great learning opportunity provided to BCPS´s staff members. The Program empowered staff members to analyze pre-merger notifications and understand the regulation of the United States of America in this regard. A pre-merger notification course was extremely important for the Brazilian Competition Policy System, since the said notification type, which is still not used in Brazil, is currently being discussed at the legislative level. The respective legislative bill was approved by the House of Representatives and is being analyzed by the Senate.

International exchange programs have been attended by the staff members of CADE, such as the U.S. Federal Trade Commission's "International Fellows Program" and the internship and training at the Competition Bureau of Canada.

Resources from the World Bank Group have been extremely important to enable exchange programs and other capacity building programs.

Regarding adjudicative functions, CADE received the total of 809 assigned Proceedings, among Merger Reviews, Administrative Proceedings, Preliminary Investigations, Appeals and others. In total, 78,9% of them were Merger Reviews (638 cases); 7,2% of them Administrative Proceedings (58 cases); 10,0% of them were Preliminary Investigations (81 cases) ; and 1,9% of them were Appeals(15 cases). (Please refer to Graphics n. 01 and n.02)

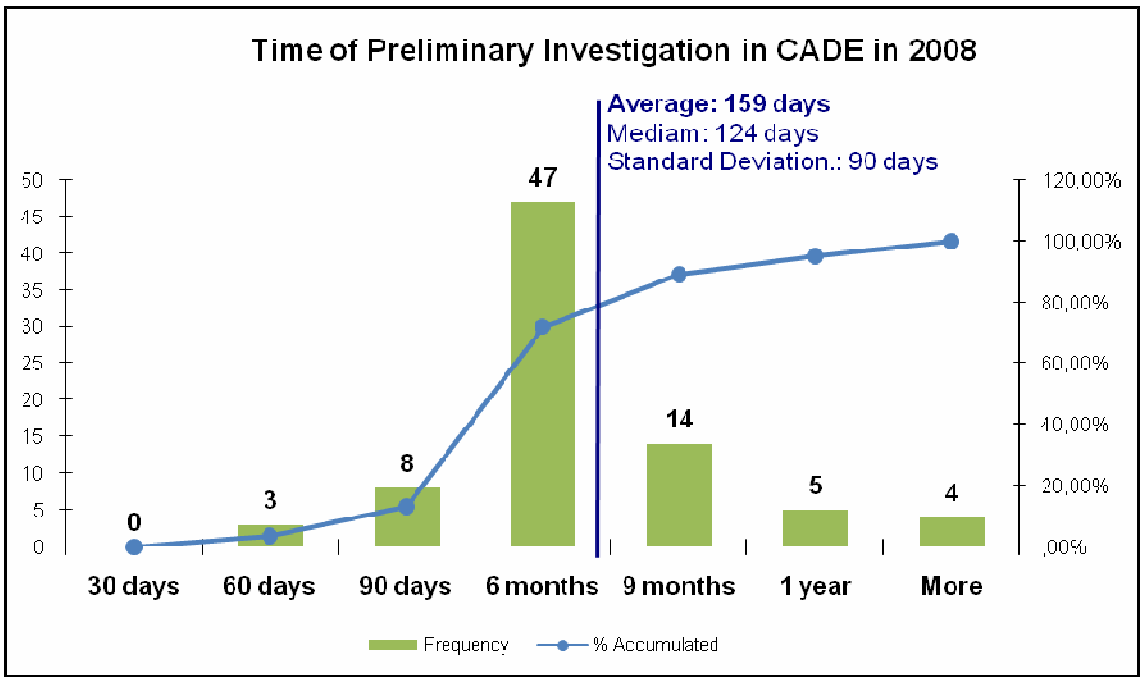
GRAPHIC 01



Graphic n. 01: 78,9% of the Assigned Proceedings were Merger Reviews.

Regarding adjudicative functions, in 2008 CADE received 86 preliminary investigations while 81 were judged. The average time for judging preliminary investigations by CADE was 159 days after it has been sent by SDE (Please refer to Graphic n.03).

GRAPHIC 02

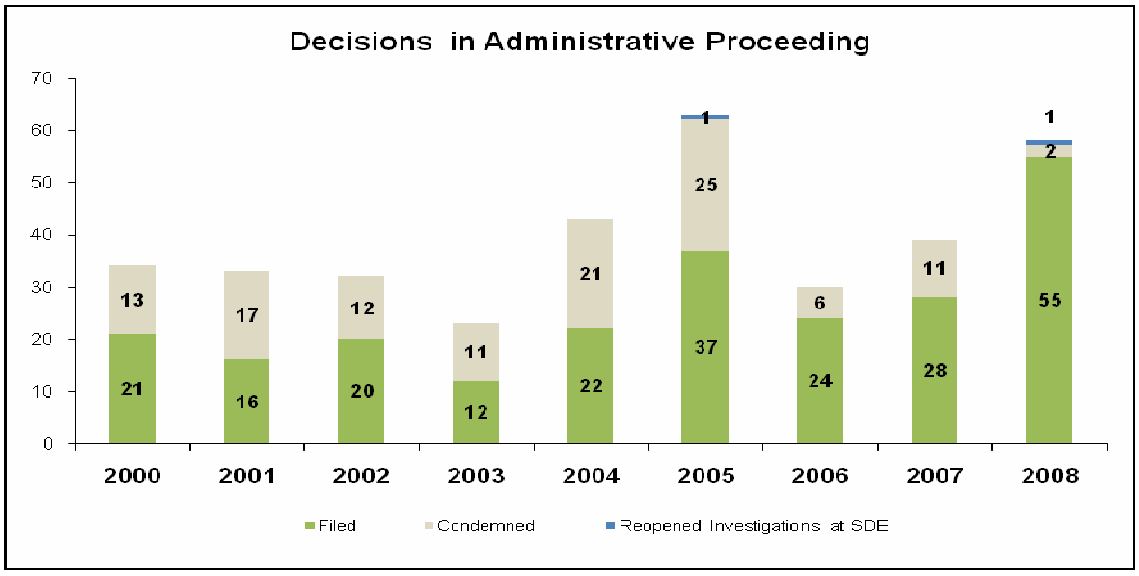


Graphic n. 02: The average time for Preliminary Investigation analysis in CADE was 159 days.

As for Administrative Proceedings[3], 58 of them were judged by CADE in 2008. Among the judged cases, 3,45% resulted in a condemnation decision (2 cases), 94,3% were dismissed (55 cases) and 1,72 has been sent by back to SDE (1 case), where the investigation was reopened. (Please refer to Graphic n. 04 and 05) . The average time for analysis of Administrative Processes by CADE was 268 days (Please refer to Graphic n. 06).

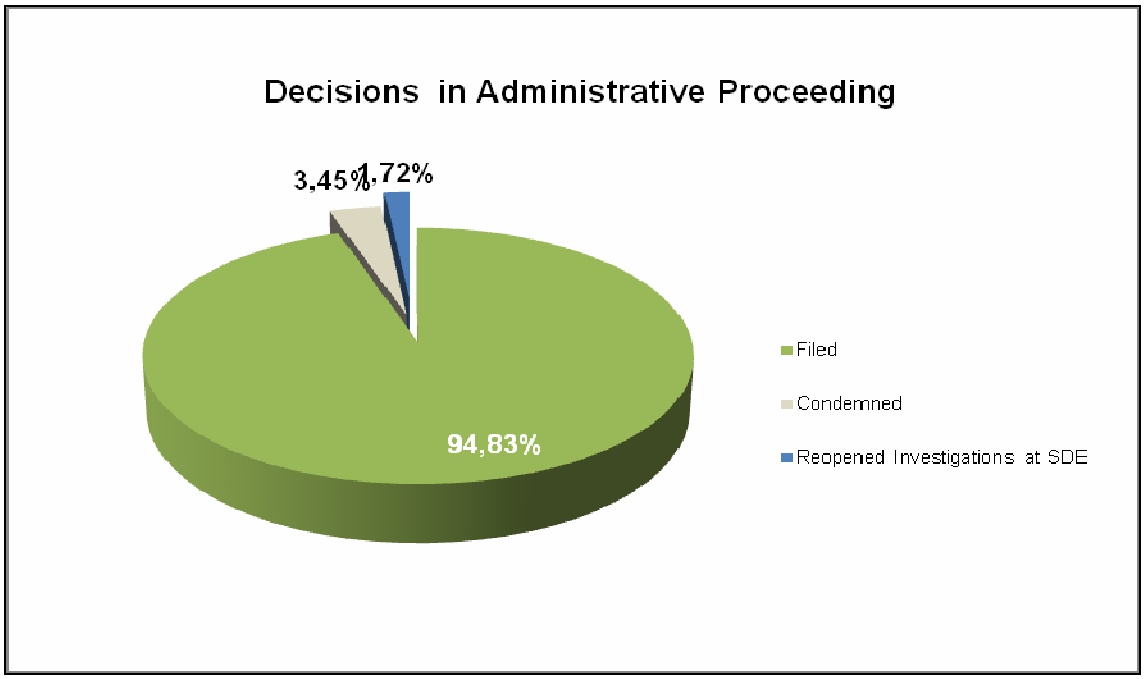
[3] Administrative Proceedings are formal processes related to anti-competitive practices when there are evidences of the practices and a formal defense is presented.

GRAPHIC 03



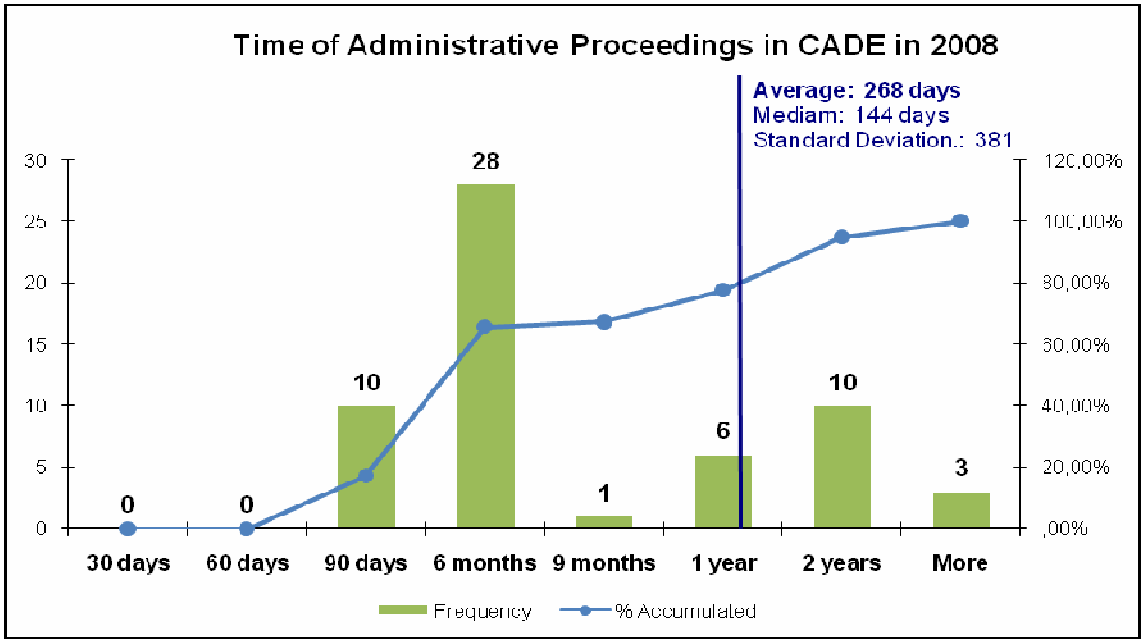
Graphic n. 03: In 2008, among the decisions in Administrative Proceedings 2 were convicted, 55 were dismissed and 1 has been sent by back to SDE.

GRAPHIC 04



Graphic n. 04: Among the decisions in Administrative Proceedings 3,45% were convicted, 94,3% were dismissed and 1,72% has been sent by back to SDE, where the investigation was reopened.

GRAPHIC 05



Graphic n. 05: In 2008, the average time for analysis of Administrative Processes by CADE was 268 days.

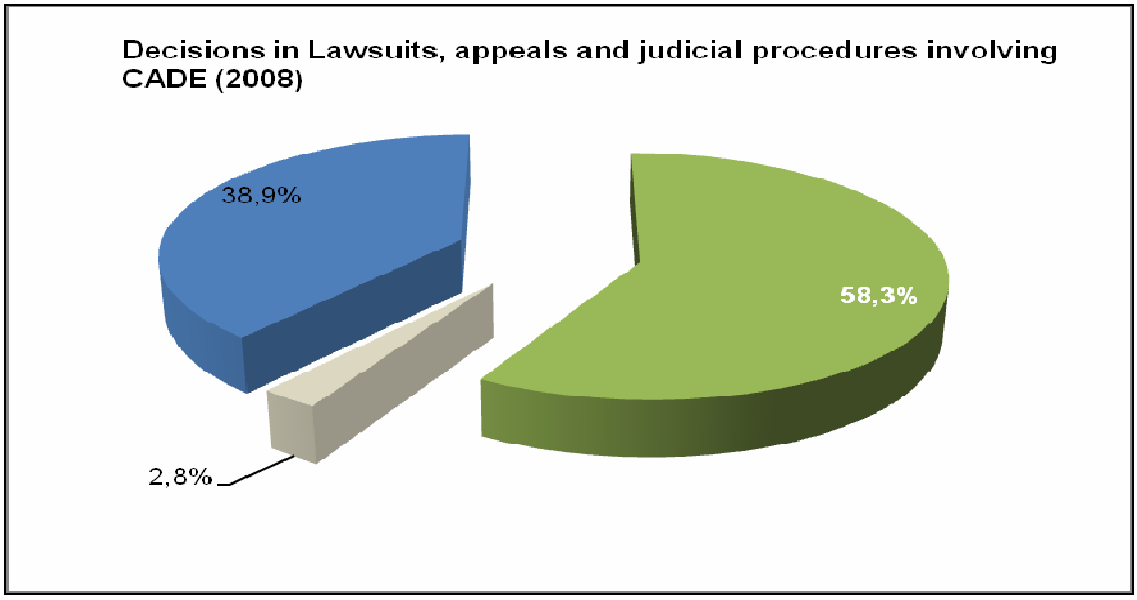
- *Courts*

As affirmed in the last Annual Report, the Brazilian Competition Policy is being subject to a process of progressive "judicialization". In this sense, competition issues are leaving their original *locus*, the CADE, and becoming increasingly present within the Judiciary. This circumstance poses new challenges to CADE and, in particular, to CADE's Attorney General Office, the body responsible for the judicial enforcement of the Board's decisions.

As a response to this "judicialization", CADE's advocacy before the Judiciary has been strengthened. In 2008, CADE's Attorney General Office became even more proactive, by proposing more lawsuits - whether to require the payment of fines imposed by the Board, or to determine compliance with remedies imposed, the follow-up of the judicial processes involving CADE is being really strict and frequently the President or the Commissioners, accompanied by CADE's attorneys, go to Court to explain the merit of the decisions. Due to these efforts, most of the judicial decisions (58.3%) are favorable to CADE's Attorney General Office. (Please refer to Graphic n. 11).

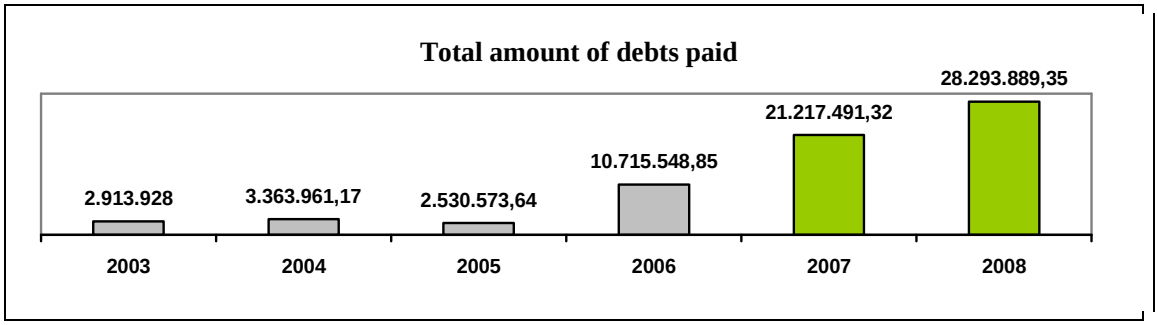
CADE's Attorney General Office work has also been essential in guaranteeing the enforcement of the Council's decisions. The body made a detailed administrative review where some cases were identified in which unpaid fines had not been included into the Federal Executable Debt. The increase in the value of fines imposed by the Council, as well as the close follow up of unpaid fines resulted in a raise of the amount of paid debts of almost ten times, from BRL 2,913,928.00 (USD 1,303,770.91) in 2003, to BRL 28,293,889.35 (USD12,659,458.32), in 2008. (Please refer to Graphic n.12).

GRAPHIC 06



Graphic n.06: As it can be noticed, most of the decisions (58,3%) are favorable to CADE, 2,8% are partially favorable and 38,9% are not favorable.

GRAPHIC 07



Graphic n.07: The amount of paid debts has raised almost ten times from BRL 2,913,928.00 (USD 1,303,770.91) in 2003, to BRL 28,293,889.35 (USD12,659,458.32) in 2008.

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

- *Cartels*

Administrative Process n. 08012.006019/2002-11

Complainant: Antonio Jader Lopes

Defendants: Agip do Brasil S/A, Cia Ultragaz S/A, Copagaz Distribuidora de Gás Ltda., Minasgás S/A Distribuidora de Gás, Nacional Gás Butano Distribuidora Ltda., Onogas S/A Comércio e Indústria, Shell Gás, Supergasbrás Distribuidora de Gás Ltda., Carlos José Dantas (Sales manager - Agip do Brasil S/A), Caetano Guimarães Silva (regional manager - Nacional Gás Butano Distribuidora Ltda.), Pedro Paulo Martins (coordinator - Uberlândia da Minasgás S/A Distribuidora de Gás), Antenor Gomes de

Moraes Filho (manager - Supergasbrás Distribuidora de Gás Ltda.), João Carlos Nicolau (sales manager - Copagaz Distribuidora de Gás Ltda.), João Gomes de Sousa (manager - Copagaz Distribuidora de Gás Ltda.) and José Duarte de Almeida (manager - Copagaz Distribuidora de Gás Ltda.)

Reporting Commissioner: Luis Carlos Delorme Prado

In 2008 the Council condemned seven companies working in the distribution of liquefied petroleum gas (LPG) and five of their employees for cartelization and resale price maintenance pursuant to Sections 20 and 21 I, XI and XXIV of Law N 8,884/94. The complainant was a LPG retailer, accusing the defendants of price squeeze and other exclusionary practices in the cities of Uberlandia, Uberaba and Araguari, in the state of Minas Gerais, in 2001.

The most relevant input provided by the complainant were tapes showing dialogues involving the defendants, part of them regarded as direct proof of involvement in the cartel. The issue whether recordings carried out by one the parties involved in the dialogue were legally obtained or not involved the assessment of Supreme Court rulings and was the cornerstone for deciding for or against conviction. The Commission also discussed the fact that the cartel was created as a means (however illegal) to deter illegal contracts entered into by the complainant as well as other LPG retailers.

CADE's Attorney General issued an opinion for the illegality of the recordings based on the constitutional right to private privacy. That notwithstanding, he asked for the conviction of the defendants based on the remaining evidence. The Commission, on the other hand, decided that the legality of the recordings were prejudicial – meaning that it affected the final results of the trial and should be decided first.

Commissioner Luiz Carlos Prado delivered the report supporting CADE's decicion. According to his vote, the Attorney General was mistaken in his findings and the recordings followed the Supreme Court's jurisprudence because the tapes were recorded as a mechanism of self defense, in order to prevent the complainant from been excluded from the market by illegal means (collusion). The Commission considered meaningful that the defendants assembled also to punish the retailers that, against the law, sold LPG belonging to different distributors – which increased their costs. However, the Commission found no excuse therein to justify cartelization and self-help. This piece of information was used to fine the defendants with minimum amount allowed by law, though.

Commissioner Prado refuted the defendants' statement that the recordings were a breach in a relation of trust between wholesaler and retailer – first, by showing that the retailer had already sued more than one of the wholesalers. Second, because trust could not be the basis for trade relations involving competitors (the retailers, although required by law, publicly did not trade only one wholesaler's product). Third, because leniency itself is analogously carried out by one the competitors in secrecy, meaning that the nature of competition rules allows for such sorts of reportings on behalf of the common good, regardless of the private right to privacy.

Administrative Process n. 08012.000283/2006-66

Complainant: Secretariat for Economic Law (SDE)

Defendants: Sociedade dos Mineradores do Rio Jacuí Ltda (Smarja), a Aro Mineração Ltda (Aro), a Sociedade Mineradora Arroio dos Ratos (Somar) e a Comprove Consultoria e Perícia Contábil Cível S/C (Comprove).

Reporting Commissioner: Paulo Furquim de Azevedo

Some companies based in Porto Alegre, in the State of Rio Grande do Sul, were fixing prices and dividing the market in the sand for civil construction market. The consulting firm "Comprove" was helping the cartel implementation trough the development of studies on price parity between the companies, comparing the distance of the minings and the sand warehouses and afterwards suggesting the prices. The consulting firm argued that the companies should standardize the prices in order to avoid the migration of clients between the companies part of the cartel. The cartel was proved trough documental evidences, as per trough telephone records and testimonies that proved the illicit conduct by the defendants. Commissioner Fernando Furlan suggested that the companies should be declared guilty and that the following proportion of fees should be charged (considering each company overturn): 22.5% Aro Mineração; 20% SMARJA; 17.5% SOMAR e 10% Comprove. All these percentages related to the gross earnings of the companies in 2005. The Reporting Commissioner Paulo Furquim de Azevedo agreed with all the suggestions made by Commissioner Fernando Furlan and the Board unanimously condemned the companies. Among other remedies, it was imposed that the clients should be informed of CADE's decision.

- *Abuse of Dominant Position*

Administrative Appeal n. 08700.002874/2008-81

Apellant: Companhia de Bebidas das Américas – AMBEV

Reporting Commissioner : Carlos Emmanuel Joppert Ragazzo

In 2008, AMBEV, the largest beer producer in Brazil, launched a 630mL bottle. Its competitors filed a complaint arguing that the new bottle would affect the common 600mL glass bottle exchange program with the beer retailers and that it would artificially raise AMBEV's rivals products costs, ultimately harming the market and consumers.

The Secretariat of Economic Law ("SDE") decided to open a file to investigate the matter and issued a interim measure prohibiting AMBEV of commercializing the new bottles until a final decision was reached.

AMBEV appealed to CADE and the Council partially reformed SDE's preventive decision, by allowing AMBEV to commercialize the new bottles in some regions and, at the same time, creating a temporary bottle exchange program that transferred most of the exchange costs to AMBEV, until the investigations are over and a final decision is rendered.

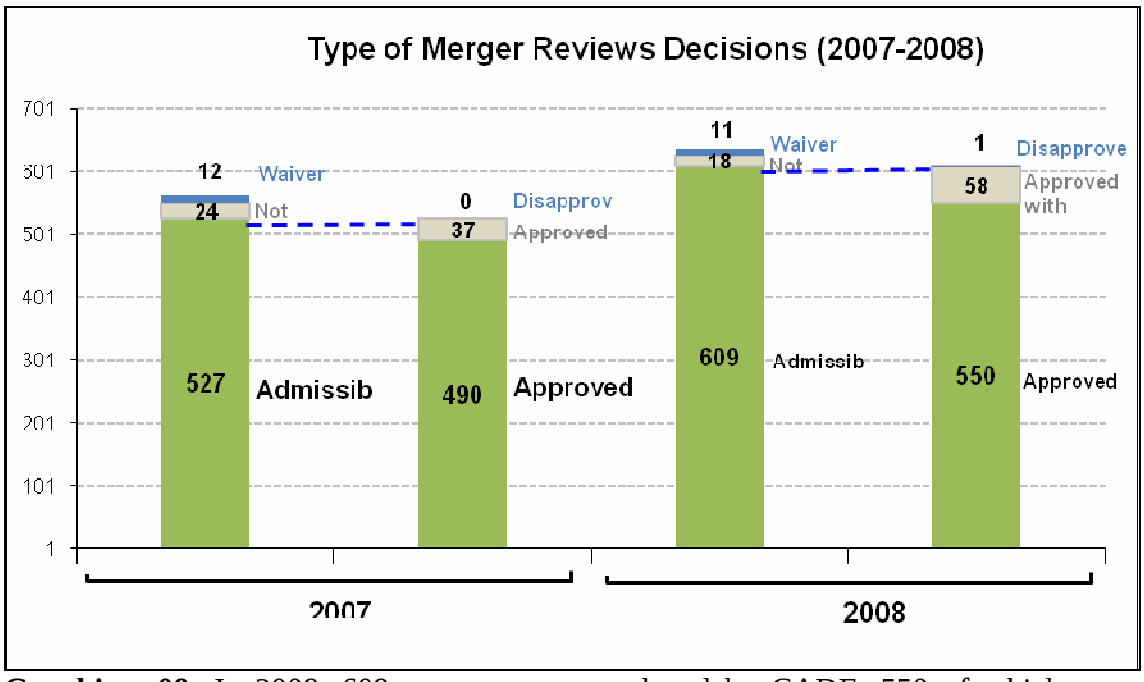
2. 2 Mergers and acquisitions

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

In 2008, 638 merger review processes were filed. From those, 18 were considered not admissible for review, 11 of them were withdrawn and 609 were considered admissible and thus judged regarding the merit. From the 609 merger review processes that were considered admissible, only 0,16% were blocked (1 case), while 90,3% were approved (550 cases) and 9,52% were approved with restrictions (58 cases). (Please refer to Graphic n. 07 and 08).

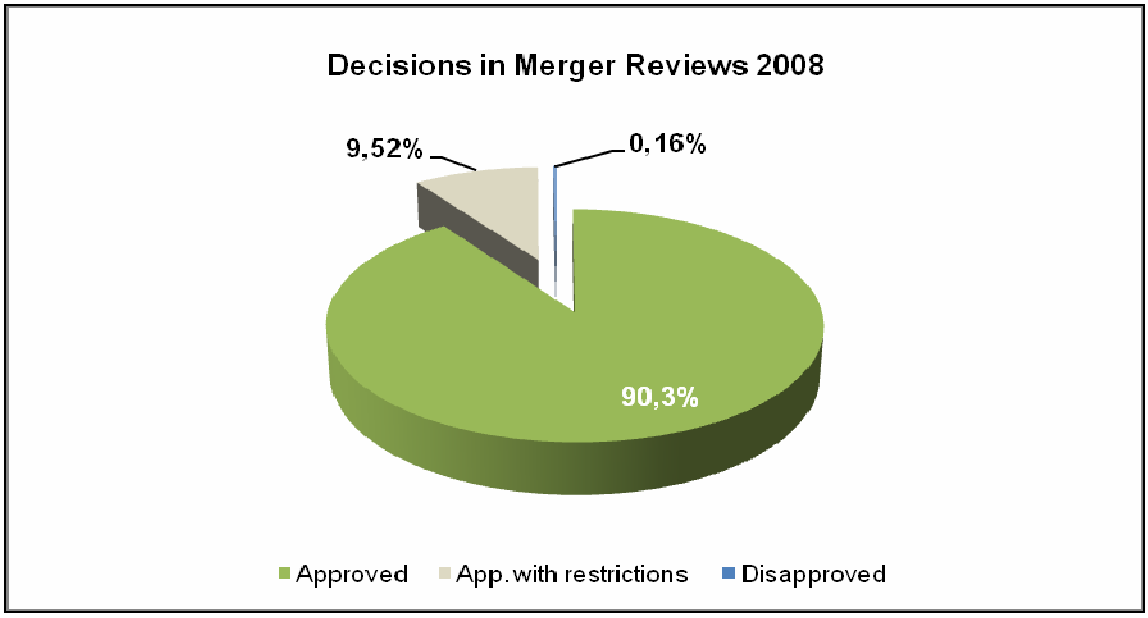
BCPS's celerity has improved a lot in the last years. One good example of this improvement is the average time for merger review: 165 days, almost 100 days less than what used to be the average in 2005. (Please refer to Graphic n. 09). Further, since 2003, SDE and SEAE formally adopted the fast track procedure to speed up merger review analysis. Afterwards, CADE adopted the same procedure and nowadays more than 70% of merger reviews analyzed by CADE are under this instrument. (Please refer to Graphic n. 10).

GRAPHIC08



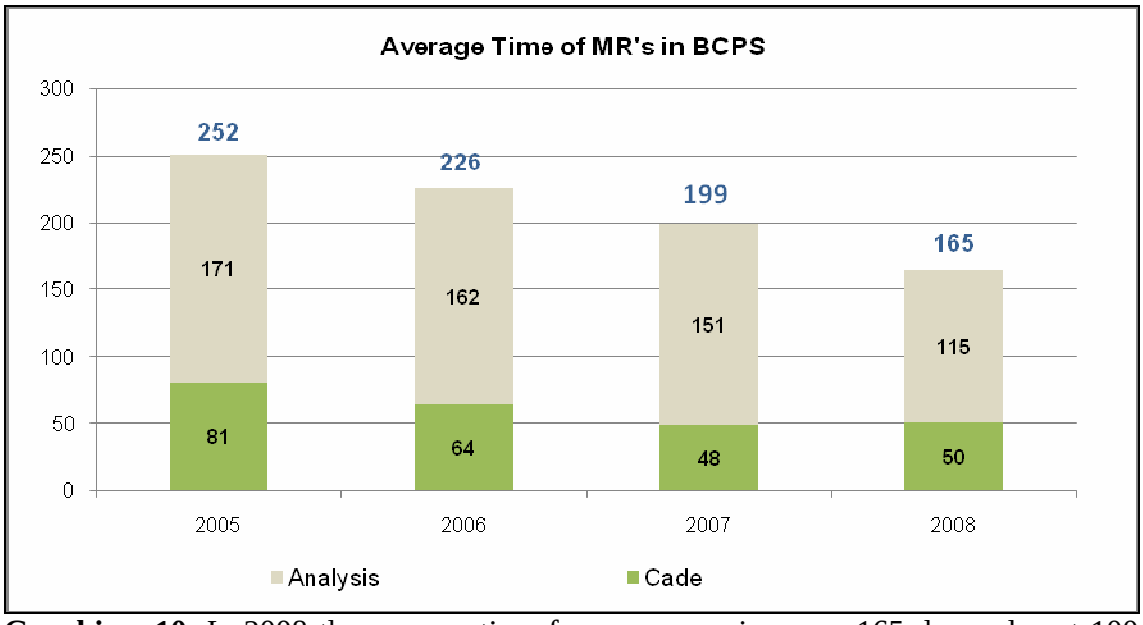
Graphic n.08: In 2008, 609 mergers were analyzed by CADE, 550 of which were directly approved, 58 of which were approved with restrictions and 1 was blocked.

GRAPHIC 09



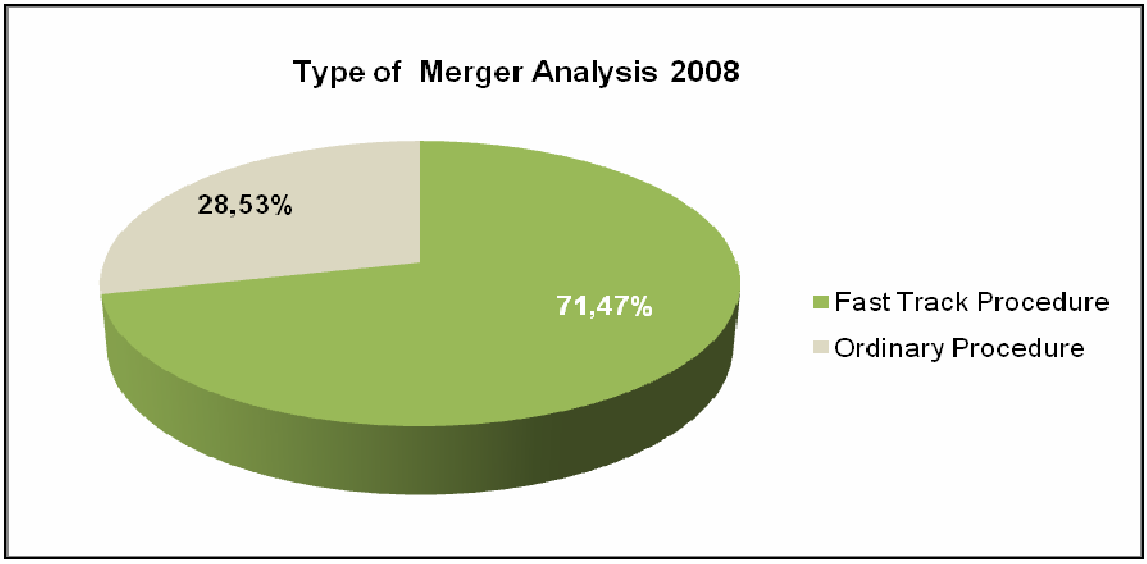
Graphic n.09: In 2008 only 0,16% of the Merger Reviews were blocked while 9,52% were approved with restrictions and 90,3% were approved with no restrictions.

GRAPHIC 10



Graphic n.10: In 2008 the average time for merger review was 165 days, almost 100 days less than what it used to be in 2005

GRAPHIC 11



Graphic n.11: In 2008, Fast Track Procedure represented 71.47% of the Merger Analysis while Ordinary Procedure represented only 28,53%

b) Summary of significant cases

Merger Review n. 08012.011196/2005-53

Parties: Air Liquide Brasil LTDA and White Martins Gases Industriais LTDA

Reporting Commissioner: Paulo Furquim de Azevedo

The joint venture between Air Liquide and White Martins was created to supply atmospheric gases (oxygen, nitrogen and argon), compressed dry air and air for blast furnace to the *Companhia Siderurgica do Atlantico* (CSA).

The CSA, located in the state of Rio de Janeiro, is a JV set up to build and operate a new stell mill by the Companhia Vale do Rio Doce S.A. and by the German group ThyssenKrupp and its activities were intended to begin in February 2009. White Martins and Air Liquide will make two Air Separation Units (ASUs) near the CSA plant. Each ASU will be constructed by a company and both will run simultaneously. The Reporting Commissioner, Paulo Furquim de Azevedo, voted for the approval of the transaction conditioned to the signature of a Performance Commitment Term in order to prevent risks related to the exchange of information which are sensitive as far as competition is concerned in the management of the Consortium, thus reducing the probability of adverse effects for the competition.

Among other clauses, said Term determined that (i) White Martins and White Martins Steel were obliged to hire, within 120 days after the conclusion of the Term, an independent manager which will represent them in the consortium; (ii) such manager should represent White Martins and White Martins Steel in the contacts deemed necessary to the management of the consortium and to the administration of the Industrial Complex, according to the agreements done between the companies and to the agreement done between them and the CSA, exclusively; (iii) White Martins and Air Liquide were obliged to perform the removal and trade of the remains in a totally independent way, and any sharing of the corresponding income and of any information

related to such aspect is prohibited, mainly concerning destination and amounts involved; (iv) Air Liquide, which is the administrator of the Consortium, should forward to CADE a copy of all convocations related to the meetings of the Management Committee, of the Technical Committee and of the Gas Supply Committee. All obligations provided in the PCT were agreed to be valid for 10 years, and may be renewed for the same period by CADE, through motivated decision. The Board, unanimously, followed the vote of Commissioner Furquim approving such transactions with signature of the Term.

Merger Review n. 08012.002531/2007-94

Parties: Petroleo Brasileiro S.A. and Brentech Energia S.A.

Merger Review n. 08012.002533/2007-83

Parties: Petroleo Brasileiro S.A. and Energetica Camacari Muricy I S.A.

Merger Review n. 08012.002535/2007-72

Parties: Petroleo Brasileiro S.A. and Arembepe Energia S.A.

Reporting Commissioner: Olavo Zago Chinaglia

The three Merger Reviews refer to the implantation and consequent exploration of thermoeletric plants in the cities of Aparecida de Goias/GO and Camacari/BA, as well as Special Purpose Companies derived from the consortium that won electricity purchase auctions organized by ANEEL, the electricity agency.

The undertakings argued that (i) the characteristics of the specific sector regulation reduces the control of structures by the BCPS; (ii) the Ministry of Mines and Energy had authorized the consortium to become an "independent producer of energy", in a way that the economic concentration resulting from such transaction would have already been approved by such administrative act. Therefore, the possibility of review of acts of such a kind by BCPS authorities would not only be economically inefficient, but also inconstitutional, should CADE powers be not hierarchically equal to the Ministries and by the Presidency of the Republic.

Such arguments were not accepted by the Reporting Commissioner, which considered that the transaction related to the creation of a consortium aiming at the participation in electric energy auctions and to the implantation of a generator power plant. Therefore, each of the transactions could not be considered in isolation from the others in regard to the antitrust analysis. On the contrary, both the immediate and the mediate effects originating from such transactions completed the scope of such analysis, in a way that all transaction phases were mandatory to be analyzed.

This conclusion was necessary, as the petitioners intended limiting the analysis exclusively to the phase which succeeds the fulfillment of the trade agreements on electric power in regulated environment, in which, in fact, the economic agents have little or no control over the essential competition variables (quality, quantity and price). However, before the auction, the companies which generate electric power have real competition price advantages. Otherwise, there would not be any reason to have a public bid.

The Reporting Commissioner also pointed out that the sectoral regulation is limited, at such phase, at determining the quantities to be supplied and their highest prices.. Consequently, there is room for preventive and repressive participation of BCPS in the electricity sector, regardless of any discussion on the sectoral regulation model.

All the three merger reviews have been approved with no remedies imposed. An extemporaneous filling fine was applied in the first Merger Review.

Merger Review n. 08012.008848/2005-28

Parties: Silcar Empreendimentos, Comercio e Participacoes Ltda., RV Empreendimentos Ltda., and LLV Empreendimentos Ltda.

Reporting Commissioner : Ricardo Villas Bôas Cueva

This Merger Review related to a transaction involving the acquisition by Silcar Empreendimentos, Comercio e Participacoes Ltda. (“Silcar”) of (i) 25% of the shares held by LLV Empreendimentos Ltda. ("LLV") in the stock of Mare Concreto Ltda.; (ii) 25% of the shares held by RV EMPREENDIMENTOS LTDA. ("RV") in the social stock of Polimix Concreto Ltda.

The holding company belongs to the Votorantin Group, which is the national leader in the cement production market and also holds shares in companies of concrete service supply. The companies which sold part of their stock belong to Plimix Group, with a great share in the concrete service market. The transaction started a verticalization process though the investment in the cement industry.

In the meantime, another operation was performed between the two groups: Silcar acquired 51% of the shares held by Polimix Group in the cement producing companies Mare Cimento Ltda., Polimix Cimento Ltda. and Mizu S.A., (MR n. 08012.008847/2005-28), reported by Commissioner Fernando de Magalhães Furlan, representing an horizontal integration in the segment of concrete service supply.

The following remedies were imposed:

a. Measures which restricted the influence of the Votorantim Group over concrete service companies from which it had obtained minority participation, such as not nominating directors, not interfering in the trade policy, not attending meetings on the discussion of strategic policies, among others;

b. Branches of the acquired companies located in nine geographic markets of the southern region of Brazil were excluded from the transaction;

c. In the cement companies, in which the Votorantim Group acquired majority status, rules to ensure the relevant influence of previous owners (Polimix Group) in transactions were introduced.

In such terms, the transaction was approved with some remedies.

Merger Review n. 08012.009419/2004-31

Parties: Geral de Concretos S.A. and Holcim Brasil S.A.

Reporting Commissioner : Ricardo Villas Bôas Cueva

The Merger Review related to the purchase of Holcim assets related to concrete service supply in Curitiba/PR, Foz do Iguacu/PR, Blumenau/SC, Brusque/SC, Sao Bento do Sul/SC and Lages/SC, by Engemix, which is the current name of the Brazilian company, Geral de Concreto S.A.

Engemix is a company which belongs to the Votorantim group, which acts in concrete service supply. Votorantim Group also has acts in the cement, rocks and lime sectors, additional to acting in other economy sectors not related to the referred merger review. Holcim acts in the industry of non-metallic mineral products - cement, mortar, chalk powder, rocks, lime and concrete.

The horizontal integration in the concrete service and the vertical integration between cement production and concrete services and between rock production and concrete services were verified. Therefore, the relevant markets analyzed were the cement and concrete service markets.

In order to define the geographical dimensions of the relevant markets, the aspects related to the transportation and the characteristics of the product which had already been defined in several previous cases involving sector companies were considered. In other words, in the concrete situation, the market comprehends a region with a 25 to 50-kilometer radius from the production unit (concrete plant); in the situation of rock production, the market comprehends a 300 to 500-kilometer radius from the production unit.

Taking into consideration that the criteria used by CADE to limit the geographic market in cement is a 300-kilometer radius from the production unit, which may reach 500 kilometers in less populated regions, the southern region of Brazil and the states of Sao Paulo and Minas Gerais were defined as relevant geographic markets in the cement industry.

The vertical integration between cement production and concrete services present in the operation was analyzed and it was concluded that it does not modify the current competition conditions.

Concerning the horizontal integration in the concreting service market, it has been verified that this transaction causes significant changes in the markets in Blumenau, Brusque and surrounding cities, Curitiba and surrounding cities and Foz do Iguaçu, threatening competition. Therefore, the operation was approved with the imposition of one remedy: selling the assets related to the concrete services acquired by Engemix together with Holcim in Blumenau/SC, Curitiba/PR and Foz do Iguaçú/PR.

Merger Review n. 08012.001885/2007-11

Parties: Owens Corning and Saint Gobain

Reporting Commissioner : Fernando de Magalhães Furlan

Owens-Corning (OC) acquired world widely the fiberglass division of Sain Gobain (SG). In Brazil, just one of the undertakings operates in the fiberglass market and the transaction would represent a high market concentration, ensuring to Owens Corning hold a lot of market power. After the merger the Owens Corning would be the only one company in the market.

Bargaining power of consumers was low due to the decentralized demand and the low rate of import penetration. Among the efficiencies presented, just the reallocation of family of products on each facility was accepted by the reporting commissioner and the others were all rejected should they were not considered specific to the transaction. As a consequence, efficiencies were considered insufficient to balance the social loss resulted from the monopoly. Therefore, the Board decided, unanimously, to block the transaction.

CADE suggested to the Chamber of Foreign Trade (*Câmara de Comércio Exterior – CAMEX*) a reduction to the imports tariff of one product that was imported exclusively by one of the undertakings.

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

Brazilian competition authorities play an important role on issues that come out as a consequence of the interface between the application of Brazilian Antitrust Law to all economy sectors and the enforcement of rules issued by the regulatory agencies (sectoral regulators), as well as the measures related to trade and industrial policies.

Coordination and consistency between sectoral regulators and the competition authorities are made through cooperation agreements, participation in regulatory *fora* and competition advocacy initiatives, especially by BCPS's commentaries on regulations proposed for adoption by regulatory agencies.

In 2008, SEAE had an intensive participation in this field. For example, after the development of a market study with SDE about the main aspects of the market for taxi services, SEAE started to receive several requests from city councils to help them to study and reform their taxi market regulation to promote the competition and improve the quality of the service in the mentioned market. The main issues analyzed by SEAE in the taxi regulation are: (i) the current number of taxi licenses and if the that number is restricted by the city; (ii) the tariff policy (usually, the Secretariat suggest the establishment of only a maximum fare with the permission of discounts by the taxi divers); (iii) suggestion to the city council to allow the publicity of the taxi fares and the discounts offered; (iv) mechanisms to stimulate the creation of taxicabs enterprises; and (v) verification of whether the legislation allows taxi drivers to get passengers in any point of the city or if there are restrictions about it.

Other examples can be mentioned in what regards to the contributions of the BCPS to the regulatory reform. For instance, the Brazilian Electricity Regulatory Agency (ANEEL) proposed a Public Hearing (N. 01/2008) to improve proceedings regarding the analysis of limits, conditions and restrictions on the participation of economic agents in the electricity sector. Some of the proposals, nonetheless, could result in a conflict of competencies between the BCPS and the Agency, as well as impact the way the case should be analyzed (definition of relevant markets, e.g.). SDE and SEAE manifested their concerns on these issues and the Resolution was changed to prevent them to happen.

Also regarding to the energy industry regulation, the Draft Bill No. 90/2007, proposed in order to restructure the natural gas sector, had an article that could lead to a conflict of competences between the BCPS and the National Agency of Petroleum, Natural Gas and Biofuels. SEAE manifested this concern and the Law was approved without the proposed paragraph.

In 2008 CADE joined the technical group of the Chamber of Foreign Trade (*Câmara de Comércio Exterior* – CAMEX). The group aims at discussing the inclusion, the exclusion and the maintenance of products in the exemptions list of exceptions to the common external tariff (TEC). CADE was also accepted as an observer to the Inter-Ministerial Technical Group to Revision of the Brazilian List of Exceptions to the Common External Tariff (LETEC). In the Merger Review n. 08012.001885/2007-11 (Owens Corning - Saint Gobain), which was blocked, CADE suggested a reduction to the imports tariff of one product that was imported exclusively by one of the undertakings.

4. Resources of competition authorities

4.1 Resources overall

a) Annual Budget (in Reais and USD)

	Council for Economic Defense CADE	**Secretariat for Economic Monitoring - SEAE**	**Secretariat of Economic Law SDE**
Brazilian Real (BRL)	BRL 10,404,755.00	BRL 4,800,000.00	BRL 6,000,000.00
U.S Dollars (USD)	USD 4,655,371.36	USD 2,152,466.36	USD 2,684,563.75

c) Number of Employees

	Council for Economic Defense- CADE	Secretariat for Economic Monitoring- SEAE	Secretariat of Economic Law- SDE
Economists	06	43	04
Lawyers	29	07	22
Other Professionals	09	30	02
Total Technical Staff (working on Competition Enforcement)	44	77	28
Support Staff	142	67	48
All staff combined	186	144	76

4.2 Human Resources

	Council for Economic Defense CADE	Secretariat for Economic Monitoring - SEAE	Secretariat of Economic Law SDE
Enforcement against anticompetitive practices	CADE does not assign a separate staff for enforcement activities	09	23
Merger review and enforcement	CADE does not assign a separate staff for merger analysis and enforcement	20	03
Advocacy Efforts	CADE does not assign a separate staff for advocacy efforts	57	SDE does not assign a separate staff for advocacy efforts

4.3 Period Covered by the above information:

January 1st, 2008 – December 31st, 2008

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

CADE continued to publish, jointly with IOB – Informações Objetivas Publicações Jurídicas Ltda. (a Thompsom Corporation), the Competition Law Journal (Revista de Direito da Concorrência).

Articles published at "*Revista de Direito da Concorrência*", CADE-IOB in 2008

Period	Subject	Author
January to March, 2008	A Modernização do Direito Comunitário da Concorrência: Uma história de Conceitos Inacabados	Jürgen Basedow
	Inovação e Defesa da Concorrência: Analise de caso da tecnologia para soja transgênica	Abraham Benzaquen Sicsú and Murilo Otávio Lubambo de Melo
	A Medida Preventiva na apuração das infrações contra a ordem econômica	Gilvandro Coelho
	Aumentos significativos e não transitórios de preço (SSNIP) em produtos de baixo valor final	Roberto Taufick
	Livre Concorrência e Livre iniciativa: fundamentos para a implementação do Direito da Concorrência no Mercosul	Mina Kaway e Pedro W.G. T. Vidal
April to June, 2008 **Especial Edition on Cartels**	O Método de Bresnaham-Lau: Uma nota cautelar sobre a sua aplicabilidade	Alberto Salvo
	Avaliação de Cartéis: o caso das pedras britadas	Gesner Oliveira, Alessandro V M Oliveira, Eduardo L Machado, Thomas Fujiwara
	Cartel: possibilidade de intervenção judicial para a fixação de preços ou da margem de lucro dos agentes econômicos	Janaina de Carli dos santos e Juliano Viali dos Santos
	Política de Combate aos Carteis: Os acordos de Leniência, o termo de Compromisso de Cessação e a Lei 11.482/2007	Danilo Ferraz Córdova e Mariana R. S. Lopes
	Relatório da ICN - Cartel Settlements	ICN

July to September, 2008 **Special Edition on Technology Convergence**	A Convergência Tecnológica e seus impactos concorrenciais – PA 08700.001618/2007-67	Luiz C.D. Prado
	Anais das Audiências Públicas sobre Convergência Tecnológica e seus impactos concorrenciais – 2007 – Parte I	Transcrições de 26/04/2007 a 14/06/2007

October to December, 2008 **Special Edition on Technology Convergence**	Transcrições: Audiências Públicas sobre Convergência Tecnológica e seus impactos concorrenciais – Parte II	Luiz C.D. Prado Transcrições de 28/06/2007 to 13/09/2007

In relation to its participation in the OCDE's roundtables in 2008, the BCPS produced the following seven written contributions:

- DAF/COMP/WP3/WD(2008)67 – Discussion on Possible Work on Bid-Rigging and Public Procurement - Brazil
- DAF/COMP(2008)10 – Annual Report on Competition Policy Developments in Brazil
- DAF/COMP/WP3/WD(2008)32 – Antitrust Issues Involving Minority Shareholders Interlocking Directorates - Brazil
- DAF/COMP/WP3/WD(2008)83 – Roundtable on the Experience with Direct Settlements in Cartel Cases - Brazil
- DAF/COMP/WD(2008)81 – Roundtable on Monopsony and Buyer Power – Note from Brazil
- DAF/COMP/WP3/WD(2008)94 – Roundtable on Cartel Jurisdiction Issues, Including the Effects Doctrine - Brazil

Annually, all the three BCPS´ authorities publish Annual Reports.

Articles Published by CADE's Commissioners in 2007

CHINAGLIA, O. Z. . *Destinação dos elementos intangíveis do estabelecimento empresarial e do aviamento na extinção parcial do vínculo societário*. 1. ed. São Paulo: N/A, 2008. v. 1. 170p.

Published Chapters of Books

AZEVEDO, Paulo Furquim. *Cooperativas e Defesa da Concorrência In: Cooperativas na Ordem Econômica Constitucional: cooperativas, concorrência e consumidor*. 1ed.Belo Horizonte : Mandamentos Editora, 2008, v.II, p. 53-72.

AZEVEDO, Paulo Furquim and POLITI, R.*Na mesma língua: evidências em investigação de cartéis de postos de revenda de combustíveis In: A revolução do Antitruste no Brasil: a teoria econômica aplicada a casos concretos* 2.1 ed.São Paulo : Editora Singular, 2008, v.1, p. 387-404.

MATTOS, César. *Ensaios Sobre Impactos da Constituição Federal de 1988 na Sociedade Brasileira*. Câmara dos Deputados. Coleções Especiais – Obras Comemorativas. Consultoria Legislativa. Vol. 2 . Autor do Artigo: "Uma Análise Econômica da Função Social da Propriedade na Constituição Brasileira". Novembro 2008.

MATTOS, César. *Testando para a Existência de Cartel no Mercado de Distribuição de GLP Brasileiro*. Anais do XXX Encontro Nacional de Economia – ANPEC, Dezembro de 2008. (co-autora Alice Kinue Jomori de Pinho)

RAGAZZO, Carlos Emmanuel Joppert . In: Mattos, César.. (Org.). *A Revolução do Antitruste no Brasil* 2 A Teoria Econômica Aplicada a Casos Concretos. 1 ed. São Paulo: Singular, 2008, v. , p. 525-558.

RAGAZZO, Carlos Emmanuel Joppert . *Advocacia da concorrência e a remoção de regulações anticompetitivas: o caso Denatran.* In: Mattos, César.. (Org.). A Revolução do Antitruste no Brasil 2 A Teoria Econômica Aplicada a Casos Concretos. 1 ed. São Paulo: Singular, 2008, v. , p. 559-584.

Communications and Abstracts published in Annals of Congresses or Journals

FURLAN, Fernando de Magalhães. *Interaction between Competition and Trade Authorities in Brazil.* Article present at the Annual Conference of the International Bar Association – IBA – panel: "Competing by trading – developments in antitrust/trade law interface", Buenos Aires, Argentina, October the 13th 2008.

BADIN, Arthur (Org.) ; CAMPILONGO, C. (Org.) ; Toffoli, Antonio José Dias (Org.) ; FARINA, E. M. M. Q. (Org.) ; FREITAS, Marcelo de Siqueira (Org.) ; DUTRA, Pedro (Org.) . *Anais do I Encontro da Advocacia Pública sobre Concorrência e Regulação* (in Revista de Direito da Concorrência vol. 16). 16. ed. São Paulo: IOB, 2008. v. 1.

BADIN, Arthur . *Agências Reguladoras e Poder Judiciário*. In: III Congresso Iberoamericano de Regulação Econômica (Promoção: ASIER e IBDP), 2008, São Paulo/SP. Anais do III Encontro Iberoamericano de Regulação Econômica, 2008.

Articles in Magazines and Newspapers

AZEVEDO, Paulo Furquim and MARTINS, Antony. *Setor de agências de internet no Brasil: análise de concorrência a partir de simulação dinâmica de sistemas*. Gestão e Produção (UFSCar). , v.15, p.201 - 214, 2008.

AZEVEDO, Paulo Furquim and CABRAL, Sandr. *The Modes of Provision of Prison Services in a Comparative Perspective*. BAR. Brazilian Administration Review. , v.5, p.53 - 69, 2008.

BADIN, Arthur. *Balanço das atividades da Procuradoria do CADE no biênio 2006/2007*. Revista de Direito da Concorrência, v. 15, p. 11-145, 2008.

BADIN, Arthur. *Transação Judicial na Lei 8.884/94.* Revista Consulex, p. 35 - 38, 01 mar. 2008.

CARVALHO, Vinícius Marques; SCHAPIRO, Mário. *Política Industrial e Defesa da Concorrência*. Jornal Gazeta Mercantil, 17/07/2008.

FURLAN, Fernando de Magalhães . *Capacidade Negociadora do Setor Público*. Artigo publicado no Jornal "O Estado de São Paulo". Nº 41793. Caderno de Economia, Seção Opinião. Página B2. Publicado em 17 de setembro de 2008.