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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
COMPETITION COMMITTEE**

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

-- 2005 --

*This report is submitted by the Brazilian Delegation to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 8-9 June 2006.*

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## **Executive Summary**

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

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

1. On January 19, 2005, CADE changed its understanding on merger notification threshold and determined that annual turnover should henceforth be measured with reference to Brazilian rather than worldwide sales<sup>1</sup>. According to the BCPS, of 161 merger filings examined in the aftermath of the new interpretation, 68 (42 per cent) could be dismissed because they met neither the turnover nor the market share test. On February 2005, CADE adopted Ordinance n. 39 that stated the possibility to CADE to issue “stare decisis” (Súmula). On October, CADE approved the “stare decisis” n. 01, that consolidated the understanding on the Brazilian sales for merger notification obligation.

2. Ordinance nr. 40, of July 2005 stated new procedures for fines collection and for enforcement of obligations imposed.

3. Finally, on September 2005, CADE adopted Ordinance nr. 41, which dispose on the new career structure.

4. In 2005, SDE initiated the discussions for putting into place 2 new Ordinances, which were implemented in the beginning of 2006. These ordinances are:

- Ordinance nr. 4, issued in January 5<sup>th</sup> 2006, which regulates the Secretary’s administrative proceedings, replacing the former Ordinance nr. 849/2000; and
- Joint-Ordinance SEAE and SDE nr. 33, issued in January 4<sup>th</sup> 2006, implementing a joint investigation proceeding between SEAE and SDE, for merger control as well as anticompetitive practices.

5. SEAE has issued a new ordinance that regulates the criteria for fines to be applicable to companies that fail to attend requests issued by the Secretariat. Ordinance n. 24/2005 disciplines the administrative proceedings for the enforcement by SEAE of the sanctions listed on article 26 of the Brazilian antitrust law, which states that the refusal, omission, misrepresentation or undue delay in providing information or documents to the Brazilian Competition Policy System (BCPS) or to any governmental body applying the law is an infringement that may be sanctioned with a fine. This ordinance is very similar to the one issued by SDE in 2004 regarding the same subject.

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

6. There were no other relevant measures.

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<sup>1</sup> According to the Brazilian Antitrust Law, Law n. 8,884 of June, 1994, any merger that involves parties with a turnover of BRL 400 million or 20% of market share must be notified to BCPS. Before 2005, CADE understood that the mentioned turnover should be based on worldwide sales.

### 1.3 *Government proposals for new legislation*

7. Representatives of the three antitrust governmental bodies have been discussing, since 2000, important amendments to the Brazilian antitrust law. Thus, a new structure for the BCPS is being designed in order to avoid duplication of current activities. The proposed changes consists of, basically, a new distribution of functions within the BCPS, (i) with the assignment to SEAE of the responsibility for the competition advocacy of the System, (ii) the improvement of the relationship between the BCPS and regulatory agencies in regulated sectors; (iii) the incorporation of the competition department of SDE into CADE, to carry out merger review analysis and investigation of conduct cases; (iv) and finally, CADE would keep its current attribution as independent tribunal linked, for budgetary purposes, to the Minister of Justice. It would, as a consequence, have both the attributions of investigating and judging cases – the investigation would be carried out by a Directorate General, which head would have a two-year mandate, one renewal permitted. The Tribunal's president and the commissioners (6) would have a four-year non-renewable mandate, instead of the current two-year mandate, renewable once.

8. The amendments proposed would also introduce some new important material features into the Brazilian antitrust law, such as a pre-merger notification system, the improvement of the merger notification criteria (increasing the threshold), and an early termination system for simple cases.

9. With a pre-merger analysis system, as the BCPS would issue its opinion in relation to merger cases, whenever the notification criteria is met, before its consummation, the parties involved would be stimulated to maximise cooperation with the BCPS for expediting the analysis, whereas the possible alternatives to address competition problems that might arise within the relevant market are highly increased (when compared to the post-merger system). The Draft Bill also introduces the possibility of closing a merger case by an agreement between the parties and BCPS.

10. Together with the Bill for the amendment of the Brazilian antitrust law, there is a proposal for the creation of a career for technicians trained in competition and regulation.

11. On competition advocacy, the government has sent to Congress a new draft legislation that would require all regulatory agencies to submit new rules and regulations to the Ministry of Finance for review as part of their normal public consultation phase. There has also been a clear demand from the Minister of Finance for advice for discussions on regulatory issues. Combined with the proposed concentration within the new CADE of merger review and conduct investigation proposed in the new competition law, these new developments make it clear that SEAE's main role in the future would be related to competition advocacy, leaving the enforcement of competition law to the new CADE.

12. The Central Bank of Brazil (BACEN) has the regulatory responsibility for banks and other financial institutions. In 2001, the Federal Attorney General's Office issued a legal opinion concluding that the specificity of Brazil's banking law took precedence over the more general language in Law 8884, and thus effectively vested the Central Bank with sole jurisdiction over banks for all purposes. CADE has never acceded to that opinion, taking the position that Law 8884 (which was enacted after the banking law) is applicable by its terms to all economic sectors, and that CADE, as an autonomous agency, is not bound by a legal opinion issued by the Executive Branch. Negotiations between CADE and BACEN were undertaken to resolve the controversy by agreement. A consensus bill, sent to Congress in 2003 is now pending before the full House. The bill provides that the Central Bank shall have exclusive responsibility for reviewing mergers that involve a risk to the overall stability of the financial system. In all other merger cases, CADE shall have dispositive authority. Authority for handling conduct cases in the banking sector shall be lodged exclusively with the BCPS. CADE and BACEN have long had a working agreement that is employed principally as a mechanism for exchanging information. At present, the two agencies are

negotiating both an expanded agreement to promote cooperation and a joint work plan for conducting merger reviews.

**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*

13. During 2005, 41 new cases of possible anticompetitive practices arrived at CADE, while the Council judged 63 of the same kind. Thereof, 25 were found guilty (11 were condemned by cartel actions and the other 14 for abuse of dominance activities) and resulted in the imposition of fines and other sanctions and 4 Cease and Desist Agreements were signed in 2005.

14. Among the 63 conducts cases judged by CADE, 19 were classified as a cartel (collusion), representing 30% of the conducts analysed. From those 19, 11 of them were found guilty and resulted in the imposition of fines and other sanctions.

15. Allegations of anticompetitive practices were present in the following sectors: food and beverages industries (2); Chemical and Petrochemical industries (4); Pharmaceutical and hygiene industries (14); informatics and telecommunications industries (4); transports (3); health services (19); general services (5); communications (3); financial services (1); mineral exploitation (2); others (6).

16. There were 30 preliminary investigations to be closed, presented to CADE by SDE. CADE filed 29 and required SDE to continue the investigation of 01 case.

17. SDE concluded 63 investigations and sent the cases to CADE for a decision. Among these, 29 were reports recommending the extinction of the cases, since no anticompetitive conduct was found, 34 were administrative processes where SDE found that the parties were guilty and recommended the application of a sanction.

**2005 Conducts**

<b>Conduct Cases Judged</b>	<b>Conduct Cases Condemned</b>	<b>Closing of a Preliminary Investigation</b>
63	25	29

**Type of Conducts analysed by CADE**

<b>2005</b>	<b>Cartel</b>	<b>Abuse of Dominance*</b>
<b>Cases concluded</b>	19	44

\* For statistical purposes, all conducts not classified as “cartel” (collusion) is understood here as an “abuse of dominance”.

18. In order to increase the collection of fines and increase the effectiveness of penalties, CADE, as well as SDE, are currently working closer to the Judiciary. This work includes both a task force to defend

CADE and SDE decisions, as well as a competition advocacy work, by means of workshops and conferences for Judges, General Attorneys and Public Prosecutors.

#### Courts

19. Although there were 200 processes in the judiciary initiated in 2005, it is not possible to find out to what cases – a merger or a conduct case – they are related to (the 2005 judicial balance has not been closed yet). It is important, however, to describe the most important judicial decisions of 2005:

20. Mergers cases of Companhia Vale do Rio Doce (CVRD): CADE jointly analysed seven merger operations involving CVRD. Two of them involved the privatisation process and the sale of participation of one partner called CSN, one of the biggest Brazilian steel producers, and the other five are related to the acquisition of mines and of participation on railroads. CADE approved the operation with a restriction that CVRD should choose between sale one of its company (which gave to CVRD the control of a strategic railroad or to sell one of its mines. CVRD appealed to the judiciary against the decision alleging that the decision was taken by the qualified vote of the president and so, although it is established in the Brazilian Competition Law, it was not valid. The judicial decision is still pending.

21. Administrative Process – Cartel condemnation: Gerdau, Siderúrgica Barra Mansa and Companhia Siderúrgica Belgo Mineira: The defendants in the steel product (vergalhões) cartel case, pleading that they had been denied an adequate opportunity to present evidence in their defence, successfully obtained an order staying CADE from meeting to render final judgment on their conduct. Four preliminary injunctions were granted impeding CADE to analyse the case. At the end, CADE General Attorney Office managed to cancel all of them and the judgment could go further. CADE condemned the companies for cartel and a imposed a fine of 7% of their 1999 gross revenues.

22. CADE condemned 22 producers of ‘flintstone’ (an important input to civil construction) for cartel plus the producer’s union. The condemnation was based on the proof got on a down raid and wiretapping jointly conducted with the Federal Public Prosecutors. The documents collected showed that the cartel was coordinated by an elected group among participants and under written rules of a document called “*the Bible*”, which dispose not only on cartel rules and organisation but also on punishments to parties that disobey such rules. Condemned parties appealed to the judiciary alleging that the cartel did not exist. The judicial decision is still pending.

23. Abuse of dominance on ports: Each of Brazil’s seaports is controlled by a Port Authority, which grants concessions authorising private parties to operate terminals and to provide cargo handling services within the port facility. At some ports, there are also independent, privately-owned terminal facilities just outside the port boundaries. A case known as “THC2,” involved terminal handling charges assessed by terminal operators against independent warehouses. The case involved allegations that certain terminal operators raised rivals’ costs by charging disproportionately more to deliver a cargo container to a warehouse located outside the terminal than they did to deliver the same container to a warehouse within the port. CADE found the price differentials to be an abuse of dominance because they constituted a significant part of storage costs and induced shippers to use the terminal operator’s warehouse, thus impairing competition in the warehouse storage. CADE condemned parties appealed to the judiciary alleging that the THC2 is legal. The judicial decision is still pending.

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

- *Administrative Procedure n°08012.003664/2001-92*

Complainant: Ciefas – Comitê de Integração de Entidades Fechadas de Assistência à Saúde (Integration of Closed Entities of Health Assistance Committee)

Defendant: Coopanest – CE – Cooperativa dos Médicos Anestesiologistas do Ceará (Cooperative of Anesthesiologist of the State of Ceará)

Reporting Commissioner: Luiz Alberto Esteves Scaloppe

**Abstract:** Fixation of a table of prices of services performed through the cooperative.

**Summary:** The Complainant accused the Defendant of influencing the prices charged by doctors in the state of Ceará by imposing a table of prices and the obligation that the contracts of anesthesiology services be made only through the cooperative.

The Defendant claimed that filiations to the cooperative is not compulsory and that there is no determination of prices. It also alleged that the Cooperative does not dominate the market, but only unite the professionals and, thus it does not exercise dominant position.

The Secretariat of Economic Law (SDE) concluded that the imposition of a table of prices had the potential to damage competition and, consequently, was subject to article 20, subsections I and IV, combined with article 21, subsection II of the Law n° 8.884/94. However, it found that the fact that contracts were made through the cooperative was not a infraction to the economic order. Code's Attorney General's Office agreed with SDE.

**Decision:** By majority, the Council decided that there was no infraction to the economic order by the part of the Defendant and so it decided for the closing of the case. Dissenting from the majority were Commissioners Luiz Alberto Esteves Scaloppe and Ricardo Villas Boas Coeval, who considered the Defendant subject to article 20, subsection I and II and article 21, subsection II, of the Law n° 8.884/94.

- *Administrative Procedure n°08012.005779/2001-01*

Complainant: Alliance Metropolitan – RJ Cooperativa de Tribal Medico (Cooperative of Medical Work)

Defendant: Unnamed São Gonçalo – Niterói, Sociedade Cooperativa de Serviços Médicos e Hospitalares (Cooperative Society of Hospital and Medical Services)

Reporting Commissioner: Ricardo Villas Bôas Cueva

**Abstract:** Clause of non-association with other cooperative of same social object.

**Summary:** The Complainant and the Defendant are cooperatives of medical services in the State of Rio de Janeiro, and compete in the market of medical services. The Complainant accused the Defendant of imposing a clause to its affiliated doctors that prohibited them to be associated with another cooperative. The Defendant claimed that there was no such clause in its Articles of Association.

The Secretariat of Economic Law verified that the Defendant prohibited its affiliated doctors from associating with the Complainant only, and thus, the case was a private dispute and it did not affect

competition. CADE's Attorney General's Office, however, considered the Defendant's conduct subject to article 20, subsection I and IV, and article 21, subsections IV and V of the Law n° 8.884/94.

**Decision:** By majority, the Council decided for the closing of the case because it did not find that the Defendant's conduct hurt competition in any way. Dissenting from the majority were Commissioners Ricardo Villas Bôas Cueva and Luis Fernando Rigato Vasconcellos, who considered the Defendant's conduct subject to article 20, subsection I and IV, and article 21, subsections IV and V of the Law n° 8.884/94.

- *Administrative Procedure n° 08012.002841/2001-13*

Complainant: Condomínio Shopping D

Defendant: Center Norte S/A – Construção, Empreendimento, Administração e Participação

Reporting Commissioner: Roberto Augusto Castellanos Pfeiffer

**Abstract:** Imposition of exclusivity clause (radius clause) by Shopping Center Norte in the contract with its tenants, prohibiting them to operate in a radius of one thousand meters from the shopping centre.

**Summary:** Both the Complainant and the Defendant are shopping centres operating in the city of São Paulo. The Complainant accused the Defendant of infracting the economic order with its exclusivity clause, which prohibited its tenants from operating in a radius of one thousand meters from the shopping centre.

The Defendant alleged that the radius clause was a common practice and it was used to protect its business from unfair competition.

The Secretariat of Economic Law (SDE) and CADE's Attorney General's Office considered the exclusivity clause abusive and recommended the conviction of the Defendant.

**Decision:** The Council unanimously decided to convict the Defendant, according to article 20, subsection I and IV, combined with article 21, subsections IV and V of the Law n° 8.884/94, imposing the payment of a fine of 1% of the total revenue of the Defendant in the year prior to the instauration of the administrative procedure. By majority, the Council decided that the Defendant (i) must stop the practice and notify its tenants within 30 days, and prove that it has altered all its lease contracts within 90 days; (ii) must publish, at its own expense, CADE's decision in a renowned newspaper in the state of São Paulo; (iii) and is subject to a R\$ 31.923,00 daily fine, in the terms of the reformulated vote of President Elizabeth Farina and the Reporting Commissioner.

- *Administrative Procedure n. 08012.002097/1999-81*

Complainant: SEAE

Defendants: O Dia, Jornal do Brasil and Infoglobo

Reporting Commissioner: Ricardo Villas Boas Cueva

**Summary:** The 3 defendants were the four largest newspapers of the city of Rio de Janeiro. On 1999, they simultaneously raised prices by 20 percent. On the day of the price increase, all four papers published

identical editorial notes, which purported to justify the increases and referred to the paper's trade association as the organising agent.

**Decision:** The Council unanimously decided to convict the Defendant, according to article 20, subsection I and IV, combined with article 21, subsections I and II of the Law n° 8.884/94, imposing the payment of a fine of 1% of each annual revenue.

- *Administrative Procedure n. 08000.010791/1994-41*

Complainant: CEAC Painéis Ltda.

Defendants: Central de Outdoor

Reporting Commissioner: Luiz Alberto Esteves Scalope

**Summary:** CEAC Painéis, an outdoor commercial agent of outdoors in the city of São Paulo complained that Central de Outdoor, its competitor, was closing the market by imposing that all companies that rented outdoors must be its associated, so that all outdoors rentals in the city of São Paulo would be hired through the Central, not by the outdoor owner directly or any other company that intends to commercialise outdoors' rental.

**Decision:** The Council unanimously decided to convict the Defendant, according to article 20, subsection I, II and IV, combined with article 21, subsections II, IV and V of the Law n° 8.884/94, imposing the payment of a fine of 100.000 UFIR (approximately BRL 110,000), among other sanctions.

*Please also see cases described on the courts activities above 002097/1999-81*

## **2.2 Mergers and acquisitions**

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

24. During 2005, 393 merger cases were notified to CADE, while 497 were concluded. Thereof, 382 were considered by the Council, 111 were not considered<sup>2</sup> and 4 were filed due to desistence of the parties. Among the 382 mergers, 345 were approved without restrictions; and the remaining 37 cases were approved with the following remedies (no case was blocked):

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<sup>2</sup> On January, 2005, CADE changed its understanding on merger notification threshold. According to Competition Law, a merger must be presented to Competition Authorities review whenever any of the parties involved presents gross revenues of R\$ 400 million. CADE used to understand that this revenues should refers to worldwide sales. From January 2005, CADE considered that the revenues imposed by Law should be assessed based on sales made in the Brazilian market.



### Summary

2005	Mergers	% (approx.)
Cases initiated	393	-
Cases dismissed	111	22,33%
Cases filed due to desistence	04	0,80%
Cases judged	382	76,86%
Cases approved without restrictions (among the judged cases)	345	90,31%
Cases with restrictions imposed (among the judged cases)	37	9,68%
Cases blocked	0	-
Cases judged under fast track procedure	377	75,86%
Average time of analysis	85 days	-
Untimely notification	13	3,40%
<b>Total sanctions imposed for untimely notifications (R\$)</b>	<b>3 430 996.73</b>	-

### Mergers approved with restrictions

Restriction	Number of Cases
Changes on Contractual Clauses	23
Sale or Licensing of Trademarks	2
Structural Remedies	7
Performance Commitments	3
Others	2
<b>Total</b>	<b>37</b>

Fines for untimely merger notification filing were imposed on 13 cases, amounting to R\$ 3,430,996.73, approx. US\$ 1,466,237.92 (\*Rate US\$ 1- R\$ 2,34 - source: Central Bank of Brazil, on December 30, 2005), as listed below:

### Merger Untimely Notification Fines

Case number	Judgment session	Judgment date	Amount
08012.008415/2004-36	338 SO	19/01/2005	R\$ 611.297,40
08012.007406/2003-47	342 SO	09/03/2005	R\$ 566.595,66
08012.009377/2004-39	343 SO	23/03/2005	R\$ 92.989,77
08012.002556/2002-83	344 SO	06/04/2005	R\$ 153.736,02
08012.000619/2004-29	345 SO	13/04/2005	R\$ 768.104,93
08012.006012/2004-52	347 SO	11/05/2005	R\$ 95.670,23
08012.005205/1999-68	349 SO	01/06/2005	R\$ 154.044,79
08012.002921/2004-11	351 SO	13/07/2005	R\$ 223.461,00
08012.004602/2005-21	352 SO	27/07/2005	R\$ 63.846,00
08012.005058/2001-10	355 SO	31/08/2005	R\$ 97.240,82
08012.010697/2004-31	357 SO	28/09/2005	R\$ 211.357,21
08012.006204/2005-40	359 SO	13/10/2005	R\$ 238.682,74
08012.007111/2005-32	363 SO	14/12/2005	R\$ 153.970,16
<b>Total</b>			<b>R\$ 3 430 996 73</b>

No Agreement of Preservation of the Reversibility of the Operation (APRO) was signed on 2005 and 2 preliminary injunctions were revoked. None was granted.

b) *Summary of significant cases*

Mergers

Mergers cases of Companhia Vale do Rio Doce (CVRD):

25. CVRD holds operating concessions for a number of freight railway lines and harbour terminal facilities that provide services both to its own mines and steel production facilities and to other customers as well. Some of the customers served by CVRD's lines are competitors in mining or steel production, a circumstance that has led to a series of cases alleging discrimination by CVRD. Where the discrimination does not involve tariffs regulated by ANTT, CADE has prime jurisdiction. In 2000 transaction CVRD acquired four iron ore mining companies and their associated rail lines in the southeast region of Brazil. CADE decided to jointly analyse seven merger operations involving CVRD. Two of them involved the privatisation process and the sale of participation of one partner called CSN, one of the biggest Brazilian steel producers, and the other five are related to the acquisition of mines and of participation on railroads. SEAE and SDE agreed that adverse effects could arise in both the iron ore and the rail service markets and proposed various remedial conditions to CADE. ANTT, in consultation with SDE, invoked its own statutory authority to issue a precautionary order imposing certain restrictions on CVRD until CADE issued a determination. In 2005, CADE approved the operation with a restriction that CVRD should choose between sale one of its company (which gave to CVRD the control of a strategic railroad or to sell one of its mines. CVRD appealed to the judiciary against the decision alleging that the decision was taken by the qualified vote of the president and so, although it is established in the Brazilian Competition Law, it was not valid. The judicial decision is still pending.

Arisco – Unilever and Unilever – BestFoods

26. The first operation (Arisco – Unilever) refers to the acquisition of a Brazilian food company called “Arisco”. Arisco was a family corporation specialised in sauces, ketchup, mustard, seasonings, soups, noodles and tomato sauces. The second operation (Unilever-Bestfoods) refers to the worldwide acquisition of Bestfoods by Unilever Group. The two operations involved not only the food sector but also the cleaning products sector, retail and wholesale. Except for ketchup, mustard and mayonnaise markets, the SDE's opinion was for the approval without restrictions. For those 3 markets, SDE suggested the sale of one brand. CADE understood that on 25 relevant markets of product defined, no anti-competitive effect would be originated from the operation. On ketchup and mustard markets, CADE found out that although could exist some effects on competition, rivalry would be able to reduce them. With respect to mayonnaise market, CADE determines that the group sells one of its trademarks (“Gourmet”). On a following operation, Cargill applied not to buy but to license the trademark for 10 years. CADE cleared the license but determined that, at the end of the license period, CADE should review and approve the sale or the license of the brand to someone else, or its renewal.

AGCO-KONE

27. By this operation, two of the four largest tractor and harvest machinery producers decided to joint. At a first moment, CADE understood that the operation could cause a strong anticompetitive effect in the market, due to a very high concentration rate originated form the operation (there will be only 3 players in the market and the petitioners would become the leader). However, during the analysis, CADE found out the largest producer in the world (being the forth producer in the Brazilian market) would build a

factory, which would doubt its production capacity. CADE, though, concluded that rivalry would be able to restrain any abuse of market power in this case and approved the operation without restrictions.

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

28. In 2003, 2004 and 2005, BCPS has done important competition advocacy work. BCPS has worked for the promotion of the idea of competition within the Judiciary and the Legislative branches, regulated markets and society in general. During the last few years, the Competition Authorities in Brazil have, for instance, invited regulatory agencies of most regulated sectors to participate in seminars, meetings and discussions concerning competition.

29. CADE put all its efforts in its relationship with the judiciary and the public prosecutor office. During 2005, seminars were jointly organised and CADE participated in many seminars and lectures organised by judges and/or public prosecutors.

30. On 2005, CADE replaced SEAE at ICN, becoming the co-chair, with Korea, of the “Competition Policy Implementation” Group, as well as co-chair, with the Chilean Competition Tribunal, of subgroup 3 of such Group, which changed its object from “competition advocacy in regulated sectors” to “competition and the judiciary”. In this subgroup, CADE developed a project that assessed the relationship between the judiciary and competition authorities all over the world. The report conclusions should be presented at the ICN Annual Conference to be held in Cape Town on May, 2006.

31. In September 2005, the BCPS, and SDE in particular, had two important opportunities to act closely with members of the Executive, Legislative and Judiciary Branches, as well as with society in general, aiming to promote competition policy and culture. The first one was the formal presentation to Congress for vote of a Bill proposing the reform of the Brazilian Competition Policy System. The second was the publication of the Peer Review Report, made by OECD, with the cooperation of the Interamerican Bank for Development. Both events represented great opportunities for SDE to actively promote and stress the importance of competition law, the need for a strong and efficient BCPS, as well as competition policy awareness in general

32. SDE has an active participation at the Executive Board of the Chamber for Regulation of the Pharmaceutical Market. It undertook studies to assist some of the Board’s decisions, as the development of new methodology for the calculation of two indexes defined by law: the intra-sectorial price increase, the *Z factor*; and the productivity factor, the *X factor*, which will be applied at the industry’s annual price increase in 2006. Furthermore, SDE actively participates in public consultations and public debates related to the pharmaceutical industry, specifically regarding competition and competitiveness in the market, as, inter alia, advertising of pharmaceutical products, the imposition of the obligation to offer unit prices for drugs sold to consumers, and co-marketing agreements between pharmaceutical companies.

33. Finally, SDE renewed the cooperation agreements it had with the Public Prosecutor’s Office of 13 Federal States and the Federal District. Such agreements establish the grounds for operational cooperation in cartel investigations, either by the BCPS or the Public Prosecutor’s Office (cartel is not only an administrative infringement of competition law, but also a crime according to the Brazilian Penal Code). It is expected that cooperation agreements with Public Prosecutor’s offices will grow stronger in 2006, and that it will represent an important tool for the repression of cartels.

34. With respect specifically to SEAE, this Secretariat really took advocacy as a priority for 2005 deepening and improving relations with regulatory agencies and their supervising Ministries to assure that a competition perspective is considered in all major regulatory changes.

35. SEAE was directly involved in the drafting of new laws regulating the natural gas and the water and sanitation industries. In the civil aviation industry, worked with the government department now in charge to eliminate restrictions for price promotions, and also helped write the charter for the new civil aviation agency avoiding the inclusion of price controls among its regulatory instruments. In the health sector, worked with the sector agencies to partially liberalise price controls over health insurance plans and to draft new regulations for the sale of drugs. Finally, SEAE was responsible for the reduction of import tariffs in the steel industry and the elimination of anti-competitive technical barriers in the steel and cement industries.

36. For 2006, SEAE intends to foster effective competition in new road concessions auctions, energy generation auctions, the civil aviation industry, and the regulatory framework for digital TV. Work is also being done for further reduction on import tariffs and anti-competitive technical barriers.

#### 4. Resources of competition authorities

##### 4.1 Resources overall (current numbers and change over previous year)

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

Annual budget*			
	Administrative Council for Economic Defence – CADE	Secretariat for Economic Monitoring - SEAE	Secretariat for Economic Law - SDE
Brazilian Real (R\$)	9 889 603.44	4 342 575	4 249 986
U.S. Dollars (US\$)	4 226 326.25	1 858 183	1 815 690.18**

\* The amount reserved for salaries is not included in this sum.

\*\* Exchange rate in December 30<sup>th</sup> 2005 (1 US\$ = R\$ 2,3407).

###### b) Number of employees (person-years)

Number of Employees			
	Administrative Council for Economic Defence - CADE	Secretariat for Economic Monitoring SEAE	Secretariat for Economic Law SDE
Economists	18	31	5
Lawyers	32	8	28
Other professionals	11*	23	2
<b>Total Technical Staff</b>	<b>61</b>	<b>67</b>	<b>35</b>
Support staff	116	101	8
All staff combined	177	168	43

\*It includes trainees.

#### 4.2 Human resources (person-years) applied to

Application of human resources			
	Administrative Council for Economic Defence - CADE	Secretariat for Economic Monitoring SEAE*	Secretariat for Economic Law SDE
Enforcement against anticompetitive practices	CADE does not assign a separate staff for enforcement activities.	8	28
Merger review and enforcement	CADE does not assign a separate staff for merger control.	15**	7
Advocacy efforts	CADE does not assign a separate staff for advocacy efforts.	44	SDE does not assign a separate staff for advocacy efforts.

\* From 2000 to October 2004, approximately 65% of the budget and of the staff was allocated to competition policy. From October 2004 on SEAE is emphasising its regulatory oversight function. Due to the similarity of issues like economic regulation/regulatory oversight and competition advocacy, from this year on we are considering that people working on economic regulation/regulatory oversight work on competition advocacy.

\*\* 3 people who work on merger review also work on anti-cartel activities. They were classified under mergers.

#### 4.3 Period covered by the above information: January 1st, 2005 – December 31st, 2005

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

- The BCPS has a partnership with two research institutions to revise routines in their current guidelines so as to improve the use of quantitative and econometric techniques in the analysis of antitrust cases as well as to study specific markets. Such studies were elaborated and thoroughly discussed in 2005, and were finalised in the first semester of 2006.
- SEAE published one report in 2005: *Regulation and Public Prices* – The paper deepens the debate on price regulation and public tariffs.
- CADE: The “*Revista de Direito da Concorrência*” (Competition Law Review) is a technical publication aimed at professionals involved in the antitrust practice as well as an academic audience. It is distributed jointly by IOB – *Informações Objetivas Publicações Jurídicas Ltda.* (a Thomson Corporation) of São Paulo and the Council for Economic Defence CADE – *Conselho Administrativo de Defesa Econômica*.

37. The history of the *Revista de Direito da Concorrência*, the Competition Law Review, started in 1975, when its predecessor, called *Revista de Direito Econômico*, began to be edited three times per year by CADE. Between 1975 and 2004, the publication was renamed and had the regularity of its releases changed, following some periods of no publication, until it took its current name in 2004 and began to be issued quarterly, as a result of the joint venture with IOB, starting with a Special Edition in March 2004.

38. Also in 2004, the Review’s Publishing Board adopted new guidelines for the publication, in order to conform the Review to the criteria of classification of the *Coordenação de Aperfeiçoamento de Pessoal de Nível Superior* – Capes, a criteria nationally adopted for the classification of all technical reviews and journals.

39. As part of this ongoing project, the Review will not only be reformulated in its structure but also in its content. In structural terms, the Review will have an Associate Editor, who will be responsible for assisting the Publisher, amongst other attributions. As to the content adequacy, one of the first actions, still in progress, is the formation of a group of scholars which will be responsible for revising and evaluating,

under a double blind review system, the papers submitted to the Publishing Board for publication with respect to the quality of their content as well as their adequacy to the goals of the Review.

**Articles Released on 2005**

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*Global Competition Review*, May 2005.

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Reference Term	Subject	Author/Organisation
January to March, 2005	Os Limites da Política de Defesa da Concorrência: Sobre o Conceito de Mercado	Rubens Nunes, Advisor, CADE
	Estabilidade de Cartéis Tácitos e Ciclos Econômicos	Rutelly Marques da Silva, Advisor, SEAE
April to June, 2005	Venda Casada: interface entre a defesas da concorrência e do consumidor	Arthur Badin, General Attorney, CADE
	Notas Introdutórias Sobre o Princípio da Livre Concorrência	Carlos Emmanuel Joppert Ragazzo, Coordinator, SEAE
July to September, 2005	Teoria Econômica, Oligopólios e Política Antitruste	Elizabeth Maria Mercier Querido Farina, President, CADE
	A Correlação Negativa entre Número de Empresas e Tamanho de Mercado na Indústria Brasileira: Uma revisão histórica da teoria de John Sutton	Rodrigo Surcan dos Santos, Advisor, CADE
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CABRAL, Sandro; AZEVEDO, Paulo Furquim de. Dealing with Incentives and Institutions in Prison

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