Updated in September 2006[#]

104

Brazil[*]

– *Gesner Oliveira*[†]

Brazil is located in Eastern South America, bordering the Atlantic Ocean. The largest and most populous country in South America, Brazil overcame more than half a century of military intervention when in 1985 the military regime peacefully ceded power to civilian rulers. Earlier, it was a Portugese colony until freedom was achieved in 1822.

PROFILE	
Population:	176.6 million ***
GDP (Current US$):	492.3 billion ***
Per Capita Income: (Current US$)	2,720 (Atlas method)*** 7,770 (at PPP.)**
Surface Area:	8.5 million sq. km
Life Expectancy:	68 years **
Literacy (%):	86.4 (of age 15 and above)**
HDI Rank:	72***

Sources:
- World Development Indicators Database, World Bank, 2004
- Human Development Report Statistics, UNDP, 2004

(**) For the year 2002
(***) For the year 2003

Economy

Brazil is the fifth largest country in the world and the largest in the southern hemisphere. Possessing large and well-developed agricultural, mining, manufacturing, and service sectors, Brazil's economy outweighs all other South American countries and is expanding its presence in world markets. According to most indicators, Brazil is about the 10th largest economy in the world. The two main problems faced by Brazil in the last half century were an over-bearing state and inflation.

The latest stabilisation plan, called the Plano Real (Real Plan), instituted in mid-1994, has probably been the most successful. The inflation rates, which used to be high and had disrupted economic activity and discouraged foreign investment, have been brought under control. The strong currency, another cornerstone of the Real Plan, together with a more liberal import policy, encouraged imports and contributed to a growing trade deficit.

Brazil started to grow steadily, and witnessed a lot of privatisation moves. But worldwide disturbances, together with exchange rate troubles stalled Brazilian growth. Economic orthodoxy was employed, leading the country to recession. Brazil is now recovering from six years of economic stagnation, with increasing employment levels and trade surpluses, but modest GDP growth.

Competition Evolution and Environment

The different phases of the Brazilian experience are closely related with the separate roles of the state in economic activity. During the phase of import substitution, in which the state had a crucial role in production and direct intervention in the markets, the antitrust function was not important, and organisations, such as the Brazilian antitrust authority, *Conselho Administrativo de Defesa Econômica* (CADE), had only a secondary role.

The first phase of legislation dominated from the 1930s to the early 1990s. Its declining importance was heralded by the change of the Constitution in 1988[1]. The rules imposed by each of the two streams of legislation affects the other. For example, Law No. 1.521, of December 26, 1951, contains various typical antitrust provisions, but says that its aim is to change provisions of the current law on crimes against the general economy, while Item XXIV of Article 21 of Law No. 8.884, 1994, establishes that 'imposition of excessive prices' belongs to the interventionist tradition of control of prices.

The non-dominant current of legislation can always be detected, even while the other is predominant. Thus, Brazil

* Original paper submitted in May 2005. Revised in July 2005. Co-authors are: Lucas Novaes, Pedro Scazufca, Tatiana Sereda, Amanda Felsky

1 The Constitutional amendment of 1988 was induced by the opening and deregulation of prices in the beginning of the 1990s, and made concrete by Law No. 8884, of 1994, and the stabilisation of prices by the Real Plan in 1994.

showed some progress in competition policy, in spite of six decades of pronounced state intervention. The inertia of bureaucracy explains the prolonged survival of the anachronistic provisions, such as Delegated Law No. 4, of 1962, which set the rules for price control and was only abandoned in 1997.

In Law No. 8.884, 1994 there are provisions that highlight competition promotion. The legislature attributed to CADE the mission of 'instructing the public on the forms of infringement of the economic order'. However, a careful analysis reveals the need for progress in the way proceedings are instructed, improvement in merger control, perseverance in efforts to de-bureaucratise proceedings and ensuring transparency and clarity in decision making.

Competition Law and Policy

At the present time, the Brazilian System for Protection of Competition (SBDC) is comprised of:

- Administrative Council for Economic Defense (CADE);
- Economic Law Office (SDE); and
- Economic Monitoring Secretariat (SEAE).

The CADE is a federal authority reporting to the Ministry of Justice and was established by the Law No. 4.237, of September 10, 1962. Composed of a President and six Counsellors (Board Members), it looks into subjects defined in the Law No. 8.884, of 1994 – matters of competition policy.

The autonomy of CADE is based on and justified in the specificity of the matters of competition protection that demands knowledge in law and economy.

Article 50 of the Competition Law of 1994, debars interference of the executive branch in the decisions of CADE. It is important to emphasise that CADE implements its own decisions and, immediately after the judgment, the Public Prosecution Service is informed about the same.

However, each of CADE's decisions can be appealed at the civil courts, but only in case of lesion or threats to rights, pursuant to Art. 5th, XXXV of the Brazilian Federal Constitution: "the law will not exclude the jurisdiction of the Judiciary over lesion or threats to rights".

The CADE is structured as follows:

- A Plenary Council, composed of six council members and one Chairperson;
- An Office of the Prosecutor, headed by an Attorney General;
- The Secretariat for Economic Law (SDE), an organ for the preparation, investigation, and oversight, a decentralised body of the Ministry of Justice, established by Law 8.158, of January 08, 1991.

The SDE is subdivided in two main departments:

- Department of Protection and Defense of the Consumer (DPDC); and
- Department of Economic Protection and Defense (DEPD).

The Secretariat for Economic Monitoring (SEAE) of the Ministry of Finance is responsible for subjects of competition protection on the economic aspects of the matter and to conduct a technical study that will aid SDE in handling the proceedings and CADE in its final decision.

SDE and SEAE have analytical and investigative functions, issuing non-binding opinions on mergers and anticompetitive cases. In other words, their 'opinions' are merely recommendatory to the CADE that may or may not adopt them in its decision.

Although conduct cases represent the majority of cases heard by CADE, it is frequently argued that the majority of the cases relate to the proceedings in the distant past, which end up being set aside for lack of detailed information or argument[2].

Brazilian legislation provides for controls on all acts and contracts that may limit or, in any way, harm free competition, or result in the dominance of one firm or a group of firms in the relevant markets of goods or services. These acts include those expressly aimed at any type of economic concentration, be it through merger or acquisition of firms, formation of corporations or partnerships to exercise control of a firm.

The industrialisation process created an environment in which the Government took a role in controlling market variables and in which the so-called 'protection of the popular economy' was prevalent. It was thus natural that, as more rigorous criteria of antitrust analysis began to be applied, a large proportion of the proceedings would be set aside. Indeed, this is positive because it relieves the private sector of the burden of pending administrative cases that are not supported by a more modern antitrust legislation.

The positive effect of elimination of the pending administrative proceedings of the private sector is frequently underestimated. Decades of intense government intervention resulted in a series of inconsistent proceedings which, in fact, could only be set aside. It was found that, in the past, there was a surge of cases put forward without a sound technical basis, with the sole aim of inhibiting inflationary behaviour – which also was never achieved.

Resolution No. 20, of 1999, defines the law that there is no infringement *per se* in the Brazilian legislation. Both vertical and horizontal practices must be analysed on a

2 It is also argued that the main sources of formation of case law continue to be in rulings on acts of concentration. This is only partially true, as is shown in the chapter on case law in CADE's Annual Report of 1997.

case-by-case basis, through a cost-benefit analysis, so as to arrive at the optimum results.[3]

Combating cartels is not easy, and cannot be buttressed by the authority's will. The main difficulty in the control of conduct arises from institutional factors, such as:

- lack of capacity building and resources;
- 'stock' of pending cases inherited due to the interventionist action by the state;
- delays in investigation, due to administrative inefficiency and excessive control by the executive; and
- CADE's dependence on proceedings being initiated and concluded by the SDE.

Structural control of the markets by antitrust agencies is a common practice in mature countries and has been gaining increasing importance in emerging economies as well. This activity involves examination of acts, such as mergers, acquisitions, joint ventures and takeovers.

The rise in the number of cases adjudicated in the 1990s reflects the restructuring of the Brazilian economy, with the most significant effect being in the intensification of the process of mergers and acquisitions.

In line with the available information on strong growth of foreign investment in Brazil, a prevalence of companies with foreign capital can be noted. A significant proportion of the transactions reflect the local effects, in the Brazilian market, of transactions carried out on a worldwide basis, which arise from redefining strategies of international groups. The Brazilian case thus illustrates the strong structural change in domestic markets caused by globalisation.

Merger control can consume a considerable amount of funds, especially immediately after its introduction, when both the technical staff and market players lack sufficient experience.

Box: 104.1 Brahma Antarctica Merger

In June 1999, the Companhia Cervejaria Brahma (Brahma) announced its merger with Companhia Antarctica Paulista (Antarctica), creating the American Beverage Company (AmBev), with assets of US$8bn and an annual turnover of roughly US$10bn. Having produced more than 59 million hectolitres of beer and 27 million hectolitres of soft drinks in 1998, AmBev became the world's fifth largest company in the beverage industry.

Brahma and Antarctica were the two largest firms in the Brazilian beer industry, controlling roughly 75 percent of national beer sales with the three most preferred brands (Skol, Brahma and Antarctica). Brahma and Antarctica also had important interests in the soft drink industry. Each of them owned its own brand of Guaraná, a very popular local soft drink believed to have strong export potential.

The parties alleged that the merger would generate important efficiencies, mainly cost-related, improving their capacity to compete in the global beverage market. The common understanding was that the merger was a necessary and sufficient condition for the improvement of the export performance of Guaraná.

SEAE and SDE adopted very similar views on the case. Both agencies agreed that the transaction in the beer market would have a negative impact on competition and consumer welfare, as AmBev would have the ability and the incentive to unilaterally increase beer prices. Competition from rivals or low-cost competitors in the soft drink industry and low market shares in other related markets suggested that the merger would be pro-competitive or competitive-neutral in those industries.

SEAE and SDE, therefore, recommended that CADE approve the merger subject to the divestiture of one of the three leading brands (Skol, Brahma or Antarctica), the production facilities related to that brand and its contracts with retail points of sales or with distribution networks. They also suggested the divestiture of two other beer plants in specific geographic markets.

At CADE's request, the Ministry of Industry, Trade and Development submitted an opinion recommending full and unconditional approval of the merger. CADE followed SEAE and SDE reports in some aspects but took a somewhat different decision. Four out of seven Commissioners agreed to approve the deal subject to the following conditions: the divestiture of Bavária, a minor brand, to a competitor with no more than five percent of national beer sales; the offer of five production facilities in each of the five regions of the country to the owner of Bavária; and some behavioural measures.

Nine months passed between the notification of the transaction and the final decision by CADE. During this period, SEAE and SDE conducted extensive inquiries with consumers and businesses from the distribution sector. Refined techniques were employed to define more rigorously the relevant market and the likelihood of anticompetitive effects. CADE held public hearings on the transaction in the five regions of the country, and its decision was issued in a public session that lasted 10 hours.

3 Appendix to Resolution 20, of June 9, 1999.

Because of this, changes were made in the procedures for analysis of concentration activities, to enable decision-making swifter, giving differential treatment to simple and complex cases. In 1996, the procedure of analysis became easier. This simplified procedure turned out to be effective in securing legal security and minimising risks and operational costs. The lower degree of complexity of cases also called for a lower volume of information for decision-making. In spite of these simplifications, further changes were still necessary.

Brazilian legislation prohibits any practice aimed at restricting or limiting free competition, dominating the relevant market of goods or services, arbitrarily increasing profits, or abusively exercising dominant market position.

All forms of conduct, objectively analysed, would be considered illegal if they have the potential of anticompetitive outcomes. The law makes an express exception for a market which is the result of a natural process, based on the greater efficiency of economic actors. It also allows CADE to authorise acts, whatever the form they may take, that may limit or harm competition, or result in the domination in relevant markets for the goods or service.

However, this authorisation of CADE is subject to the following conditions:

1. The Acts should have as their objective, increasing productivity, improving the quality of goods and services, or promoting both efficiency and economic development;
2. The resulting benefits should be distributed equitably between the participants and the consumers or end users;
3. The authorisation should not result in the elimination of a substantial part of the relevant market for goods and services; and
4. Strictly necessary limits should be observed for attaining the objectives sought.

In addition, an act shall be approved if at least three of these conditions, necessary for prevailing concerns related to the national economy, are met and without resulting in harm to the consumer or end user.

Anticompetitive Business Practices

Box: 104.2 Kraft Foods and Cadbury Attack an Acquisition by Nestle

In November 2002, Nestlé bought the Brazilian candy enterprise Garoto, in a US$250mn deal. The acquisition was attacked by other rivals, namely Kraft Foods and Cadbury. CADE rejected Garoto's sale at the beginning of 2004, justifying its decision by pointing out that the concentration would lead to harm to consumers, labour and competition in general. Nestlé appealed, with a compromise agreement, to divest part of its market, but once again, in September 2004, CADE vetoed the operation.

This case has been notably one of the most visible in the Brazilian antitrust law history, targeted by a large number of economic and political interests, drawing attention on CADE again.

Legislative Framework

1. Constitution of Brazil promulgated in 1988. Articles 170, 173, and 174.
2. Law No. 8.884, of June 11, 1994 (enacted originally in 1962 and amended in 1990 and 1994). Transforms the CADE into a government autarchy and provides for prevention and prosecution of infractions against the economic order.

Complementary Legislation

3. Law No. 8.137, of December 27, 1990. Defines crimes against the tax and economic order, and against the consumers.
4. Law No. 9.021, of March 30, 1995. Provides for implementation of the autonomy of the CADE.
5. Law No. 7.347, of June 24, 1985, amended by Article 88 of Law No. 8.884, of June 11, 1994. Regulates the civil action for liability for damages caused to free competition or any other diffused or collective interest.
6. Government order No. 186 of the Ministry of Justice of April 30, 1992. Approves the by-laws of the CADE.
7. Directive No. 849 of the Ministry of Justice of September 22, 2000. Approves the regulations governing the competence of the SDE of the Ministry of Justice concerning the investigation of infringements of the economic order.
8. Law No. 10.149, of December 21, 2000. Amends Law No. 8.884, of June 11, 1994. Includes the leniency programme and states that the procedural fee for the SBDC to analyse the monitoring acts and agreements shall amount to R$45.000,00, which shall be shared in equal parts by CADE, SDE and SEAE.

There is an amendment of the Competition Law being prepared by Ministry of Justice, not only to adapt to the new contours of the system, but also making it more agile and efficient with respect to investigation procedures and mergers analysis. The draft-bill proposes a National Competition Agency (NCA), the two investigative and advisory institutions (SEAE and SDE), and to be organised as an independent body associated with either the Ministry of Finance or to the Ministry of Justice. The amendment would, among other issues, carry out the following significant improvements:

1. The companies will have to file merger notifications ex-ante and not ex-post, as it is now. This will give more time to the competition authority and not the companies. Sometimes companies delay the submission of documents necessary for the analysis of the case, making it more difficult for the Council to recommend structural remedies. An examination of past decisions has shown that CADE has imposed mainly behavioural remedies and only a few structural ones.
2. There will be a clear separation between the investigative role

performed by the NCA, and the decision-making role, performed by CADE.

3. It establishes a new procedure for merger-analysis, where only clearly anticompetitive cases will be heard by CADE and the Director-General of the NCA. CADE, however, will still be kept informed about the case through a report prepared by the Director-General, and might still decide to hear it, if its opinion differs from the Director-General's.
4. There is an important change from the perspective of the consumer as well: the Director-General will be the representative of consumer's interests during the trial. Under the current system, only the firms are allowed to defend their case before CADE.
5. As a consequence to CADE being thereafter responsible only for the cases potentially harmful to competition, it will able to issue important decisions in a shorter period of time.
6. Similarly, the NCA will have more time to investigate illegal conducts, mainly hard core cartels. This will also help CADE to adjudicate upon them.
7. The amendment also clarifies that the final decision regarding competition issues comes from the competition authorities; even those related to regulated sectors, where there are specific regulators in charge.
8. The regulatory agencies and the national competition agency will have to work together in these matters.

The draft-bill is under consideration and debate at the Congress. The preliminary draft was submitted to the public for consultation and many proposals were received during the two years of its preparation.

The main feature is the reduction of bureaucracy. From the previous three bodies: CADE, SEAE and SDE only two would remain: CADE and SEAE. SDE would only regulate consumer protection. CADE would be the only body to try and adjudicate cases, meanwhile SEAE could be designated by CADE to examine certain competition issues. The processes submitted to CADE would face more restrictive and coherent criteria. This measure would certainly reduce the number of cases adjudicated. Table 104.1 shows the evolution of the competition law, as the draft bill proposes:

Table 104.1: Evolution of Competition Law

	4.137 (1962)	8.158 (1991)	8.884 (1994)	8.884 (revisited)
BODY	CADE	CADE/ SDE	CADE/ SDE/ SEAE	CADE/ SEAE
SCOPE	Conduct	Conduct	Structure and Conduct	Conduct Ex ante structure conduct
AUTONOMY	None	None	CADE gets more independent, members have a two year mandate	CADE turns into a special autonomous body; 5-year mandate

Regulatory Framework

The competition law applies fully to regulated sectors of the economy. The aim of regulatory agencies is to ensure the proper functioning of regulated markets. The general characteristics of the regulation will depend on certain specificities of the sector.

A common feature in the functions of agencies is promoting private sector in delivering public services. Control over entry and exit in these markets depends on a number of factors including the type of technology used in the sector. In telecommunications and electricity, for instance, more competition is allowed, whereas natural monopolies continue to exist in basic sanitation and transport. Law of Concessions No. 8.987 of 1995 governs conditions for entry or exit and the functioning of private enterprise in infrastructure sectors. Concession holders (i.e. the private investor) will only be able to cancel contracts unilaterally if a court rules that contractual rules are not being followed by the concession granting powers, i.e. the government.

Competition policy and control of the monopoly power are very important for sectors that have progressed in the privatisation process (Table 102.2).

Monitoring of concession contracts has made most progress in the segments where the privatisation process has progressed the most and where more direct and frequent consumption of services by majority of the people is a feature, as is the case of use of telephony, electricity and highways or turnpikes (Table 102.3).

Consumer Protection

In Brazil consumer protection Law No. 8.078 was enacted on September 11, 1990. According to this code, the purpose of the National Policy for Consumer Relations is to meet the consumers' needs, protect his dignity, health and safety, protect his economic interests, improve the quality of his life and bring about transparency and harmony in consumer relations. This is expected to be achieved through efficient restraint and repression of all abuses in the consumer market relations, including dishonest competition, inadequate use of industrial inventions and creation of trademarks, commercial names and logos that might cause harm to consumers (Consumer Defense Code, Article 4).

Table 104.2: Regulation of Competition	
AGENCY/Law of creation	**ENTRY AND EXIT CONTROLS**
ANEEL (National Electric Energy Agency), Law No. 9427, 1996	– Sector legislation sought to promote competition through unbundling, or the separation of generation, transmission, distribution and commercial segments. The companies had to set up subsidiaries or have separate accounting for these branches of activity. – Free access to the transmission network by any agent of the electricity system, aiming at new means of commercialisation through the Wholesale Electricity Market (local acronym MAE). Negotiations are subordinated to operational planning, programming and decision by the National Electricity System Operator (ONS), which also manages all generating and distribution companies' transmission assets. – The legislation also poses restrictions on share ownership, cross shareholdings among agents and electricity purchasing policy.
ANATEL (National Telecommunications Agency) Law No. 9472, 1997	– Regulation of competition includes measures that require prior notification of any merger or acquisition between market agents. – Incumbents are obliged to allow their competitors access to disaggregated elements and/or alternative points in their networks. – The General Telecommunications Law gives Anatel power to monitor market behaviour, as in the case of interconnection agreements. Parties to these agreements seek to inhibit tariff subsidies by means that include artificially reduced tariffs, unauthorised use of information obtained from competitors, omission of technical information, obstruction, and restraint.
ANP (National Oil Agency) Law No. 9478, 1997	– No specific rules were adopted, except that ANP should notify CADE of any fact that constitutes an infraction against the economic order. – There are only restrictions against Petrobrás setting up specific subsidiaries for each of its activities in the sector.
ANA (National Waters Agency**)** Law No. 9984, 2000	– No specific mechanisms for regulating competition were established, one reason being the technical impossibility of introducing competition in several segments.
ANTT (National Agency of Terrestrial Transports) Law No. 10233, 2001	– There is no specific regulation for the road transport sector. - For railroads, the concession contracts for lines now exploited by private enterprise, establish interconnection obligations with other lines, carrying mutual traffic with other concession holders. They also serve as mechanisms for control of shareholder concentration. - In the case of the airports, there are equal access rules for marketing and sales channels of all airlines are subjected to coordination of flight plans and routes. – In the urban passenger transport segment, regulation is decentralised to state and municipal levels, and there is no specific provision for protection of competition. In the case of interstate and international road transport, all infractions against the economic order must be notified to the SDE by order of the Ministry of Transport. Transporters with relations of economic interdependence among them are not allowed to exploit services on the same route.
ANTAQ (National Agency of Water Transports) Law No. 10233, 2001	There is no specific regulation for port and waterway activities.

Table 104.3: Monitoring Contracts	
AGENCY	**MONITORING**
ANEEL	– Although not standardised, concession contracts provide for fines and penalties for non-fulfillment of service quality levels. There are plans for construction works aimed at expansion and enlargement of the electricity system, and the difference between the cost of the works and the limits for investment allowed under the contracts is to be offset by state governments.
ANATEL	– The concession contracts stipulate obligations, such as universal supply of services and their quality levels for wire line telephony concession holders. The contracts set targets for expanding facilities and service financed, in the short term, by their own revenues.
ANP	– Concession contracts for exploring and producing oil, set periods for exploration and production projects. Concession holders assume an obligation to adopt technical standards for rationalising output and controlling the depletion of reserves. – Technical requirements for modernisation and capacity enlargement are established for the activities of oil refining and natural gas processing. – Controls prioritised fuel quality. In the distribution of natural gas, the privatised companies' concession contracts set targets for universalisation of services and quality standards. Concession holders may be penalised for non-fulfillment of contracts.
ANA	– In the sanitation sector, there is no standardisation of concession contracts and targets and penalties are not stipulated for cases of not fulfilling investment plans or service standards.
ANTT	– Concession contracts for the exploitation of highways are standardised; there are schedules and targets for investments in conservation and modernisation. Concession holders are subject to a fine for not meeting deadlines or for defective conservation of highways. – In the case of the railroads, the contracts set rules for: a) evaluating quality of services (provision and security), setting minimum levels of production and annual reduction in accident indexes, b) stipulating three-year investment plans. Concession holders may be fined for non fulfillment of contractual targets. – In airports, local administrations exercise control over and inspection of contracts for use of infrastructure. In relation to operating passenger routes, monitoring is performed by the DAC through periodic inspection of aircraft and companies. – In the case of urban passenger transport, monitoring of investment plans and quality of services is up to the concession granting power.
ANTAQ	– In the case of the ports, there are several specificities in the concession contracts stipulating fines for non-fulfillment of investment obligations and enlargement of operational capacity – supervised by port authorities.

The Department of Protection and Defense of the Consumer (DPDC), a division of SDE, deals with subjects related to the Law No. 8.078 of 1990. It looks into consumer protection, as distinct from antitrust matters that are the responsibility of DPDE. This does not allow DPDC to provide overall protection to consumers.

Traditional mechanisms of consumer protection, through either individual or collective litigation, have proved to be insufficient to prevent abuses. The nature of this type of legal relation presents new and hard challenges for the traditional consumer law.

For this reason, there is an increasing need for regulatory and monitoring agencies, in particular to control abuses committed in areas of consumer services, such as health care, insurance, bank services, social security or control of quality of products that involve high technology, such as pharmaceutical products, cosmetics, electronics and others.

One of the most important challenges for consumer law today is to prevent such abusive and discriminatory practices – practices themselves reinforced by a dual society and economy.

Concluding Observations and Future Scenario

In spite of the significant recent progress there is still a lot to be done to consolidate competition policy in its basic role of diffusion of the competition culture, and repression and prevention of abuse of economic power.

Although such consolidation should receive priority treatment, the modernisation of the economy brings up two new issues, the analysis of neither of which can be postponed, both associated with institutional coordination at domestic and worldwide levels: privatisation and deregulation of the infrastructure sectors, and cooperation with the jurisdictions of other countries and commercial blocs.

The available evidence suggests a relationship of mutual strengthening between privatisation and competition. On the one side, increases in several performance indicators of privatised companies tend to be higher in competitive environments. And on the other, privatisation itself fosters the market economy, as a better alternative to state investments, typically subject to various political pressures.

To avoid the distortion of markets, which are unnecessarily anticompetitive, the competition dimension should be taken into account at the phase of structuring of the privatisation process. Where there are natural monopolies, a pro-competition regulatory framework should be conceived from the very beginning.

Changes in Competition Law, in case of merger processes and consumer protection will improve the current Brazilian competition policy.

CADE Rejects Cartel Settlement

Brazil's Competition Authority, CADE, has been forced to decline a US$46.2mn settlement from orange juice producers, accused of price-fixing.

On November 22, 2006, under pressure from federal prosecutors, the Authority returned the case to the Justice Ministry, which will now continue investigating the file. Members of the alleged cartel – Cargill, Cutrale, Coinbra, Citrosuco, Citrovita and Montecitrus – denied any wrongdoing but offered to pay a settlement fee to end the dispute, after a judge removed a legal barrier to settlement negotiations between the companies and enforcement agencies.

The cartel members will continue to exert control over the orange industry if the investigation is closed and seized documents returned to the companies.

Brazil is the world's largest producer of oranges. It supplies 79 percent of the orange juice consumed globally.

(Source: Global Competition Review, 28.09.06)

† ***Gesner Oliveira*** *holds a Ph D in Economics from the University of California, MA in Economics from the State University of Campinas and BA in Economics from University of Sao Paulo. Currently, he is working as a Professor of Economics in Fundação Getulio Vargas, Sao Paulo.*

Lucas Novaes *has his B Sc Degree in Economics in 2004 at the Universityof São Paulo. He has worked as an assistant of Professor Gesner Oliveira since 2004, and is a member of the Study Group of Regulation, Competition and Trade at the Getulio Vargas Foundation. Joint with Professor Oliveira and other researchers, he presented 'Aspects of the Independence of Regulatory Agencies and Competition Advocacy' at the ICN Conference of 2005.*

Pedro Scazufca *has his B Sc Degree in Economics in 2004 at the Universityof São Paulo. He has worked as an Assistant of Professor Gesner Oliveira since 2003 and is a member of the Study Group of Regulation, Competition and Trade at the Getulio Vargas Foundation. He has special interest in Competition Policy, Industrial Organisation and Regional Economics. He has a paper in Regional Economics in The University of São Paulo Regional and Economics Lab website (www.econ.fea.usp.br/nereus/).*

Tatiana Sereda *is an Economist with specialisation in corporations' foreign-economic activities and translator of Russian-English in Economics (Samara State Economic University, Russia). He has won many awards concerning to excellence in researches in Samara Region (Russia) and took part in the course 'Competitiveness: foreign experience and efficient strategy for Russia', organised by Moscow State University in partnership with London School of Economics and presented seminars at FGV/EAESP about Russian system of competition defense.*

Amanda Felsky *is a BA in International Relations and has a Masters degree in Finance from the University of California (Berkeley). He works in the financial analysis area for large cap companies in one of the largest banks in Brazil, making projections and presentations for the Committee. He used to work in the financial analysis of the Fortune 100 companies at Banca di Roma (USA).*