



# The Positive Agenda for Competition in Brazil



By Eduardo Caminati Anders<sup>1</sup>

The International Chamber of Commerce (ICC), the world's largest business organization, was established in 1919, forming a network that embraces over 6 million businesses and business associations across 130 countries. It is a renowned and respected organization, based in Paris, with National Committees in more than 80 countries.

Since its creation, the ICC has made significant contributions towards the construction of a sound and transparent business environment, aimed particularly at (i) the growth of international trade, (ii) the development of the global economy, and (iii) the constant improvement of competition in the business world in light of antitrust rules.

The ICC has been established in São Paulo since 2014. ICC Brazil is responsible not only for the local dissemination of content developed by the ICC in its various areas of activity, but also for establishing Thematic Committees to tackle matters of high importance, notably for the Brazilian business sector.

Briefly reviewing the history of the ICC, one should note the creation, over half a century ago, of the Administrative Council for Economic Defense (CADE) by virtue of Law. At the time, while functioning as part of the Ministry of Justice, CADE's task was to supervise the economic management and the accounting system of companies, where it was sometimes possible to detect irregularities. In practical terms, inserted into a planned economy model and charged with the policy of price control, CADE had a limited and modest role in the Federal Public Administration. Three decades later, in light of Law No. 8,884/1994, the agency gained greater levels of autarchy and became linked to the Ministry of Justice.

In addition to its new status of Federal Autarchy CADE, as a judicial body, gained among other things the competence to analyze and rule over merger agreements, as well as to exercise its preventive functions, as established by the Federal Constitution of 1988. From that point on, an escalation in CADE's journey commenced: from a simple and neglected body of government responsible for economic issues in a country operating a state-run economy - hitherto marked by a price control policy - CADE, starting at the late 1990s, began to play a prominent role in the Federal Public Administration stage, in the context of an avalanche of privatization and a boom in mergers and acquisitions.

CADE's saga added a decisive chapter with the enactment of Law No. 12,529/2011 at the end of May in 2012, which has come to be known as the "new" antitrust law. This new legal arrangement officially structured the Brazilian Competition

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Defense System (SBDC) and brought up relevant material and procedural changes to the application of competition law in Brazil.

Among the main innovations of Law No. 12,529/2011, it's worth noting the pre-merger review regime, according to which CADE's prior approval of certain legal transactions became a condition for their implementation. Overcoming the skepticism that reigned during the transition phase between the old law of 1994 and the "new" antitrust law, according to which the prior regime served as a bottleneck for the Brazilian economy and another heavy load added to the "Brazil cost". Instead, CADE was able to move forward with institutional terms, reducing the average time for analysis of merger agreements and improving performance for these procedures.

Having surpassed the obstacles mentioned above, CADE has made a qualitative leap in terms of institutionalization. With the gain of efficiency in its preventive role, CADE was able to improve its performance, highlighting for example the refinement of its Leniency Program and Cease and Desist Agreements (TCCs). Many investigations were launched; lots of others terminated, and CADE finally managed to get rid of the image of the "toothless lion", with positive repercussions.

As a result of their success in implementing the "new" law, CADE and competition law as a whole became key players in the most diverse matters regarding the legal-economic-business affairs that guide the agenda of the Brazilian economy. Expressions like "cartel", "merger review", "TCC", "gun jumping", "merger control agreements" and "antitrust remedies" go beyond the restricted academic universe of competition, reaching out newspapers, magazines, periodicals and news, inhabiting the day-to-day life of the Brazilian society. Undoubtedly, mastering competition law ceases to be a whim or even an academic hobby of few and becomes an essential part of navigating safely in the business environment in Brazil.

Against this background, the ICC Brazil has launched its Competition Commission for Brazil. With the aim of identifying key-subjects in competition policies that affect the business community, the new Commission is composed of four main taskforces, namely: (i) presidential agenda; (ii) competition advocacy; (iii) discussions about (iii.1) new technologies and the 4.0 revolution, and (iii.2) digitalization and financial markets; and, (iv) hosting the so-called "Competition Day".

On the eve of elections for a new head of state, the Commission intends to prepare a formal document to be delivered to each presidential candidate, setting the competition agenda for the government plan and, above all, emphasizing the importance of competition for the business environment and economic welfare. The importance of strengthening CADE more and more will also be highlighted, an initiative that involves reinforcing its budget, personnel and technical and functional independence.

With regards to the competition advocacy front, the intention is to effectively disseminate competition culture, raising awareness among the business community. To this end, the Competition Commission will initially seek to establish an institutional partnership with CADE in order to, among other things, develop educational videos. At the end of the day, its purpose is to strengthen antitrust policy in Brazil and thus forge an increasingly fruitful business environment.

Among the main topics that will be discussed in the scope of the Commission, two shall have greater importance in 2018: (i) new technologies and the 4.0 revolution; and (ii) digitalization and financial market. Both are contemporary issues with global reach, and, certainly, the competitive lens has a lot to contribute to the debate.

The Competition Commission's fourth component will focus on the organization of specific events, among which is the creation of Competition Day (which is inspired by a successful event promoted by its peer in the ICC, the Arbitration Commission). This event will be held during the first half of 2019 and will count with the participation of some of the greatest legal experts, competition authorities, lawyers and economists in Brazil and from around the world.



In addition to the capacity to manage these taskforces, the ICC Brazil Competition Commission will simultaneously follow the activities and initiatives of the ICC Global Commission on Competition, whether by promoting its activities, or collaborating with the preparation of publications and studies, or participating in events to be held abroad, such as the roundtables on Competition organized jointly with the Annual Conference of the International Competition Network (ICN).

Finally, in an environment where the leading role of CADE and of competition law is stepping up and where theoretical-abstract discussions still prevail, ICC Brazil's initiative to create a specific commission to examine and discuss practical aspects of competition law is laudable.

A round of applause to ICC Brazil, which has been working hard since 2014 in order to improve the business environment in the country across its multifaceted spectra. The newly created Commission on Competition is a clear example of this commitment. This is another important initiative by the ICC to spread a sustainable business environment for the business community, which, in the end, culminates in positive results for society and for the country's economy.