

**Law # 8.884  
of June 6<sup>th</sup>, 1994**

LAW # 8884 OF JUNE 11, 1994  
(OFFICIAL GAZETTE OF THE FEDERAL EXECUTIVE, JUNE 13, 1994)

Changes the Administrative Council for Economic Defense — CADE into an independent agency, regulates antitrust measures, and makes other provisions.

THE PRESIDENT OF THE REPUBLIC:

I hereby make known that the Congress decrees and I sanction the following Law:

TITLE I  
GENERAL PROVISIONS

CHAPTER I  
OBJECT

Article 1. This Law sets out antitrust measures in keeping with such constitutional principles as free enterprise and open competition, the social role of property, consumer protection, and restraint of abuses of economic power.

Sole Paragraph. Society at large is entrusted with the legal rights protected herein.

CHAPTER II  
TERRITORY

Article 2. Without prejudice to any agreements and treaties to which Brazil is a party, this Law applies to acts wholly or partially performed within the Brazilian territory, or the effects of which are or may be suffered therein.

Sole Paragraph. Foreign companies that operate or have a branch, agency, subsidiary, office, establishment, agent or representative in Brazil shall be deemed situated in the Brazilian territory.

TITLE II  
THE ADMINISTRATIVE COUNCIL FOR ECONOMIC DEFENSE — CADE

CHAPTER I  
INDEPENDENT AGENCY

Article 3. The Administrative Council for Economic Defense — CADE, an agency with authority throughout the Brazilian territory and created by Law # 4137 of September 10, 1962, shall henceforth become a federal independent agency (*autarquia federal*) reporting to the

Ministry of Justice, with headquarters and jurisdiction in the Federal District, and duly commissioned for performance of the duties set forth herein.

## CHAPTER II THE CADE BOARD

Article 4. The CADE Board shall be composed of a President and six Board Members chosen from among citizens older than thirty years of age reputed for their legal or economic knowledge and unblemished reputation, duly appointed by the President of the Republic after their approval by the Senate.

Paragraph 1. The term of office of the President and Board Members shall be two years, one reelection being hereby permitted.

Paragraph 2. The President and Board Member duties shall be discharged on an exclusive basis; accordingly, no overlapping of positions will be permitted, unless otherwise provided for in the Constitution.

Paragraph 3. In the event of resignation, death or termination of a CADE President, the senior or eldest Board Member (in this order) will take office as President until further appointment thereof, without prejudice to his/her corresponding duties as Board Member.

Paragraph 4. In the event of resignation, death or termination of a CADE Board Member, a new Board Member shall be appointed for the remaining term of office of the replaced member.

Paragraph 5. In the events set forth in the preceding paragraph or upon expiration of the terms of office of the councilmembers, the Council shall be reduced to less than the number established in article 49, the time frames set out in articles 28, 31, 32, 33, 35, 37, 39, 42, 45, 46, sole paragraph, 52, paragraph 2, 54, paragraphs 4, 6, 7 and 10, and 59, paragraph 1 of this law shall be considered automatically interrupted, and the case development shall be suspended, and the new terms shall begin immediately after restructuring of the quorum. **(Provisory Measure # 1465-7/96, Article 1).**

Article 5. The CADE President or Board Members may only be ousted by a decision of the Senate, a request of the President of the Republic, as a result of unappealable criminal sentencing of any such member for malicious crime, or in light of disciplinary action as set forth in Law # 8112 of December 11, 1990 and Law # 8429 of June 2, 1992, as well as owing to violation of any of the limitations dealt with in article 6 hereof.

Sole Paragraph. Any CADE Member's absence at three consecutive ordinary meetings, or twenty intermittent ordinary meetings, shall cause automatic termination of his/her term of office, except for leaves of absence duly approved by the CADE Board.

Article 6. The President and Board Members shall not:

I - receive fees, percentages or other compensation in any way or on any pretext;

II - act as a self-employed workers;

III - participate--as controlling parties, officers, managers, agents or attorneys in fact-- in any civil, commercial or like companies;

IV - render opinions on matters of their specialty, even if on a theoretical basis, or act as advisors to companies of any kind;

V - avail themselves of the media to render opinion on cases pending decision, or otherwise disparage orders, votes or sentences handed down by the courts, except for critique in case records, technical works or in the exercise of court duties; and

VI - carry out politics- or party-oriented activities.

### CHAPTER III AUTHORITY OF THE CADE BOARD

Article 7. The CADE Board shall:

I - ensure compliance with this Law and its regulations, as well as with the Board in-house rules;

II - resolve on purported violations of the economic order, and apply the penalties provided for by law;

III - resolve on proceedings instituted by the Economic Law Office - SDE of the Ministry of Justice;

IV - resolve on *ex officio* appeals from the SDE Secretary;

V - order that action be taken in restraint of violations of the economic order within the term scheduled therefor;

VI - approve both the cease-and-desist commitment (*compromisso de cessação de prática*) and the performance commitment, as well as order SDE to monitor compliance therewith;

VII - judge appeals against preventive action adopted by SDE or by the Board reporting official;

VIII - make its decisions known to interested parties;

IX - request information from individuals, agencies, authorities and other public or private entities, with due regard for the confidentiality ensured such information pursuant to law, if any, as well as determine the investigations required for performance of its duties;

X - request from the Federal Executive Branch agencies and from state, municipal, the Federal District and territorial authorities the taking of all acts required for compliance with this Law;

XI - retain the performance of examinations, inspections and studies, approving the respective professional fees and other expenditures on a case-by-case basis, all of which shall be borne by the company if it is eventually punished under this Law;

XII - analyze acts or conducts under any circumstance, subject to approval thereof pursuant to article 54 below, and establish a performance commitment as the case may be;

XIII - request court execution of its decisions pursuant to this Law;

XIV - request services and staff from any federal public agencies or entities;

XV - determine the adoption of administrative and court action by the CADE Attorney General Office;

XVI - sign contracts and agreements with Brazilian agencies or entities, and advance to the Minister of Justice for approval any such documents that are to be signed with foreign or international organisms;

XVII - answer consultations on matters within its sphere of authority;

XVIII - make the forms of violation of the economic order known to the public;

XIX - draft and approve its in-house rules on operations, criteria for resolutions, and organization of in-house services, including for the purpose of establishing the recess of the Board and the Attorney General Office on account of vacation; during such period, the statute of limitations as well as the term set forth in article 54, paragraph 6 hereof shall be suspended;

XX - draft the structure applying to the CADE staff, with due regard for article 37, II of the Constitution;

XXI - draft budgetary proposals pursuant to this Law; and

XXII - appoint the possible substitute of the Attorney General in the event of absences, dismissal or impairment.

#### CHAPTER IV AUTHORITY OF THE CADE PRESIDENT

Article 8. The CADE President shall:

I - act as the CADE legal representative in and out of court;

II - preside over the CADE Board meetings, with the right to vote thereat, plus a casting vote;

III - distribute processes by lot at the Board meetings;

- IV - call meetings and organize the corresponding agenda;
- V - comply and cause compliance with the CADE decisions;
- VI - determine that the CADE Attorney General Office take all court action required for execution of the CADE decisions and sentences;
- VII - sign the cease-and-desist commitments, as well as performance commitments;
- VIII - submit to the CADE Board for approval the budgetary proposal, as well as the intended assignment of the staff that is to render services to CADE; and
- IX - guide, coordinate and supervise the CADE administrative activities.

#### CHAPTER V AUTHORITY OF THE CADE BOARD MEMBERS

Article 9 - The CADE Board Members shall:

- I - vote on cases and matters submitted to the CADE Board;
- II. - issue orders and decisions on the cases for which they act as reporting members;
- III. - submit to the CADE Board any requirements as to data and documents from individuals, agencies, authorities and other public or private entities, which data and documents are to be kept confidential pursuant to law, as the case may be, as well as order all investigations deemed required for performance of their duties;
- IV - adopt preventive action, and establish a daily fine for noncompliance therewith; and
- V - discharge all further duties ascribed thereto under the applicable rules.

#### CHAPTER VI THE CADE ATTORNEY GENERAL OFFICE

Article 10. An Attorney General Office shall be commissioned with CADE to:

- I - render legal assistance to CADE, and provide for defense thereof in court;
- II - arrange for judicial execution of CADE decisions and sentences;
- III - subject to the CADE Board preliminary approval, request court measures with a view to curbing violations of the economic order;
- IV - arrive at court settlements for cases involving violations of the economic order, subject to the CADE Board preliminary approval after hearing a representative of the Attorney General of the Republic;

V - render opinion on cases under the CADE authority;

VI - ensure compliance with this Law; and

VII - perform all further action incumbent thereon under the in-house rules.

Article 11. The Attorney General--appointed by the Minister of Justice, and duly commissioned by the President of the Republic after consultation and approval of the Senate--shall be a Brazilian citizen with unblemished reputation and renowned legal expertise.

Paragraph 1. The Attorney General shall attend the CADE meetings, with no right to vote thereat.

Paragraph 2. The Attorney General shall be subject to the same rules on term of office, reelection, disqualification, termination and replacement as those applying to the CADE Board Members.

Paragraph 3. In the event of absences, temporary separation or impairment of the Attorney General, the plenary body will indicate and the CADE President will appoint a possible substitute to act for a period not exceeding ninety (90) days, with no need for Federal Senate approval; such substitute shall be entitled to compensation for the position held during such substitution.

### TITLE III THE ATTORNEY GENERAL OF THE REPUBLIC AND CADE

Article 12. The Attorney General of the Republic, after hearing the Higher Council, shall appoint a member of the Attorney General Office of the Republic to handle the cases submitted to CADE for review.

Sole Paragraph. CADE may request that the Attorney General Office of the Republic cause enforcement of the CADE decisions or of the cease-and-desist commitments, as well as that it adopt all court action provided for in article 6, XIV (b) of Supplementary Law No. 75 of May 20, 1993.

### TITLE IV THE ECONOMIC LAW OFFICE

Article 13. The Economic Law Office of the Ministry of Justice — SDE, as structured pursuant to law, will be headed by a Secretary appointed by the Minister of Justice from among Brazilian citizens of renowned legal or economic expertise and unblemished reputation, duly commissioned by the President of the Republic.

Article 14. SDE shall:

I - ensure compliance with this Law by monitoring and following up on market practices;

II - provide for ongoing follow-up on business activities and practices from individuals

or legal entities with overriding control over a relevant market for a certain product or service, in order to prevent violations of the economic order; for such purposes, all pertinent data and documents may be required, with due regard for the confidential status thereof pursuant to law, if any;

III - carry out preliminary investigations on purported violations of the economic order, for further instatement of administrative proceedings;

IV - acknowledge the lack of grounds or evidence, and shelve the preliminary investigation records;

V - request data from individuals, agencies, authorities and other public or private entities, with due regard for the confidential status thereof under the law, if any, as well as determine the action required for exercise of its duties;

VI - commence administrative proceedings intended to investigate and restrain violations of the economic order;

VII - appeal *ex officio* to CADE for shelving of preliminary investigations or administrative proceedings;

VIII - send on to CADE, for review, any cases commenced by SDE, if a violation of the economic order has been duly evidenced;

IX - sign a cease-and-desist commitment on the agreed conditions and submit it to CADE, as well as monitor compliance therewith;

X - advise CADE of certain conditions for signing of a performance commitment, and monitor compliance therewith;

XI - adopt preventive measures intended to cease the act characterized as a violation of the economic order, and establish the deadline for compliance therewith as well as a daily fine applying to default thereon;

XII - receive and substantiate cases to be judged by CADE, including consultations, and monitor compliance with the CADE decisions;

XIII - advise the public authorities as to the adoption of any action required for compliance herewith;

XIV - carry out studies and researches with a view to improving antitrust policies;

XV - advise the public of the various forms of violation of the economic order, as well as the means to curb such violations; and

XVI - perform other duties as provided for by law.

## TITLE V VIOLATIONS OF THE ECONOMIC ORDER

## CHAPTER I GENERAL PROVISIONS

Article 15 - This Law applies to individuals, public or private companies, as well as to any individual or corporate associations, established *de facto* and *de jure* — even on a provisional basis — irrespective of a separate legal nature, and notwithstanding the exercise of activities regarded as a legal monopoly.

Article 16. The company and each of its managers or officers shall be jointly liable to the various forms of violation of the economic order.

Article 17. The companies or entities within a same economic group *de facto* and *de jure* shall be jointly liable to violations of the economic order.

Article 18. The legal nature of any party charged with violation of the economic order may be disregarded whenever any such violation entails abuse of power and rights, violation of the law, illicit facts or acts, or any breach of bylaws or articles of association. This legal nature shall also be disregarded in the event of bankruptcy, insolvency, discontinuance or suspended operations of the underlying company owing to poor management thereof.

Article 19. The antitrust measures set forth herein do not exclude any punishment inflicted on other legal acts pursuant to law.

## CHAPTER II VIOLATIONS

Article 20. Notwithstanding malicious intent, any act in any way intended or otherwise able to produce the effects listed below, even if any such effects are not achieved, shall be deemed a violation of the economic order:

I - to limit, restrain or in any way injure open competition or free enterprise;

II - to control a relevant market of a certain product or service;

III - to increase profits on a discretionary basis; and

IV - to abuse one's market control.

Paragraph 1. Achievement of market control as a result of competitive efficiency does not entail an occurrence of the illicit act provided for in item II above.

Paragraph 2. Market control occurs when a company or group of companies controls a substantial share of a relevant market as supplier, agent, purchaser or financier of a product, service or related technology.

Paragraph 3. The *dominant position* mentioned in the preceding paragraph is presumed when a company or group of companies controls twenty percent (20%) of the relevant market; this percentage is subject to change by CADE for specific sectors of the



economy.

Article 21. The acts spelled out below, among others, will be deemed a violation of the economic order, to the extent applicable under article 20 and items thereof:

I - to set or offer in any way--in collusion with competitors--prices and conditions for the sale of a certain product or service;

II - to obtain or otherwise procure the adoption of uniform or concerted business practices among competitors;

III - to apportion markets for finished or semi-finished products or services, or for supply sources of raw materials or intermediary products;

IV - to limit or restrain market access by new companies;

V - to pose difficulties for the establishment, operation or development of a competitor company or supplier, purchaser or financier of a certain product or service;

VI - to bar access of competitors to input, raw material, equipment or technology sources, as well as to their distribution channels;

VII - to require or grant exclusivity in mass media advertisements;

VIII - to agree in advance on prices or advantages in public or administrative biddings;

IX - to affect third-party prices by deceitful means;

X - to regulate markets of a certain product or service by way of agreements devised to limit or control technological research and development, the production of products or services, or to dampen investments for the production of products and services or distribution thereof;

XI - to impose on distributors, retailers and representatives of a certain product or service retail prices, discounts, payment conditions, minimum or maximum volumes, profit margins, or any other marketing conditions related to their business with third parties;

XII - to discriminate against purchasers or suppliers of a certain product or service by establishing price differentials or discriminatory operating conditions for the sale or performance of services;

XIII - to deny the sale of a certain product or service within the payment conditions usually applying to regular business practices and policies;

XIV - to hamper the development of or terminate business relations for an indeterminate period, in view of the terminated party's refusal to comply with unreasonable or non-competitive clauses or business conditions;

XV - to destroy, render unfit for use or take possession of raw materials, intermediary or finished products, as well as destroy, render unfit for use or constrain the operation of any equipment intended to manufacture, distribute or transport them;

XVI - to take possession of or bar the use of industrial or intellectual property rights or technology;

XVII - to abandon of cause abandonment or destruction of crops or harvests, without provenly good cause;

XVIII - to unreasonably sell products below cost;

XIX - to import any assets below cost from an exporting country other than those signatories of the GATT Antidumping and Subsidies Codes;

XX - to discontinue or greatly reduce production, without provenly good cause;

XXI - to partially or fully discontinue the company's activities, without provenly good cause;

XXII - to retain production or consumer goods, except for ensuring recovery of production costs;

XXIII - to condition the sale of a product to acquisition of another or contracting of a service, or to condition performance of a service to contracting of another or purchase of a product; and

XXIV - to impose abusive prices, or unreasonably increase the price of a product or service.

Sole Paragraph. For the purpose of characterizing an imposition of abusive prices or unreasonable increase of prices, the following items shall be considered, with due regard for other relevant economic or market circumstances:

I - the price of a product or service, or any increase therein, vis-à-vis any changes in the cost of their respective input or with quality improvements;

II - the price of a product previously manufactured, as compared to its market replacement without substantial changes;

III - the price for a similiar product or service, or any improvement thereof, on like competitive markets; and

IV - the existence of agreements or arrangements in any way, which cause an increase in the prices of a product or service, or in their respective costs.

Article 22. (VETOED)

Sole Paragraph. (VETOED)

### CHAPTER III PENALTIES

Article 23. The following antitrust penalties shall apply:

I - for companies: a fine from one to thirty percent of the gross pretax revenue thereof as of the latest financial year, which fine shall by no means be lower than the advantage obtained from the underlying violation, if assessable;

II - for managers directly or indirectly liable to their company's violation: a fine from ten to fifty percent of the fine imposed on said company, which shall be personally and exclusively imposed on the manager; and

III - in the case of other individuals and other public or private legal entities, as well as any *de facto* or *de jure* associations of entities or persons, even temporary ones, with or without legal identity, that do not engage in business activities, when it is not feasible to use the gross sales value, the fine will be 6,000 (six thousand) to 6,000,000 (six million) UFIR or any other index replacing it.

Sole Paragraph. Fines imposed on recurring violations shall be doubled.

Article 24. Without prejudice to the provisions of the preceding article, the fines listed below may be individually or cumulatively imposed on violations, whenever the severity of the facts or the public interest so requires:

I - at the violator's expense, half-page publication of the summary sentence in a court-appointed newspaper for two consecutive days, from one to three consecutive weeks;

II. - ineligibility for official financing or participation in bidding processes involving purchases, sales, works, services or utility concessions with the federal, state, municipal and the Federal District authorities and related entities, for a period equal to or exceeding five years;

III. - annotation of the violator on the Brazilian Consumer Protection List;

IV - recommendation that the proper public agencies:

(a) grant compulsory licenses for patents held by the violator; and

(b) deny the violator installment payment of federal overdue debts, or order total or partial cancellation of tax incentives or public subsidies;

V - the company's spin-off, transfer of corporate control, sale of assets, partial discontinuance of activities, or any other antitrust measure required for such purposes.

Article 25. If any acts or situations detrimental to the economic order are not discontinued after a CADE Board decision to this effect, or in the event preventive measures or any cease-and-desist commitment set forth herein are not complied with, a daily fine equal

to or higher than 5,000 (five thousand) Fiscal Reference Units — UFIR or replacing index shall apply, which fine may be increased as many as twenty times in accordance with the severity of the violation and the violator's economic status.

Article 26. In the event any data or documents requested by CADE, SDE, SEAE or other public entity acting under this Law are unreasonably denied, concealed, tampered with or delayed, this shall constitute a violation subject to a daily fine of 5,000 (five thousand) UFIR, which fine may be increased up to twentyfold in keeping with the violator's economic status.

Article 27. The penalties provided for in this Law shall apply with due regard for:

I - the severity of the violation;

II - the violator's good faith;

III - the advantages obtained or envisaged by the violator;

IV - actual or threatened occurrence of the violation;

V - the extent of damages or threatened damages to open competition, the Brazilian economy, consumers, or third parties;

VI - the adverse economic effects on the market;

VII - the violator's economic status; and

VIII - recurrences.

#### CHAPTER IV STATUTE OF LIMITATIONS

Article 28. Violations of the economic order become time-barred five years after the date of the corresponding violation or, in the event of repeated or ongoing violations, after the date in which any such act has ceased.

Paragraph 1. Any administrative or court action intended to investigate purported violations of the economic order stays the statute of limitations set forth herein.

Paragraph 2. This statute of limitations is stayed during the effectiveness of a cease-and-desist commitment or performance commitment.

#### CHAPTER V CAUSE OF ACTION

Article 29. Injured parties may — for themselves or for the privies under article 82 of Law #. 8078 of September 11, 1990 — defend their individual or diffuse interests in court by way of antitrust measures and the awarding of losses and damages suffered in connection therewith, irrespective of the corresponding administrative proceeding which shall not be stayed in view of the court action.

TITLE VI  
ADMINISTRATIVE PROCEEDINGS

CHAPTER I  
PRELIMINARY INVESTIGATIONS

Article 30. SDE may carry out preliminary investigations *ex officio* or at the written and reasonable request of interested parties; no disclosure as to any such investigations shall be made whenever the evidence as to purported violation of the economic order does not suffice to immediate commencement of administrative proceedings.

Paragraph 1. During preliminary investigations, the SDE Secretary may adopt any of the steps set forth in article 35 hereof, including requests for clarification addressed to the defendant.

Paragraph 2. Commencement of administrative proceedings out of formal complaints addressed by the Senate or the House of Representatives is not conditioned to preliminary investigations.

Article 31. After conclusion of preliminary investigations within sixty days, the SDE Secretary shall order commencement of a corresponding administrative proceeding or the shelving thereof, subject to *ex officio* appeal to CADE in this latter case.

CHAPTER II  
COMMENCEMENT AND DISCOVERY OF ADMINISTRATIVE PROCEEDINGS

Article 32. Administrative proceedings shall be instituted no later than eight days after cognizance of the underlying fact, formal complaint or closing of the preliminary investigations, as per order issued by the SDE Secretary providing for the facts to be verified thereunder.

Article 33. The defendant shall be summoned to file a defense within fifteen days.

Paragraph 1. The initial summons shall bear the entire tenor of the order providing for institution of the administrative proceeding and the corresponding formal complaint, as the case may be.

Paragraph 2. The defendant shall be first personally summoned by mail against receipt or, in case of failure thereof, by notice published in the Official Gazette of the Federal Executive and in a newspaper widely circulated in the state in which the defendant is resident or headquartered, with due regard for the periods required for attachment of the receipt notice or publication, as the case may be.

Paragraph 3. Any summons under subsequent proceedings shall be made by publication in the Official Gazette of the Federal Executive, in which the name of the defendant and respective attorney shall be mentioned.

Paragraph 4. The defendant's holders, officers or managers, or duly appointed attorney,

may follow up on administrative proceedings, with full access to the case records at SDE and CADE.

Article 34. Failure to file a defense in due course after duly notified to that effect will entail the defendant's judgment by default and acknowledgment of the charges against it/him, subject to all further terms irrespective of prior notice in that respect. The *in absentia* defendant may take part in any phase of the proceeding without recourse of preceding acts.

Article 35. Upon lapse of time for filing a defense, SDE will order investigations and the production of evidence required thereby; SDE may order that the defendant, any individuals or companies, public entities or agencies provide data, clarifications or documents within fifteen days, with due regard for the confidentiality applying thereto under the law, as the case may be.

Sole Paragraph. The investigations and evidence required by the SDE Secretary, including hearing of witnesses, shall be concluded within forty-five days, extendable for a like period with good cause.

Article 36. Federal authorities, as well as officers of independent agencies, federal government-owned companies and mixed-capital companies, shall render all assistance and collaboration required by CADE or SDE, including as regards preparation of technical reports on the matters under the authority thereof, under penalty of liability.

Article 37. The defendant shall produce any evidence within forty-five days after submission of defense, as well as put forth new documents at any time before the discovery phase lapses.

Sole Paragraph. The defendant may ask the SDE Secretary to set out a date, time and place for hearing of a maximum of three witnesses.

Article 38. The Economic Policy Secretariat of the Ministry of Finance (SEAE) shall be informed by official letter of the institution of any administrative proceedings, and the Secretariat may elect to render an opinion on the matters within its sphere of authority, before the discovery phase lapses.

Article 39. Upon conclusion of the discovery phase, the defendant will be summoned to put forth his/its final arguments within five days, after which the SDE Secretary will issue a substantiated report resolving on forwarding of the case records to CADE for review or shelving thereof, subject to an *ex officio* appeal to CADE in this latter case.

Article 40. The SDE Secretary, the CADE members, and their civil servants and officials shall exert their best efforts to develop and conclude preliminary investigations and administrative proceedings in the interest of proper expedition as required for clarification of the facts, under penalty of liability.

Article 41. The SDE Secretary decisions cannot be appealed to higher ranks.

### CHAPTER III CADE JUDGMENT ON ADMINISTRATIVE PROCEEDINGS

Article 42. Once the proceedings have been found admissible, the CADE President will randomly distribute such proceedings to the Reporting Official, who will be afforded a twenty-day term to render an opinion thereon.

Article 43. The reporting official may order supplementary investigations or request further information pursuant to article 35 hereof, as well as allow for the production of new evidence to the case whenever he/she considers the existing data insufficient for a final determination on the case.

Article 44. Upon invitation of the CADE President in response to an indication of the reporting official, any person may provide CADE with clarifications on relevant matters.

Article 45. Upon board judgments--the date of which will be made known to the parties at least five days in advance--the Attorney General and the defendant, or his/its attorney, will be respectively offered the floor for fifteen minutes each.

Article 46. The CADE decision--which in any event shall be duly substantiated against violations of the economic order--shall contain:

I - a detailed report on the violating acts, and an indication as to the antitrust action to be taken by the proper authorities;

II - the terms for commencement and conclusion of the action referred to in the preceding item;

III - the applicable fine; and

IV - a daily fine to apply while the violation is in effect.

Sole Paragraph. The CADE decision shall be published within five days in the Official Gazette of the Federal Executive.

Article 47. CADE shall monitor compliance with its decisions.

Article 48. Total or partial noncompliance with the CADE decision shall be reported to the CADE President, who will ask the Attorney General to provide for execution thereof via court channels.

Article 49. The CADE decisions shall be taken by majority vote, with the attendance of a minimum of five members.

Article 50. The CADE decisions do not qualify for Executive Branch review; accordingly, any such decisions shall be promptly executed, the Attorney General Office being then advised in this respect for the purpose of taking all legal action within its sphere of authority.

Article 51. The CADE regulations and in-house rules shall further regulate administrative proceedings.

## CHAPTER IV PREVENTIVE MEASURES AND CEASE-AND-DESIST ORDERS

Article 52. The SDE Secretary or reporting official may--upon his/her own initiative or at the request of the CADE Attorney General--adopt preventive measures in any instance of administrative proceedings, whenever there are signs or sound reasons to believe that the defendant directly or indirectly caused or may cause irreparable or substantial damages to the market, or that he/it may render the final outcome of the proceedings ineffective.

Paragraph 1. The preventive measures issued by the SDE Secretary or reporting official shall order prompt cessation of damaging acts and the resumption of the preceding situation, if reasonably feasible, as well as impose a daily fine pursuant to article 25 hereof.

Paragraph 2. The SDE Secretary or CADE reporting official decision on adoption of preventive measures may be voluntarily appealed to the CADE Board within five days, without suspensive effects.

## CHAPTER V CEASE-AND-DESIST COMMITMENTS

Article 53. CADE or SDE — *ad referendum* CADE — may agree on a commitment to cease acts under investigation in any instance of administrative proceedings, which commitment shall by no means entail a confession as to the matter under analysis nor acknowledgment of guilt for the acts thereunder.

Paragraph 1. The commitment shall provide for:

- (a) the defendant's commitment to cease the action under investigation in due course;
- (b) a daily fine to be imposed in the event of default under article 25 hereof; and
- (c) the defendant's commitment to issue periodical reports on the defendant's market performance, and an undertaking to make proper authorities aware of any changes in its corporate structure, control, activities and location.

Paragraph 2. The case will be on hold while the cease-and-desist commitment is duly complied with, and after a preestablished time this case will be shelved if all conditions set out in the corresponding commitment have been fully met.

Paragraph 3. The conditions spelled out in the commitment may be changed by CADE if they are provenly overburdensome for the defendant, provided that any such changes do not cause damages to third parties or to the society at large, and that the new conditions do not entail a violation of the economic order.

Paragraph 4. The cease-and-desist commitment constitutes an extrajudicial execution instrument; accordingly, execution of this commitment shall be promptly petitioned in the event of default thereon or if monitoring thereof is in any way hampered, pursuant to articles 60 *et seq.* hereof.



TITLE VII.  
MONITORING MECHANISMS

CHAPTER I.  
MONITORING OF ACTS AND AGREEMENTS

Article 54. Any acts that may limit or otherwise restrain open competition, or that result in the control of relevant markets for certain products or services, shall be submitted to CADE for review.

Paragraph 1. CADE may authorize any acts referred to in the main section of this article, provided that they meet the following requirements:

I - they shall be cumulatively or alternatively intended to:

(a) increase productivity;

(b) improve the quality of a product or service; or

(c) cause an increased efficiency, as well as foster the technological or economic development;

II - the resulting benefits shall be ratably allocated among their participants, on the one part, and consumers or end-users, on the other;

III - they shall not drive competition out of a substantial portion of the relevant market for a product or service; and

IV - only the acts strictly required to attain an envisaged objective shall be performed for that purpose.

Paragraph 2. Any action under this article may be considered lawful if at least three of the requirements listed in the above items are met, whenever any such action is taken in the public interest or otherwise required to the benefit of the Brazilian economy, provided no damages are caused end-consumers or -users.

Paragraph 3. The acts dealt with in the main section of this article also include any action intended for any form of economic concentration, whether through merger with or into other companies, organization of companies to control third companies or any other form of corporate grouping, when the resulting company or group of companies accounts for twenty percent (20%) of a relevant market, or in which any of the participants has posted in its latest balance sheets an annual gross revenue equivalent to R\$ 400,000,000 (four hundred million of Reais).

Paragraph 4. The acts dealt with in the main section of this article shall be submitted to SDE — duly accompanied by three counterparts of the corresponding documentation — in advance or no later than fifteen business days after the occurrence thereof, and SDE shall promptly forward one such counterpart to CADE and another to SEAE.

Paragraph 5. Noncompliance with the deadlines set forth in the preceding paragraph will be punishable with a fine in an amount between 60,000 (sixty thousand) UFIR and 6,000,000 (six million) UFIR, imposed by CADE without prejudice to the opening of an administrative proceeding pursuant to article 32 hereof.

Paragraph 6. Upon receipt of the SEAE technical report issued within thirty days, SDE shall pronounce thereon within this same period and then send the case and evidentiary documents on to the CADE Board, which shall resolve thereon within sixty days.

Paragraph 7. The effectiveness of any acts dealt with in this article will be conditioned to approval thereof, which approval shall be retroactive to the date of occurrence of such acts; if not looked into by CADE within the sixty-day period established in the preceding paragraph, the acts referred to above will be deemed automatically approved.

Paragraph 8. The terms set forth in paragraphs 6 and 7 hereof will be stayed while the clarifications and documents considered essential for review of the case by CADE, SDE or SEAE are not submitted as requested.

Paragraph 9. In the event the acts specified in this article are subject to suspensive conditions or have already caused fiscal or other effects to third parties, the CADE Board--if it elects to deny approval thereof--shall determine that all applicable action be taken to totally or partially revert — by way of dissolution, spin-off or sale of assets, partial cessation of activities, among others — any action or procedure damaging to the economic order, notwithstanding any civil liability for losses and damages caused third parties.

Paragraph 10. Without prejudice to the obligations of the parties involved, any change in the stock control of publicly-held companies or registration of amalgamations shall be reported to SDE by the Securities Commission - CVM and by the Brazilian Commercial Registry Department of the Ministry of Industry, Trade and Tourism - DNRC/MICT, respectively, within five business days for the SDE review, if applicable.

Article 55. The approval dealt with in the preceding article may be reviewed by CADE *ex officio* or at the SDE request, if this approval was based on false or misleading information rendered by the interested party, in the event of default on obligations assumed hereunder, or if the intended benefits have not been attained.

Article 56. The commercial registries or corresponding state entities cannot file any acts related to organization, transformation, amalgamation, merger or grouping of companies, as well as changes in incorporation acts, unless all such acts contain:

I - a clear-cut and detailed statement as to the subject matter thereof;

II - the interest of each partner, and the term for capitalization thereof;

III - full name and identification of each partner;

IV - the place where the headquarters is located and its respective address, including as regards any declared branches;

V - full name and identification of the company's officers;

VI - the term of duration of the company; and

VII - the number, type and value of the outstanding stock.

Article 57. Articles of dissolution shall state the reasons thereof, apart from a statement re the amount ascertained among the partners and an indication of the persons that are to assume the company's assets and liabilities.

## CHAPTER II PERFORMANCE COMMITMENT

Article 58. The CADE Board will define performance commitments to be assumed by any interested parties that submitted acts for review pursuant to article 54 hereof, so as to ensure compliance with the conditions established in paragraph 1 thereof.

Paragraph 1. Performance commitments will take into consideration the extent of international competition in a certain industry and their effect on employment levels, among other relevant circumstances.

Paragraph 2. Performance commitments shall provide for volume or quality objectives to be attained within predetermined terms, compliance with which will be monitored by SDE.

Paragraph 3. Failure without good cause to comply with performance commitments shall cause the CADE approval to be revoked pursuant to article 55 hereof, followed by the opening of an administrative proceeding for the adoption of the applicable measures.

## CHAPTER III CONSULTATION

Article 59. (REPEALED)

## TITLE VIII COURT EXECUTION OF CADE DECISIONS

### CHAPTER I PROCESSING

Article 60. The CADE Board decisions imposing fines, as well as obligations to do or not to do, constitute an extrajudicial execution instrument.

Article 61. Executions exclusively intended to collection of fines shall be carried out pursuant to Law # 6830 of September 22, 1980.

Article 62. In the event of executions intended to collection of fines and compliance with obligations to do or not to do, the courts shall order specific performance of any such obligations, or otherwise provide for acts that ensure an outcome equivalent to compliance therewith in practical terms.

Paragraph 1. An obligation to do or not to do can only lead into a suit for losses and damages its specific performance or obtainment of an equivalent outcome in practical terms is not possible.

Paragraph 2. Losses and damages shall be paid without prejudice to any applicable fines.

Article 63. Execution shall be carried out by all means, including by way of intervention in the company, if necessary.

Article 64. The CADE decisions shall be executed at the federal courts of the Federal District, or at the courts with jurisdiction over the executed party's headquarters or domicile, at the CADE discretion.

Article 65. Motions or like action against an execution instrument shall not stay the execution itself, unless an amount corresponding to the fines imposed is deposited in court, and a bond is posted as determined by the courts to ensure compliance with a final decision on the case, including as regards daily fines.

Article 66. Depending on the severity of the violation of the economic order, and should there be sound reasons to believe in irreparable or substantial damages, the courts may order prompt adoption of all or a portion of the action required under the execution instrument, notwithstanding the deposit of fines in court or the posting of bonds.

Article 67. Daily fines on an ongoing violation shall be apply as from the deadline established by CADE for voluntary compliance with the CADE decision, up to the day of actual performance thereof.

Article 68. The execution of CADE decisions shall be afforded priority over other kinds of action, except for habeas corpus and writ of mandamus.

## CHAPTER II JUDICIAL INTERVENTION

Article 69. The courts shall order intervention in a company whenever required to ensure specific performance hereunder, and appoint a receiver.

Sole Paragraph. The court decision on intervention shall be duly substantiated, as well as accurately establish the action to be taken by the appointed receiver.

Article 70. If the executed party rebuts a court-appointed receiver within forty-eight hours on the arguments of ineptitude or lack of good standing, and if this claim is duly evidenced in three days, the courts shall render a decision thereon within this same period.

Article 71. If the rebuttal is granted, the courts shall appoint another receiver within five days.

Article 72. The intervention may be terminated early if the obligation that gave rise

thereto has been provenly complied with in full.

Article 73. The court intervention shall be limited to those acts required for compliance with the court decision that gave rise thereto, and shall be effective for a maximum period of one hundred and eighty days; the receiver shall be held liable for his/her acts and omissions, especially in the event of abuse of power and departure from the original purposes of his/her appointment.

Paragraph 1. The receiver will be subject to articles 153 through 159 of Law # 6404 of December 15, 1976, to the extent applicable.

Paragraph 2. The receiver will be entitled to a compensation stipulated by the courts, which may replace him/her at any time and whenever the receiver becomes insolvent, is charged with active or passive corruption or malfeasance in office, or violation of his/her duties.

Article 74. The courts may withdraw the company's managers from their duties if they are provenly preventing performance of acts incumbent on the receiver. Any such managers shall be replaced as provided for in the company's bylaws or articles of association.

Paragraph 1. If any managers still prevent the receiver from taking proper action after adoption of the procedures set forth in the main section of this article, then the courts shall proceed as per paragraph 2 below.

Paragraph 2. If a majority of the company's managers deny assistance to the court-appointed receiver, the courts shall order that the receiver take over the company's management.

Article 75. The receiver shall:

I - perform or order performance of all acts required under the execution process;

II -advise the courts of any irregularities committed by the company's management and of which the receiver may become aware; and

III - submit to the courts a monthly report on his/her activities.

Article 76. The expenses arising from the intervention hereunder shall be borne by the executed party.

Article 77. Upon lapse of the intervention, the receiver shall provide the federal courts with a detailed report on his/her action, and either propose the dismissal or shelving of the case or ask for an extension of the intervention period should the execution decision have not been fully performed in due course.

Article 78. Whoever opposes or prevents any intervention or, after termination thereof, performs any acts that directly or indirectly annul its effects in whole or in part, or even fails to comply with legal orders from the court-appointed receiver, will be held criminally liable for resistance, disobedience or coercion under the execution process, pursuant to articles 329,

330 and 344 of the Penal Code.

TITLE IX  
FINAL AND TEMPORARY PROVISIONS

Article 79. (VETOED)

Sole Paragraph. (VETOED)

Article 80. The CADE Attorney shall henceforth become an Attorney General official duly commissioned to the independent agency created hereunder, jointly with the CADE President and Board Member positions.

Article 81. The Executive Branch shall send to the Congress within sixty days a bill of law on the permanent staff of the new independent agency, as well as on the duties and compensation applying to the CADE President, the Board Members, and the Attorney General.

Paragraph 1. While CADE is not provided with staff of its own, civil servants may be temporarily assigned to this independent agency by commission or otherwise, without prejudice to the remuneration and other benefits originally afforded thereto, including for the purpose of representing this independent agency in court.

Paragraph 2. The CADE President shall prepare and submit to the Board for approval a list of servants required for the independent agency, who may be placed at SDE disposal.

Article 82. (VETOED)

Article 83. The Code of Civil Procedure, as well as Laws # 7347 of July 24, 1985 and 8078 of September 11, 1990, also apply to the administrative and court proceedings set forth herein.

Article 84. The fines provided for herein shall be converted into Brazilian currency on the date of actual payment thereof, duly collected to the Fund dealt with in Law # 7347 of July 24, 1985.

Article 85. Article 4, VII of Law # 8137 of December 27, 1990 shall henceforth read as follows:

"Article 4. (...)

VII - increase without good cause the price of a certain product or service, in view of one's market control."

Article 86. Article 312 of the Code of Criminal Procedure shall henceforth read as follows:

"Article 312. - Preventive imprisonment may be decreed so as to safeguard public or economic order in the interest of the criminal process, or to ensure enforcement of criminal

laws, whenever a crime was provenly committed, or if there is sufficient evidence as to its perpetrator."

Article 87. - Article 39 of Law # 8078 of September 11, 1990 shall henceforth read as follows, with the additional items below:

"Article 39. The supplier of a certain product or service cannot, among other abusive practices:

(...)

IX - refuse to sell products or render services directly to whomever is willing to purchase them against prompt payment, except for intermediation cases duly regulated by special laws; and

X - increase without good cause the price of a certain product or service."

Article 88. - Article 1 of Law # 7347 of July 24, 1985 shall henceforth read as follows, with the additional item below:

"Article 1. - Without prejudice to class actions, this Law applies to actions for moral and property damages arising from:

(...)

V - violation of the economic order."

Sole Paragraph. Article 5, II of Law # 7347 of July 24, 1985 shall henceforth read as follows:

"Article 5. (...)

II - include in its institutional purposes the protection to the environment, consumers, economic order, open competition, or the artistic, aesthetic, historical, tourism, and landscape heritage;

(...)"

Article 89. CADE shall be invited to take part as assistant in court actions involving application of this Law.

Article 90. The periods for consultations submitted under article 74 of Law # 4137 of September 10, 1962, as amended by article 13 of Law # 8158 of January 8, 1991, are hereby interrupted, with due regard for Title VII, Chapter I hereof.

Article 91. This Law does not apply to dumping and subsidies cases dealt with in the Accords for Implementation of Article VI of the General Agreement on Customs Tarrifs and Trade, duly enacted by Decrees # 93941 and 93962 of January 16 and 22, 1987, respectively.

Article 92. All provisions to the contrary are hereby revoked, as are Laws # 4137 of September 10, 1962; 8158 of January 8, 1991; and 8002 of March 14, 1990, except for article 36 of Law # 8880 of May 27, 1994, which remains effective.

Article 93. This Law takes effect on the date of its publication.

ITAMAR FRANCO  
President of the Republic

ALEXANDRE DE PAULA DUPEYRAT MARTINS  
Minister of Justice



Brazilian antitrust laws  
**Resolution # 15**  
**of August 19<sup>th</sup>, 1998**

CADE RESOLUTION # 15/98 OF AUGUST 19, 1998  
(OFFICIAL GAZETTE OF THE FEDERAL EXECUTIVE, AUGUST 28, 1998)

Regulates CADE procedures and formalities applicable to concentration acts.

The Board of the Administrative Council for Economic Defense — CADE, in discharge of the duties bestowed thereon, and pursuant to Article 7, XIX of Law # 8884/94, hereby resolves as follows:

CHAPTER I  
PRESENTING TRANSACTIONS TO CADE

SECTION I  
APPLICATION

Article 1. The applications for the authorization of the act or contract set forth in article 54 of Federal Law No. 8884 of June 11, 1994 shall be accompanied by the documents and information listed in the Exhibit I attached.

Paragraph 1 The execution of the provisions set forth in Paragraph 4 of Article 54 of Law 8884/94 is effected by the full completion of the Exhibit referred on this Article, . The not filling of any Item of such Exhibit shall, necessarily, be accompanied by justification.

Article 2 The moment of the execution of the transaction for effects of Paragraphs 4 and 5 of Article 54 of Law 8884/94, shall be set from the first binding document settled by the Applicants, except when it is demonstrated existence of considerable alterations in the competition relations between the Applicants or at least between one of them and a third party, resulting in effects on the Market, occurred in a different moment.

Article 3. The application shall, when possible, be filed by the Applicants jointly, indicating, necessarily, all information required according to Article 1 hereof.

Sole Paragraph. The Applicants shall, immediately, inform any posterior alterations in the information contained in the application presented.

CHAPTER II.  
TRANSACTION ANALYSIS

SECTION I  
PROCEEDINGS

Article 4. Upon receipt one of the counterparts of the application from SDE as per the

provision of paragraph 4, Article 54 of the Law No. 8884/94, the case shall be distributed in the immediate first Session of Distribution held by CADE as per its Internal Rules.

Article 5. Upon the receipt of the proceeding, the Reporting Commissioner shall verify, jointly with SEAE, the realization of the market consult about the effects of the transaction. If necessary, the Reporting Commissioner will reach the reasonable measures according to Exhibit IV.

Article 6. The President of CADE, immediately, after the Session of Distribution, shall notify the Commerce Board or the Public Notary's Office where the transaction has been registered and the CVM (Securities Commission) as the case may be, considering that the effects of the act or contract depend on its approval by CADE, as per the provision of paragraph 7° of Article 54 of Law # 8884/94.

Sole Paragraph. Within 15 days from the date of the publication of the decision on the transaction related in the notification mentioned in this article, the President of CADE shall inform the entity notified about the result of the judgment.

Article 7. The Reporting Commissioner, within 60 (sixty) days from the date of distribution of the proceeding at CADE, shall inform to the members of the Board after consulting SEAE and SDE, his conclusions on whether or not the transaction under exam requires, to establish his own conviction, complementary investigation without affecting the exercise at any time of the competence given by the Item III, Article 9 of Law 8884/94.

Sole Paragraph. In the cases requiring complementary investigation, the Reporting Commissioner shall require the Applicants to complete the Exhibit II attached or other necessary information.

Article 8. The Reporting Commissioner, observing the provisions of Articles 5 and 7 hereof may, through determination authorized by the Council and the filling of the exhibit III, consider the transaction under examination in the terms of paragraph 7 of Article 54 of Law # 8884/94.

Paragraph 1. The Exhibit III shall be sent to the other members of the Board, to the SEAE, to the SDE, and to the CADE's Attorney-General.

Paragraph 2. The acts indicated in this Article and on its First Paragraph shall be performed at least 15 (fifteen) days before the approval of the transaction under examination, in reason of expiration of the term for review.

Article 9. Anyone interested may require, in a well-founded way, that the Transaction be examined in Judgment Session according to the proceedings of Section IV, Part II of CADE's Internal Rules.

## SECTION II RECONSIDERATION

Article 10. The Council decision which disapproves the transaction or approves the transaction with conditions, would be reconsidered by CADE, upon the applicant's petition,

founded in new document(s) or fact(s) which can by itself assure a new decision more favorable.

Sole paragraph. New facts or documents are they which existence the Applicants knew after the date of the judgment, or which could not be used during the proceeding.

Article 11. The reconsideration order shall be addressed to the Commissioner which gave the leading vote for the decision, upon petition which shall contain:

I - the names and qualification of the petitioners;

II - the new fact(s) or document(s);

III - the demand for review.

Article 12. The right to request the reconsideration will be performed:

I - within 60 days after the publication of the decision, in case of acts or agreements not yet consummated;

II - within the period established for the termination of the act or the period for response to the proposed approval conditions.

Article 13. The Report Commissioner of the reconsideration will refuse, in a preliminary way, the petition, upon approval of the Council, when:

I - submitted after the expiration of the time presentation;

II - non fulfillment of any of the conditions set forth in Article 11 hereof;

III - evidently unfounded petition.

Article 14. Conceded the processing of the petition, upon approval of the Council, the period granted to the applicants shall be interrupted for the enforcement of the decision, restarting its counting from the publication of the decision which judge the reconsideration request.

### CHAPTER III FINAL PROVISIONS

Art.15. In cases which the acts or contracts regulated in the Chapter VII of the Law 8.884 of June 11, 1994 involve, for its analysis and/or instruction, the participation of regulatory agencies, procedures developed jointly with each organ will be used.

Art. 16. The dispositions in opposite are revoked, and, especially, the Resolution no. 05 of August 28, 1996.

Art.17. This resolution shall take effect in 30 (thirty) days after its publication at the Official Daily of the Union.

## EXHIBIT I

### PART I — THE APPLICANTS

- I.1. Name according to by-laws, name of the business organizations, name of legal representative, CGC (IRS Registry Number) and State Inscription Number.
- I.2. Main Line of Business of the Applicant (follow list of Exhibit V).
- I.3. Head office address, telephone and fax numbers and e-mail address.
- I.4. Name of the Shareholders or Quotaholders including their respective interests the Stock Capital describing the nature of the interest (obligatory for interests over 5%).
- I.5 Group of Companies to which it belongs.
- I.6. Origin nationality of the Group.
- I.7. Main line of Business of the Group (follow list of Exhibit V).
- I.8. List of all companies directly or indirectly components of the group, with activities in Brazil and Mercosur, as well as the companies of the group in which at least one of them holds an interest over than 5%, with activities in Brazil and Mercosur.
- I.9. Turnover, in the last financial year, of the Applicants, of the whole companies of the group in Brazil, in Mercosur and in the World.
- I.10. List of acquisitions, mergers, join-ventures and conjunct constitution of new companies executed by the group in Brazil and Mercosur in the last 3 years.

### PART II — THE APPLIED ACT

- II.1. Summary description of the transaction, including its nature (acquisition, merger, constitution of new company, contract, association or joint venture).
- II.2. Sector of activities where the transaction applied occurred. (follow list of Exhibit V).
- II.3. Describe whether the transaction results from an overseas transaction performed between companies/group of companies (global transaction with consequences in Brazil)
- II.4. List of the assets involved and their location.
- II.5. Transaction date and value.
- II.6. In the transactions involving alterations on the control of stock capital, present table containing the structure of the stock capital before and after the execution of the transaction.
- II.7. State decisive reasons for the execution of the transaction applied.

### PART III — DOCUMENTS

III.1 Copies of the documents of execution of the transaction applied. In case of prior application, present all documents available which demonstrate the conditions of the transaction applied.

III.2. Copies of the last annual report prepared for the shareholders or quotaholders.

III.3. Any complementary or additional contracts entered by the parties.

III.4. List of members of direction of the group that, at the same time are members of direction of any other company in the same line of business of the Applicants.

III.5. Shareholders, quotaholders and/or any others agreements including rules related to the administration.

### PART IV — LINE OF BUSINESS

IV.1. List of the line of products/services offered by each of the Applicants in Brasil and in Mercosur.

IV.2. List of the line of products/services offered by the other companies which belong to the same Groups of the Applicants in Brazil and in Mercosur.

IV.3. Identify the products/services where there is horizontal or vertical relations between the Groups of the Applicants.

### PART V — RELEVANT MARKETS

V.1. Estimate of the relevant market(s) identified in terms of value (R\$) and volume of sales in the last year.

V.2. Absolute and percentage value and volume of sales of each Applicant, in each relevant market, in the last year.

V.3. Estimate of the Market Share of the main competitors (over than 5%) in value (R\$), in the last year. If not possible, present an estimate in volume. Indicate address, phone and fax number of each of the competitors, besides the methodology and source used in the estimate.

### PART VI — GENERAL CONDITIONS OF THE RELEVANT MARKETS

VI.1. The 5 largest independent customers and suppliers in the relevant markets of each applicant. (Indicate name, address, phone and fax number and e-mail of the contact).

VI.2. TEC Code and the respective aliquot of importing tax (%). Include the foreseen alterations on the aliquot.

VI.3. Estimate the share of independent imports in the national market.

VI.4. Identification of the factors with positive and negative influence on the entry in the relevant markets.

## PART VII — FINAL INFORMATION

VII.1. Additional information considered relevant by the companies.

VII.2. Inform the other jurisdictions in which the transaction was notified.

VII.3. Name, address, phone and fax numbers, e-mail of the legal representative of the company charged to provide information regarding the application. In case of application through Attorney, present the same information with the Power of Attorney.

## EXHIBIT II

### PART I — THE APPLICANTS

I.1. Location of the business sites (industrial/commercial).

I.2. Number of employees of the Applicants of all the companies of the Group in Brazil and of the Group in the world.

### PART II — THE APPLIED TRANSACTION

II.1. Transaction way of payment.

II.2. Rules for definitions of indications of directors of the Applicants, indicating the names and the share of the control capital which it represents. Present the documents where such rules are established.

II.3. State whether there was previous transaction's offer to the market and its results.

### PART III — DOCUMENTS

III.1. Copies of analyses, reports and market studies presented or elaborated for the Administration, the Shareholders Meeting or other entity, internal or external, concerned to the applied transaction.

III.2. Copies of the complete financial reports of the preceding three years. In case the Company is not legally required to make such reports, present most recent copies of the Corporate Income Tax reports.

### PART IV — LINE OF BUSINESS

IV.1. Describe the composition of the gross turnover of the Group in Brazil and in Mercosul, by each line of products/services.

### PART V — RELEVANT MARKETS

V.1. Describe summarily the productive process regarding to each relevant product.

V.2. Installed capacity of each Applicant in each relevant market, in the last three years.

V.3. Estimate the market share of the main competitors (over than 5%), in the last three years, with base in the value of the sales. If not possible, present an estimate in volume. Indicate the information sources and the methodologies used in the estimates clearly. Indicate name, telephone number, fax number, address of the e-mail, besides the name and the occupation of the employee of the commercial area of the mentioned competitors.

V.4. Estimate the number of companies with market share under 5% of the market.

V.5. Total value and volume of imports of relevant products in the last three years.

V.6. Identify, from the total imports, those realized, direct or indirectly, by the Applicants or by companies of the group of the Applicants.

V.7. Other institutional obstacles to importation (technical barriers, antidumping rights, compensatory rights, derived restrictions resulting of the application of the Safeguards Code, previous approval, etc.)

V.8. Average landing costs of similar imported product. Discriminate its components (freight, insurance, importing tax, port expenses, etc.).

## PART VI — GENERAL CONDITIONS OF THE RELEVANT MARKETS

### OFFER STRUCTURE:

VI.1. List the 10 (ten) largest independent suppliers of each Applicant, indicating the respective material acquired. Provide name, telephone number, fax number, address of the e-mail, besides the name and occupation of the employee of the commercial area of the mentioned competitors.

VI.2. Estimate the installed capacity and the degree of idleness of the industry as a whole, in each relevant market.

VI.3. Main characteristics of distribution in the relevant market, estimating the relative shares of the direct and indirect sales.

VI.4. Describe, if there is, the post sale services rendered in the relevant markets. Evaluate and explain its binding degree with the sales.

VI.5. Perspectives of the relevant market in terms of growth of sales, evolution of the production capacity, technological development, relation between domestic and international prices, and other relevant factors.

### DEMAND STRUCTURE

VI.6. The 10 (ten) larger customers of each Applicant in the relevant markets, the value of sales for each one of them and the respective participation in the total of the sales of each Applicant in these markets. Indicate, for each client, name, telephone number and fax number of the employee of the purchase area. Present the same information for 5 (five) customers, deemed as medium size, by the company, and 5 (five) small size customers.

VI.7. Identify the degree of the concentration of the customers (if the sales are concentrated in few customers or many). Shares of the great, medium and small customers' in the total of the sales of each Applicant and estimate number of customers for size band.

Entry Conditions

VI.8. List of companies which entered in each relevant market in the last five years. Name, telephone and fax numbers.

VI.9. Identify the companies or group of companies that could enter in the market. State the reasons for such conclusion.

VI.10. Size of the smallest plant capable to compete efficiently in the market (minimal efficient scale). Investment value and minimum time required for the installation.

VI.11. Evaluate the importance, in the entrance cost, of the customer preferences in terms of fidelity to the mark, product differentiation and presentation of a complete range of products. In case these aspects are determining, present the best available estimate of that cost and of the involved time.

VI.12. Access conditions to technology, material, specialized personal, distribution structure and other relevant elements for the entrance.

VI.13. Existence of patents or institutional barriers.

## VII. EFFICIENCIES

VII.1. List, quantitative and qualitatively, the efficiencies resulting from the transaction applied and which could not be achieved by other means.

## VIII. FINAL INFORMATION

VIII.1. Additional information which the companies find of relevant considerations.

VIII.2. Date, name and signature of the responsible for the information.

## EXHIBIT III

1. Identification:

1.1. Proceeding #:

2. Report:



2.1. Transaction Description:

2.2. Competition Standards of the Relevant Market:

3. Others

4. Way of Treatment:

3.1. Declaration:

In my opinion and according to my Inform (Of./CADE/# ) dated , the act (or contract) # (.....) does not show indications that could characterise damage to competition, being unnecessary any complementary instruction procedure.

Therefore, I declare, for its due means, that the act in reference shall be treated according to the Article 8° of Resolution # 15/98, as per the paragraph 7° of Article 54 of Law # 8884/94, observing both the provisioned on paragraphs 6° and 8° of the same Article of that Law and the Article 9° of this Resolution.

4. Date:

Brasília, (date)

4. Reporting Commissioner:

\_\_\_\_\_  
Commissioner (signature)

EXHIBIT IV

1. Inform.

In execution to the article 5° of the Resolution # 15/98, it is informed that the Proceeding #. (..) /(..), which has as Applicants the companies (..), is being analyzed in this Administrative Council for Economic Defense — CADE, having been designated as Reporting Commissioner Mr./Mrs. (..).

2. Manifestation Request

Considering the regimental disposition above mentioned and the usefulness of the information rendered by the customers, competitors and suppliers about the transaction and its effects on the market, it is requested, in the period of 15 days and respected, if requested, the secret of such information in the terms of the article 10 of the CADE's Internal Rules, the following information:

CUSTOMERS

2.1. If the transaction causes negative effects on the market, including, but not limited to, the possible elevation of the price of the product [X] sold by those companies, answer:

2.1.1. Would its substitution be possible for another type of product?

2.1.1.1. If affirmative, indicate the current level of prices of the product acquired by that company (by each supplier) and the level of prices that would make possible the change for the substitute product (present such prices at the same basis, allowing the comparison). Indicate, also, which will be this (these) substitute product(s) and its supplier(s), if possible, including the name, telephone and fax numbers, as well as the necessary time for the complete substitution.

2.2. Would the change of the current suppliers be possible for others located in more distant areas of the country or in another country?

2.2.1. If affirmative, indicate the level of prices that, if performed by the current suppliers, would make possible that change. Indicate the probable substitute suppliers, its locations (if possible, including the name, telephone and fax numbers) and the necessary time for the change (immediately, one month, one year, etc.). Finally, indicate the prices FOB of the new suppliers and the increments in the total cost of acquisition resulting from the differences of freight expenses, insurance, taxes, etc.

2.2.2. If negative, list the aspects that make unfeasible the substitution of the current suppliers.

2.3. Evaluate the possible positive and/or negative effects resulting from that transaction on the market. Consider, if applicable, its effects on the level of prices, introduction of new products, technological development, improvement of the product quality, new investments, costs reduction and other aspects deemed important.

## COMPETITORS

2.4. Provide an evaluation of the possible positive and/or negative effects resulting from that transaction on the competition in the market(s) of the products of that company. Also evaluate, if applicable, the effects on the level of prices, introduction of new products, technological development, improvement on the quality of the product, new investments, reduction of costs and other aspects deemed important.

## SUPPLIERS

2.5. Evaluate the possible positive and/or negative effects resulting from the transaction on the materials markets of the companies which compose that market. Consider, if applicable, the impacts on the materials prices, competitive conditions, business conditions and other aspects deemed important.

3. Send to:

Mr. (name of the Report Commissioner of the proceeding).

Conselho Administrativo de Defesa Econômica — CADE, Esplanada dos Ministérios, Ministério da Justiça, Anexo II, 2º andar. CEP 70064-900 - Brasília - DF, Brazil, name of the Report Commissioner of the proceeding.

## EXHIBIT V

## 1 DEFINITIONS

### 1.1. LEGAL REPRESENTATIVE

In the terms of the clauses VI, VII and VIII of the article 12 of the Civil Process Brazilian Code, are the persons with legal qualification to represent the Applicants in a Court, being the company legally constituted or not (for example, associations, joint ventures, etc), foreign or national legal entity.

### 1.2. GROUP OF COMPANIES

Set of companies subject to a common control.

### 1.3. CONTROL

Power to command, direct or indirectly, internal or external, in fact or legally, individually or by agreement, the social activities and/or the operation of the company.

### 1.4. HORIZONTAL RELATIONS

It happens a horizontal relation when two or more companies operate in a same market as sellers of similar products (read: substitutes) or when two or more companies operate in a same market as buyers.

### 1.5. VERTICAL RELATIONS

It happens a vertical relation when a company operates as seller in the material market of other company, even if there is not a business relation among them.

### 1.6. RELEVANT MARKETS

#### 1.6.1. PRODUCT(S) RELEVANT(S) MARKET(S)

A product relevant market includes all the products/services considered substitutable among themselves by the consumer due to its characteristics, prices and utilization. A relevant market of the product eventually could be composed by a certain number of products/services that present physical, techniques or business characteristics that recommend the grouping.

#### 1.6.2 GEOGRAPHIC(S) RELEVANT(S) MARKET(S).

A geographic relevant market includes the area in which the companies offer and seek products/services in sufficiently homogeneous conditions of competition, regarding the prices, consumers' preferences, products/services characteristics. The definition of a geographic relevant market also demands the identification of the obstacles to the entrance of the products offered by companies placed out of that area. The companies capable to begin the offer of the products/services in the area considered after a small, but substantial elevation of the practiced prices, are part of the geographic relevant market. In the same way, are part of a geographic relevant market, in a general way, all companies considered by the offers and plaintiffs in the negotiations seeking the fixation of the prices and other business conditions in the considered area.

### 1.7. CUSTOMERS AND INDEPENDENT SUPPLIERS.

Customers and independent suppliers are those companies which do not participate in none of the groups of the Applicants.

### 1.8. INDEPENDENT IMPORTATION.

Independent importation is that performed by any company that does not belong to none of the groups of the Applicants.

### 1.9. EFFICIENCIES.

Efficiencies means the reductions of costs of any nature, quantitatively esteemed and intrinsic to the transaction type related, that could not just be obtained by means of internal effort.

### 1.10. ACTIVITY SECTORS

#### 1 MINERAL EXTRACTION

- 01 Precious Minerals
- 02 No-ferrous Minerals
- 03 Ferrous Minerals
- 04 Petroleum and Natural Gas
- 05 Coal and other Mineral Fuels
- 06 Calcareous
- 07 Fertilizers Minerals
- 08 Salt
- 09 Search, Prospecting and other Services
- 10 Stones and Other No-metallic Minerals
- 99 Several

#### 2 AGRICULTURE

- 01 Agricultural Cooperatives
- 02 Search and Agricultural Development
- 03 Grains
- 04 Coffee
- 05 Soy
- 06 Cotton
- 07 Orange
- 08 Fruits
- 09 Seeds and Scions
- 10 Integrated plants: Cane-sugar-alcohol
- 99 Several

#### 3 CATTLE BREEDING AND ANIMAL PRODUCTION

- 01 Cattle for Slaughter and Milk
- 02 Bovine Cold-Storage Rooms
- 03 Milk Cattle
- 04 Milk Cooperatives
- 05 Swine
- 06 Fowls and Eggs
- 07 Swine and Fowls Cold-Storage Rooms
- 08 Rations
- 09 Fishing
- 99 Several

#### 4 WOOD INDUSTRY

- 01 Extraction
- 02 Reforestation
- 03 Sawmills
- 04 Agglomerates and Pressed
- 05 Laminate and Veneer
- 06 Wood for Construction
- 07 Wood Manufacture
- 99 Several
- 5 FURNITURE INDUSTRY
  - 01 Furniture Predominantly of Wood
  - 02 Furniture Predominantly of Metal
  - 99 Several
- 6 PAPER AND CELLULOSE INDUSTRIES
  - 01 Paste and Cellulose
  - 02 Paper
  - 03 Paper Manufacture
  - 99 Several
- 7 ALIMENTARY INDUSTRY
  - 01 Milky
  - 02 Mills
  - 03 Pasta and Breeds
  - 04 Cereals
  - 05 Sweet and Cookies
  - 06 Ice Creams
  - 07 Prepared and Frozen
  - 08 Several Condiments
  - 09 Several Preserves
  - 10 Torrefaction and Soluble Coffee
  - 11 Several Smoke-dried
  - 12 Vegetable oils
  - 99 Several
- 8 INDUSTRY OF DRINKS
  - 01 Wine
  - 02 Distilled
  - 03 Beer
  - 04 Soft Drinks
  - 05 Juices
  - 06 Waters
  - 99 Several
- 9 FUME
  - 01 Cigarettes
  - 99 Several
- 10 TEXTILE INDUSTRY AND LEATHER PRODUCTS
  - 01 Spinning
  - 02 Weaving
  - 03 Lines
  - 04 Bed, Table and Bathing
  - 05 Clothes
  - 06 Underwear and Bathing suits

- 07 Several makings
- 08 Laces and Embroideries
- 09 Accessories
- 10 Rugs, Curtains and Awnings
- 11 Woolen Goods
- 12 Silk
- 13 Jute and Sisal
- 14 Printworks, Dye works and Finishing
- 15 Textile Several
- 16 Tanning
- 17 Footwear
- 18 Leather Manufacture
- 99 Several
- 11 COMMUNICATION AND ENTERTAINMENT
  - 01 Newspapers
  - 02 Magazines
  - 03 Books
  - 04 Graphic services
  - 05 Radio and Television
  - 06 Films, Videos and Records
  - 07 Movies and Theaters
  - 99 Several
- 12 CHEMICAL AND PETROCHEMICAL INDUSTRIES
  - 01 Refining of Petroleum
  - 02 Petrochemical Central
  - 03 Petrochemical Several
  - 04 Artificial and Synthetic Fibers
  - 05 Thermoplastics Resins
  - 06 Lubricants
  - 07 Asphalt
  - 08 Soda/Chlorine/Alkalis
  - 09 Industrial gases
  - 10 Coloring and Anilines
  - 11 Tincture/Varnish/Solvents
  - 12 Glues and Stickers
  - 13 Grease/Tallow/Candles
  - 14 Explosive
  - 15 Flavouring and Fertilizers
  - 16 Defensive
  - 17 Matches
  - 99 Several
- 13 PLASTICS AND RUBBERS INDUSTRIES
  - 01 Foam
  - 02 Packing
  - 03 Toys and Games
  - 04 Elastomers
  - 05 Rubber Manufacture
  - 06 Plastic Manufacture
  - 99 Several

- 14 PHARMACEUTICAL INDUSTRY AND HYGIENE PRODUCTS
  - 01 Pharmaceutical and Veterinary products
  - 02 Cleaning Products
  - 03 Personal Hygiene Products
  - 04 Cosmetics and Perfumery
  - 99 Several
- 15 INDUSTRY OF NO-METALLIC MINERALS PRODUCTS
  - 01 Cement and Whitewash
  - 02 Concretion
  - 03 Bricks and Roofing Tiles
  - 04 Ceramic and Porcelain
  - 05 Industrial porcelains
  - 06 Floors and Wall Tiles
  - 07 Sanitary Dishware
  - 08 Glass
  - 09 Crystals
  - 10 Abrasive
  - 11 Amianthus
  - 12 Refractory and Insulating Thermos
  - 13 Stones, Marbles and Granites
  - 99 Several
- 16 METALLURGIC INDUSTRY
  - 01 Precious metals
  - 02 Aluminum
  - 03 Copper
  - 04 Tin
  - 05 Other No-ferrous ones
  - 06 League-Iron
  - 07 Cast-Iron
  - 08 Melted of Iron
  - 09 Special steels
  - 10 Steels Semi-finishes and Plans
  - 11 Steels No-plans
  - 12 Laminate steels
  - 13 Melted of Steel
  - 14 Tubes of Steel
  - 15 Forged
  - 16 Structures
  - 17 Heavy Kettle
  - 18 Metal Manufacture
  - 19 Cutlery
  - 20 Tools
  - 21 Ironware
  - 22 Wiredrawing and Screens
  - 23 Printings
  - 24 Treatment of Metals
  - 25 Valves and Connections
  - 26 Solders
  - 27 Cables and Currents

- 99 Several
- 17 MECHANICAL INDUSTRY
  - 01 Tractors and Agricultural Implements
  - 02 Elevators
  - 03 Rolling Bridges, Cuts and Cranes
  - 04 Presses
  - 05 Tools Machines
  - 06 Textile Machines
  - 07 Machines for Wood
  - 08 Machines for Paper
  - 09 Machines for Victuals
  - 10 Machines and Heavy Equipment
  - 11 Weapons
  - 12 Bombs and Compressors
  - 99 Several
- 18 LIGHT MECHANICAL INDUSTRY
  - 01 Ovens and Stoves
  - 02 Refrigeration
  - 03 Mensuration Instruments
  - 04 Doctor-dental equipments
  - 05 Clocks
  - 06 Musical instruments
  - 07 Exhauster and Fans
  - 99 Several
- 19 ELECTRIC AND ELECTRONIC INDUSTRIES
  - 01 Electric Conduits
  - 02 Electric Components
  - 03 Electric Motors
  - 04 Controls
  - 05 Illumination
  - 06 Faucets, Showers and Heaters
  - 07 Typewriters and Calculators
  - 08 Household Electric Appliances
  - 09 Electronic components
  - 10 Sound and Image
  - 99 Several
- 20 COMPUTER INDUSTRY AND TELECOMMUNICATIONS
  - 01 Computers
  - 02 Peripheral
  - 03 Programs
  - 04 Consulting
  - 05 Industrial automation
  - 06 Copying Machines
  - 07 Central Phone
  - 08 Data Transmission
  - 99 Several
- 21 AUTOMOBILE AND TRANSPORT INDUSTRIES
  - 01 Assemblers
  - 02 Motors and Components



- 03 Electric material
- 04 Batteries
- 05 Transmission and Components
- 06 Brakes and Components
- 07 Shock absorbers and Springs
- 08 Tires
- 09 Wheels
- 10 Accessories
- 11 Motorcar Body
- 12 Shipyards
- 13 Airplanes and Components
- 14 Rail material
- 15 Bicycles and Motorcycles
- 99 Several
- 22 CIVIL CONSTRUCTION
  - 01 Contractors and Manufacturers
  - 02 Predial Reforms
  - 03 Industrial Assemblies
  - 04 Paving and Earthwork
  - 05 Soils and Foundations
  - 06 Heavy Construction
  - 07 Real Estate and Predial Administration
  - 08 Projects and Engineering
  - 09 Electric facilities, Hydraulics, etc
  - 99 Several
- 23 WHOLESALE TRADE
  - 01 Victuals and Drunk
  - 02 Cereals
  - 03 Products of Hygiene and Cleaning
  - 04 Pharmaceutical products
  - 05 Textiles and Makings
  - 06 Publications
  - 07 Paper Products
  - 08 Fuels
  - 09 Chemical Products
  - 10 Electric Material
  - 11 Material for Construction
  - 12 Steel Distributors
  - 13 Metallurgic Products
  - 14 Machines and Tools
  - 99 Several
- 24 RETAILER TRADE
  - 01 Supermarkets
  - 02 Department stores
  - 03 Household Electric Appliances
  - 04 Computer Science
  - 05 Textiles and Makings
  - 06 Footwear
  - 07 Pharmacies and Drugstores

- 08 Bookstores and Stationers
- 09 Jewels, Presents and Souvenirs
- 10 Liquefied Gas
- 11 Fuels
- 12 Material for Construction
- 13 Electric and Illumination Materials
- 14 Metallurgic Products
- 15 Machines and Tools
- 16 Ironworks
- 17 Chemical Products
- 18 Medical and Dental material
- 19 Furniture
- 20 Vehicles and Vehicles Pieces Dealers
- 99 Several
- 25 TRANSPORT SERVICES AND STORAGE
  - 01 Railways and Subway
  - 02 Urban bus
  - 03 State, National and International Bus
  - 04 Hydroways
  - 05 National and International Civil Aviation
  - 06 Port and Airport Services
  - 07 Perishable Load Transport
  - 08 No-perishable Load Transport
  - 09 Inflammable Transport
  - 10 Cars Renting
  - 11 Storage
  - 99 Several
- 26 ESSENTIAL AND INFRASTRUCTURE SERVICES
  - 01 Public cleaning
  - 02 Electric energy
  - 03 Gas
  - 04 Basic Sanitation - Water and Sewer
  - 05 Telecommunications
  - 99 Several
- 27 GENERAL SERVICES
  - 01 Hospitals
  - 02 Medical Services
  - 03 Hotels
  - 04 Travel Agencies
  - 05 Restaurants
  - 06 Safety
  - 99 Several
- 28 FINANCIAL SERVICES
  - 01 Private Commercial Banks
  - 02 State Commercial banks and Savings Banks
  - 03 Development Banks
  - 04 Investment Banks
  - 05 Credit Cards
  - 06 Values Brokers and Exchange

- 07 Dealers
- 99 Financial
- 29 INSURANCES AND WELFARE
  - 01 Health Insurance
  - 02 Several Insurance Companies
  - 03 Insurance Brokers
  - 99 Private Welfare

Brazilian antitrust laws  
**Resolution # 12**  
**of March 31<sup>st</sup>, 1998**

RESOLUTION # 12 OF MARCH 31ST, 1998  
(OFFICIAL GAZETTE OF THE FEDERAL EXECUTIVE, APRIL 23, 1998)

Approves the Internal Rules of the Administrative Council of Economic  
Defense — CADE

The Board of the Administrative Council of Economic Defense - CADE, exercising the powers bestowed thereon pursuant to article 7, XIX of Law 8884 of June 11, 1994, hereby RESOLVES as follows:

PART I  
Purpose and Structure

Article 1. - The Administrative Council of Economic Defense - CADE is a decision-making agency reporting to the Ministry of Justice and governed by Law No. 8884 of June 11, 1994, with main offices in the Federal District and jurisdiction throughout the Brazilian territory, and the purpose of which is to prevent and curb any practices in violation of economic policies.

Article 2. - The CADE Board shall be composed of the Chairman and six (6) Council members.

PART II  
Procedures

Section I  
CADE Operations

Article 3. Cases shall be registered or entered at the CADE clerk office on the same date of their receipt, and the term for respective judgment shall run as from such date.

Article 4. Cases under the CADE authority shall be distributed per type—Administrative Proceedings, Preliminary Investigation, Concentration Act, Inquiry, and Voluntary Appeal—each of which bearing a distinct case number.

Article 5. Cases shall be distributed by the Chairman, by drawing of lots, on an equitable basis, in public sessions held on Thursdays, at 10:00 a.m., and extraordinarily on Tuesdays, at 2:30 p.m.

Article 6. The CADE Board shall meet ordinarily on Wednesdays, in public sessions opening at 2:00 p.m. and expected to close at 6:00 p.m., from January 15th through December 19th, and extraordinarily at the call of the CADE Chairman or upon request from a majority of the CADE Board members.

Sole Paragraph. The CADE Board shall be in recess from December 20th through January 15th, during which the procedural terms shall be stayed.

Article 7. In the event of impairment or disqualification of:

I - the Reporting Member, the case shall be redistributed in the session thereafter, pursuant to article 5 hereof;

II - any other Board member, such impaired or disqualified member shall have no right to vote.

Article 8. In the events of sick leave, vacation or justified absence, the Council member who is the next in the line of vote shall replace the Reporting Member, exclusively for the adoption of any diligence that is indispensable to the case development.

## Section II Confidentiality

Article 9. CADE shall make the case records available to the respondents, claimants or inquirers, or their respective lawyers, for review on the CADE premises.

Paragraph 1. Third interested parties may be afforded access to the case records for review on the CADE premises, provided that a substantiated request to this effect is submitted to the Reporting Member, which request shall be attached to the respective records. Access to the documents and information identified as confidential pursuant to article 10 of these Rules is hereby prohibited.

Paragraph 2. In the cases for which no Reporting Member has been appointed, or on which a conclusive decision has already been issued by the CADE Board, the request set forth in paragraph 1 above shall be forwarded to the Chairman.

Paragraph 3. Certificates and copies of the proceedings shall be supplied to the respondents, claimants and inquirers, or their lawyers, as well as to third interested parties, duly authorized by the Reporting Member or, in the event of paragraph 2 above, by the Chairman, upon refund of the corresponding costs.

Paragraph 4. The Reporting Member or, in the event of paragraph 2 above, the Chairman, shall deny, through a circumstantiated order, any request for review of the case records, whenever there are sound reasons therefor.

Paragraph 5. No CADE official shall disclose any information contained on the case records, unless with the prior express consent of the Reporting Member or, in the cases set out in paragraph 2 above, the Chairman, on pain of liability for undue disclosure.

Article 10. To the extent required by law or in the public interest, the Reporting Member shall declare certain documents and information confidential, to be entered on separate records.

Paragraph 1. The respondent, claimant or inquirer, or the respective lawyers, shall place

a request for confidentiality to the Reporting Member, based on substantiated reasons therefor.

Paragraph 2. The request dealt with above shall specify the persons who may be given access to the confidential documents and information, coupled with a non-confidential summary of the data contained therein. Whenever this summary report cannot be released, the respondent, claimant or inquirer, or the respective lawyers, shall make written justification thereof.

Paragraph 3. The Reporting Member shall deny the request dealt with above, through a circumstantiated order, whenever there are sound reasons therefor; a Voluntary Appeal against this denial may be filed to the CADE Board within five (5) days after notice thereof, the respective confidentiality being assured throughout the appellate period.

Paragraph 4. If an appeal is filed, the confidentiality status shall be in full force and effect until judgment thereon is rendered by the CADE Board in a closed session.

Paragraph 5. The reserved nature of confidential information shall be warranted in every oral or written statement made by the Attorney General and CADE Board members.

Paragraph 6. The confidential information and documents dealt with in this Section II, supplied by the respondents, claimants or inquirers, or their respective lawyers, cannot be made available to third parties.

### Section III Evidentiary Procedures

Article 11. At any time throughout the evidentiary stage regarding any case distributed to him, the Reporting Member may require copies of documents or information from SDE, SEAE or other evidentiary agency, with a view to following up on the development of evidentiary procedures.

Article 12. Evidentiary hearings shall be open to the public and presided over by the Reporting Member; minutes of the respective hearings shall be attached to the records.

Paragraph 1. At the request of the Reporting Member, the Chairman may invite the respondent, claimant or inquirer, or the respective lawyers, to render clarifications to the CADE Board.

Paragraph 2. The Reporting Member may hold evidentiary hearings in closed session, whenever the evidence to the submitted thereat has a confidential nature.

Paragraph 3. Notice of evidentiary hearings shall be served by the Reporting Member on the respondents, claimants or inquirers, their legally appointed lawyers, as well as the Attorney General Office and CADE Board members, at least five (5) business days in advance.

Article 13. Every hearing instated by the Attorney General or CADE Board members to the respondents, claimants or inquirers, or their lawyers, shall be duly recorded, indicating the date, time and attendees thereof.

## Section IV Judgment

Article 14. On receipt of the case records, the Reporting Member shall make them promptly available to the Attorney General Office for its opinion thereon.

Paragraph 1. The period of twenty (20) days referred to in article 42 of Law 8884/94 shall start running as from receipt of the case records by the Attorney General Office.

Paragraph 2. Upon expiration of the period dealt with in the preceding paragraph, and if the supporting evidence is deemed satisfactory to the Reporting Member, he may enter the case at the judgment docket.

Paragraph 3. If the Attorney General Office has not rendered an opinion on the case within the period dealt with in paragraph 1 above, the Attorney General shall hand down such opinion orally at the judgment session, unless he deems such pronouncement insufficient; in this case, the Reporting Member shall be informed thereof in a timely manner.

Paragraph 4. Should the provisions of paragraph 3 above occur and to the extent deemed expressly indispensable for defense purposes, the respondent, claimant or inquirer, or their lawyers as well as interested third parties, may petition for a stay of judgment for review of the technical opinion handed down by the Attorney General Office.

Paragraph 5. The stay dealt with in the preceding paragraph for review of the oral opinion shall not exceed five (5) business days as from publication of the minutes of the judgment session.

Article 15. The Report shall be distributed to the CADE Board members, the Attorney General, and the respondents, claimants or inquirers, or their lawyers, at least five (5) business days prior to the judgment session, during which the reading of such Report shall be dispensed with.

Paragraph 1. With due regard for the provisions of article 10 hereof, the report shall contain a summary of the facts and events occurring in the case development.

Paragraph 2. Except for ex officio appeals in a Preliminary Investigation, the report shall be open to public scrutiny one (1) hour before instatement of the judgment session.

Article 16. At the judgment session, the Reporting Member shall make a summary statement of the material factual aspects contained in his previously distributed report; thereafter, the Attorney General and the respondent, or its lawyer, shall have fifteen (15) minutes to make their respective oral statements.

Article 17. The CADE Chairman shall take the vote of the Reporting Member, and then from the other Board members in decreasing order of seniority, and on equal conditions of age; the Chairman shall be the last to declare his vote.

Paragraph 1. The Reporting Member may order an adjournment of the judgment session, whereas the other Board members and the Chairman may ask for a review of the case,

which shall be returned on or before the second ordinary session thereafter.

Paragraph 2. If any Board member asks for a review of the case, the judgment session shall be reinstated after his vote upon return of the case, even if this may entail a change in the order of votes.

Paragraph 3. A request for review posed by one or more Board members shall not prevent the other qualified members from delivering their respective vote.

Paragraph 4. Until a final decision is declared by the Chairman, the Council members may change their respective votes.

Article 18. At the request of any CADE Board member or the Attorney General, and after casting of vote by the Reporting Member, the Chairman may declare the session open for oral discussions during a period of fifteen (15) minutes, whenever deemed required to clarify certain factual or legal aspects on which a learned decision of the Board members shall rely.

Paragraph 1. Only after the discussion period may be Chairman afford to any Board member the opportunity to bring forth objections or answers.

Paragraph 2. The Chairman shall order the closing of oral discussions and the reopening of votes.

Article 19. The Chairman shall declare the final decision handed down by CADE, to be reduced in writing by the Reporting Member.

Paragraph 1. If the Reporting Member has issued a dissenting opinion, the CADE member who has first rendered a concurring opinion shall be appointed to report on the CADE decision.

Paragraph 2. CADE decisions shall contain reference to the notes taken during the judgment session, which shall become an integral part thereof.

Paragraph 3. The CADE decision shall be signed by the Chairman and the Reporting Member, or the CADE member who has prepared it.

Paragraph 4. The CADE decision shall be published in the Official Gazette of the Federal Executive within fifteen (15) business days of publication thereof.

Article 20. Minutes of every Board session shall be submitted to the next session for approval.

## Section V Special Judgments

Article 21. The judgment on ex officio appeals in Preliminary Investigations shall be held in a closed session, at which only the Attorney General and the respondent or its lawyer shall attend.



Article 22. If the Attorney General Office's opinion is unfavorable to an ex officio appeal in Preliminary Investigations, the Reporting Member may order the shelving thereof, ad referendum of the CADE Board.

Paragraph 1. Every month, the decisions referred to in the main section of this article shall be taken to the CADE Board sessions by addressing only the case number and the names of the parties involved.

Paragraph 2. If there is any request for review of a case, the respondents, claimants or inquirers, or their respective lawyers, as well as the Attorney General, shall be entitled to take the floor for a period not exceeding fifteen (15) minutes, during the session in which the case reenters the CADE Board docket for judgment purposes.

Paragraph 3. At the end of the oral statements dealt with in paragraph 2 of this article, the procedural order of votes starting by the Reporting Member shall be resumed.

### PART III Enforcement

Article 23. Enforcement of the CADE decisions shall be inspected by an agency reporting directly to the CADE Chairmanship, to which the cases shall be forwarded as soon as a conclusive decision is handed down by the CADE Board.

Paragraph 1. In the event of imposition of a fine or noncompliance with a decision, the CADE Board, through its Chairman, shall order that the Attorney General Office take the action required for judicial enforcement thereof.

Paragraph 2. Any incident during the enforcement of the CADE decision shall be submitted to the CADE Board, by its Chairman, for review.

Article 24. The Reporting Member may apply to the Chairman for assistance of the CADE administrative bodies in supervising compliance with the cease-and-desist orders ("consent decrees") and performance commitments.

Article 25. CADE shall check compliance with any decision for the performance of actions intended to eliminate the damaging effects of any act or practice on economic policies.

### PART IV General Provisions

Article 26. The CADE Board shall resolve on the rules and procedures related to the items listed below, among others:

- I - the definition of supplementary rules on the CADE operations and judgment docket;
- II - inquiries to CADE on matters under its authority;
- III - instatement of administrative proceedings;

IV - collection of the fines dealt with in Law 8884/94;

V - the rules of ethical conduct to be followed by the CADE officials;

VI - the acts dealt with in article 54 of Law 8884/94;

VII - the voluntary appeals against preventive measures taken by the Reporting Member or by SDE; and

VIII - the CADE participation in the judicial proceedings set forth in Law 8884/94.

Article 27. The Chairman, the Council members, and the Attorney General shall jointly render to the CADE Board an annual account of their activities, which shall contemplate, respectively:

I - the activities performed in representation of CADE as well as for enforcement of its decisions;

II - case reporting activities; and

III - legal counsel as well as administrative actions taken in the administrative and judicial spheres.

Article 28. Any proposed amendment to the CADE Internal Rules shall be submitted by a Board member in an ordinary session, and shall remain open for suggestions in three consecutive ordinary sessions thereafter, whereupon the matter shall be discussed on and put to a vote.

Article 29. Any amendment to these Rules shall be conditional on the favorable vote of at least five (5) Council members in an ordinary session.

Article 30. CADE publications are as follows:

I - Judgment Docket;

II - Minutes of Board and distribution sessions, summary dockets, decisions, and orders;

III - CADE Newsletter;

IV - Annual Report;

V - CADE: Texts for Discussion; and

VI - Minutes of the Meetings of the Permanent Forum on Competition Issues.

Article 31. The cases not dealt with herein, as well as any doubts arising out of these Rules, shall be settled by the Chairman, after hearing the Board members.

Article 32. These Rules shall come into force on the date of their publication; all provisions to the contrary are hereby repealed.

GESNER OLIVEIRA  
President of CADE