

COMPETITION ECONOMICS HANDBOOK 2020

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Cornerstone Research

Copenhagen Economics

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E.CA Economics



Competition Economics Handbook 2020

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Global Competition Review is delighted to publish this thirteenth annual edition of the *Competition Economics Handbook*.

With economics at the centre of competition law, this handbook identifies the issues that antitrust economists are tackling today. The book's comprehensive format provides contact details for competition agencies' economists in over 70 jurisdictions. A Q&A format illustrates how the advisers are organised and their input into the regulation and enforcement process.

Much of the information has been provided by the agencies themselves and we are, as ever, grateful for all their cooperation.

The *Competition Economics Handbook 2020* is one of five special reports included in a *Global Competition Review* subscription each year, alongside four issues of the magazine, a survey on a four-year rotation (*Corporate Counsel* published in January 2019 and *40 Under 40*, to be published in January 2020) and two signature surveys, *Rating Enforcement* and *The GCR 100*.

We would like to thank all those who have worked on the research and production of this publication.

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Overview

The Brazilian Competition Defense System (SBDC) is comprised of two agencies: the Administrative Council for Economic Defense (CADE), in charge of antitrust enforcement and competition advocacy, and the Secretariat of Competition Advocacy and Competitiveness (SEAE), which shares with CADE the role of advocacy initiatives.

CADE is the Brazilian competition authority responsible for the investigation of violations against the economic order and for the analysis of mergers. Its competences are stated in Law 12,529/2011 that came into force in May 2012. The authority is currently divided into three main bodies: the General Superintendence, the Administrative Tribunal and the Department of Economic Studies. The former is headed by a general superintendent with the support of two deputies, one of them responsible for merger cases and unilateral conduct and the other one responsible for cartel investigations. This body may approve mergers that do not raise competitive concerns and also give its non-binding opinion to CADE's Tribunal on those cases that have the potential to harm competition. Further, the General Superintendence also conducts investigations associated with anticompetitive practices.

The Administrative Tribunal, in turn, is composed of a president and six commissioners in charge of:

- judging administrative proceedings of anticompetitive conducts;
- judging merger cases in which the General Superintendence has imposed remedies or the merger disapproval;
- claiming and judging merger cases approved by the General Superintendence without conditions;
- analysing and judging cases in which there was a third-party appeal against the General Superintendence's decision;
- approving cease and desist agreements;
- appreciating preventive measures adopted by the reporting commissioner or by the General Superintendence; and
- elaborating and approving CADE's internal regulation which organises the competition authority's functioning.

Finally, the Department of Economic Studies is headed by a chief economist and a deputy chief economist and is also an important body within CADE's structure, being responsible for:

- advising the General Superintendence and the Administrative Tribunal on the instructions and economic analysis of administrative proceedings related to mergers and anticompetitive practices;
- undertaking economic studies to ensure that CADE's decisions are taken on the basis of the most advanced economic techniques;
- conducting sectorial studies in order to keep CADE updated on the evolution of the competitive dynamics of certain markets;

- proposing and elaborating guides for different proceedings analysed by the Brazilian competition authority; and
- publishing some of its own technical studies related to competition defence.

Questions and answers

How many economists do you employ?

There are 29 employees on CADE's staff that hold a degree or postgraduate degree in economics.

Do you have a separate economics unit?

Yes. The Department of Economic Studies (DEE) was created in 2009 with the purpose of advising the Presidency and the Plenary of CADE. With the enactment of Law 12,529/2011, the DEE was formalised as part of CADE's structure, along with its Administrative Tribunal and General Superintendence. As mentioned before, both the Administrative Tribunal and the General Superintendence rely on the DEE's advice, to ensure the accuracy of decisions rendered by the authority with economic principles and to keep them updated with the most recent economic techniques applied in competition analysis. The DEE also has a role on competition advocacy within the authority, as it conducts market studies on competition issues in different economic sectors and promotes seminars to the internal and external public regarding competition policy and commercial defence.

Do you have a chief economist?

Dr Guilherme Mendes Resende is CADE's chief economist. Dr Resende has been the head of the DEE since June 2016 and he has a PhD in regional economics from the London School of Economics and Political Science. He also holds a master's degree in economics from the Federal University of Minas Gerais and a bachelor's degree in economics, law and business administration. Since 2004, Dr Guilherme is a researcher from the Institute for Applied Economic Research (IPEA) and has extensive experience on competition policy, policy evaluation and regional economics.

The deputy chief economist is Patrícia Alessandra Morita Sakowski. Ms Sakowski is the deputy head of the DEE since September 2016 and holds a master's degree in economics from Hitotsubashi University and a bachelor's degree in economics from the University of São Paulo. She is also a researcher from the Institute for Applied Economic Research (IPEA) and has experience on competition policy, policy evaluation and complex systems.

To whom does the chief economist report?

The chief economist reports to CADE's president and to the general superintendent.

Does the chief economist have the power to hire his or her own staff?

The staff at the DEE is mainly composed of Brazilian civil servants recruited through public tenders (ie, they have to take public exams in order to join the public service). The chief and deputy chief economists can recruit these civil servants from the Public Administration to join the DEE's team. The department also has some positions of trust to be filled in either by civil servants or non-civil servants and some consultants hired to specific and specialised projects through a project of technical cooperation with the United Nations Development Program (UNDP).

How many economists have a PhD in industrial economics?

CADE has two economists who hold a PhD in economics.

Does the agency include a specialist economist on every case team? If not, why not?

Not as a rule. In general, a specialist economist from the DEE is appointed to assist the case team if required by the General Superintendence or the Administrative Tribunal, depending on the complexity level of the case and data analysed. Moreover, the department provides complex and sophisticated analysis by its own initiative, such as market studies, opinions and consultancy papers, which expedites the case team analyses. In addition, there are other economists integrating CADE's staff that are not directly linked to the DEE.

Most of the studies elaborated by the DEE are available at CADE's website: www.cade.gov.br.

Is the economics unit a 'second pair of eyes' during cases – is it one of the agency's checks and balances? If not, why not?

In some ways. CADE's DEE gives assistance on many economic issues and therefore might influence the investigation or case strategy, as well as preliminary conclusions. On the other hand, the DEE is not an

autonomous body within CADE. According to article 18 of Law No 12,529/2011, the chief economist will be appointed jointly by the general superintendent and the president of the Tribunal, among Brazilians of unblemished reputation and outstanding knowledge in economics.

How much economics work is outsourced? What type of work is outsourced?

The outsourcing of the DEE's activities happens in specific occasions. First, CADE has general and specific agreements with other institutions. For instance, CADE established a technical cooperation agreement with the Institute of Applied Economic Research, aiming at developing joint initiatives, such as studies and reports about mergers, unilateral conducts, ex post evaluations and mechanisms for the detection and identification of bid-rigging.

Moreover, the DEE hires consultants to work in specific and specialised projects, usually economists, but also statisticians and IT specialists, through a project of technical cooperation with the United Nations Development Program (UNDP). These consultants work on a range of competition issues, with the coordination and oversight of the DEE staff, who are responsible for selecting the themes and preparing the tenders. The projects relate to several topics such as ex post evaluation of cartel damages, remedies guidelines, competition impacts of antidumping measures, ex post evaluation of merger decisions, theoretical and empirical literature review of industrial organisation and competition economics, elaboration of competition indicators and statistics, application of machine learning and artificial intelligence in competition policy, among others. Usually, consultants are university professors, PhDs or PhD students.

