

The Importance of Communications: Enhancing Competition Advocacy in Brazil¹

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RESUMO

O Brasil tem uma longa história de intervenção do Estado na Economia. A cultura que predominou no país até recentemente era baseada no controle de preços e possuía um viés anti-mercado. Nesse tipo de ambiente não havia lugar para a política de concorrência.

Após apenas oito anos de política de concorrência – a Lei nº 8.884 foi editada em 1994 – ainda é muito cedo para afirmar que a concorrência é um valor para a sociedade brasileira. Nesse contexto, o posicionamento estratégico no campo das comunicações é percebido pelas autoridades antitrustes brasileiras como um importante aliado. Ele tem desempenhado papel de destaque no fortalecimento da “cultura da concorrência” no país e, como consequência, no adequado cumprimento das provisões da Lei de Defesa da Concorrência.

ABSTRACT

Brazil has a long history of state intervention in the economy. The culture that predominated within the country until recently was one found on price control and anti-market approach. In such an environment there was no room for competition policy.

After only eight years of competition policy, it is too early to say that competition is a value of the Brazilian society. The communications strategic positioning is perceived by Brazilian antitrust authorities as an important ally. In this context, it has been playing a major role in strengthening the “competition culture” in the country and, as a consequence, in increasing the level of compliance with the competition law provisions.

1. INSTITUTIONAL AND HISTORICAL BACKGROUND

The Brazilian System for Competition Defense is composed by the Secretariat for Economic Monitoring (SEAE) of the Ministry of Finance, the Secretariat of Economic Law (SDE) of the Ministry of Justice and the Administrative Council for Economic Defense (CADE), an independent body administratively linked to the Ministry of Justice.

SEAE and SDE have analytical and investigative functions. Both are responsible for issuing non-binding opinions on mergers and anti-competitive practices cases. CADE is an administrative tribunal and its decisions can only be reviewed by the courts.

Brazil has had an antitrust law since 1962. However, like other developing countries, this law remained unused for many years due to strong state intervention in the economy, high inflation rates, protection of national industries and price control mechanisms. This implied such an environment in which there was no room for competition policy.

In 1994, a new competition law (Law no. 8884) substituted the previous statute in a context of broad economic reforms, such as trade liberalization, regulatory reform, and macroeconomic stabilization. With the enactment of that competition diploma, Brazil moved definitively from price control to competition policy.

In the present days, the diffusion of competition values throughout the society and the repression against anticompetitive practices are the main challenges faced by the Brazilian antitrust authorities. Since 1999, important initiatives taken by them were related to anti-cartel enforcement and to competition advocacy. Efforts were also made to increase efficiency and to improve transparency of economic analysis, as well as to reduce budgetary limits.

Currently, a working group is preparing a new structure for the Brazilian System for Competition Defense, at the request of President Fernando Henrique Cardoso. The proposed draft-bill gathers under a National Competition Agency the two investigative and advisory institutions (SEAE and SDE), and it will be organized as an independent body linked either the Ministry of Finance or to the Ministry of Justice. CADE will keep its administrative and financial independence and have the final administrative authority on the subject.

At the same time, an amendment of the Competition Law is being prepared, not only to adapt it to the new conformation of the system, but also making it more agile and efficient with respect to investigation procedures and mergers analysis.

The draft-bills are currently being finished to be sent to Congress. The preliminary project was submitted to public consultation and has received many suggestions during the two years of its preparation.

2. ENHANCING ADVOCACY: THE IMPORTANCE OF COMMUNICATIONS

As it was previously mentioned, in 1994 a new competition law was enacted and, with that, the seed for a new competition culture was planted.

The price control system that lasted in Brazil for so many years was responsible for the strong belief shared by Brazilian society that controlled prices were fair prices and, thus, better than those that result from a competitive environment.

This relative unawareness of the competition “question” is also true regarding other government bodies and branches (the Legislative and the Judiciary) and regarding the business community. Apparently, so many years of state interventionism and price control makes it difficult for society to rely upon the free market – competition – as the best means to allocate resources. Moreover, the very notion of the benefits of competition and the existence of a competition law and of competition authorities to enforce it is not widespread.

A great deal of mobilization was and still is necessary to change these views and substantial competition advocacy work is necessary to strengthen the “competition culture” among consumers, business people, government officials, congressmen and judges. To accomplish this task and, as a consequence, to increase the level of compliance with the competition law provisions, communications play a key role.

During the past three years, SEAE and the other agencies of the SBDC have concentrated efforts in disseminating the value of competition within the government and throughout the Brazilian civil society. The competition advocacy role performed by the SBDC has encompassed a variety of initiatives that ranged from an intensive campaign in the media, to participation in task forces with different governmental bodies.

SEAE has a communications advisor itself and also counts on the Minister of Finance’s communications staff. The SBDC and SEAE, in particular, does not have a formal strategic communications plan but the System has some policies for communications and media relations such as a policy toward transparency and information dissemination through the internet, which has been adopted by SEAE since 1999. In (<http://www.fazenda.gov.br/seae/>) one can easily access the most important information on competition policy in Brazil and around the world (through links to worldwide competition authorities). SEAE’s web site also has the Brazilian antitrust legislation, SEAE and SDE’s common merger guidelines, the press releases, articles, papers and annual reports on the Secretariat’s activities.

The three agencies have taken on the routine of issuing press releases and giving press conferences to announce relevant accomplishments and important decisions on the most relevant cases. Here, SEAE pays close attention to the press releases language in order to make the messages simple, objective and direct, leaving the sophisticated technical approach for the working papers. This practice has increased the knowledge of journalists on the subject and, as a consequence, the information that is passed on to the general public is significantly more

accurate. In addition, the heads of antitrust authorities of the SBDC write occasional articles for the largest newspapers and are frequently quoted by journalists in their news pieces.

It is almost impossible to measure the effectiveness of the communications objectively. One way to assess it might be by the number of media insertions. A study on the number of articles in the print media reporting antitrust enforcement by SEAE alone indicates that only in the first four months of 2002 there were already more pieces in the press about the agency than during the entire year of 2001: 66 articles were published in 2001, against 79 from January through June 2002. Although there are not yet numbers for the SBDC as a whole, it seems fair to assume that it follows the same trend.

The initiative of the agencies in promoting antitrust in the media has been followed by publications by attorneys and former competition officials, including two former commissioners from CADE that have weekly columns in important newspapers. The actual growth in importance of this topic is also reflected on the inclusion of antitrust on undergraduate courses of economics; on the emergence of several graduate courses on antitrust; and on the proliferation of thesis and graduate papers on the subject.

In order to encourage staff participation and also to advocate the competition “cause”, SEAE started, in 1999, the publication of a Working Papers Series, through which the staff is experimenting the opportunity to seeing the result of their jobs in the media. This fact has improved their commitment to work, which led them to greater awareness of the competition relevance and of the antitrust authorities’ role in the economy. Thus, besides enhancing high morale among the working team and creating a positive organizational environment, the media effort helped making of the employees natural competition advocates.

SBDC’s communications strategy includes making live presentations for government officials, business community representatives and external audiences. In this context, almost every invitation to give speeches is accepted. This is viewed as fundamental to improve comprehension and credibility about the antitrust authorities’ job.

In addition to this “road show” strategy, public discussions, both in specialized and non-specialized fora about competition issues are encouraged. The underlying objective regarding discussions in non-specialized audiences is to get as much people as possible being accustomed to debating the subject, so to effectively widespread its importance and potential benefits. On the other hand, discussions and the feedback of specialized audiences aim at fine-tuning the authorities’ action and at improving compliance. Moreover, whenever possible, new procedures and legal changes are made available for public consultation before their implementation.

An illustrative example of this practice was the discussion within the SBDC of the National Competition Agency proposals. The draft-bills were open for public consultation during three months and were presented in various discussion fora, such as the Competition Protection, Environment and Minorities Committee of the Chamber of Deputies (House of Representatives), the Brazilian Bar Association and the Brazilian Institute for Competition and Consumer Protection Studies (IBRAC). A great number of suggestions came from this broad

debate and many of the proposed modifications were incorporated, contributing for the proposals' excellence.

The role of public opinion is fundamental in the whole process, and it has the power to include or to remove specific subjects from the Agenda. The discussions for the creation of the National Competition Protection Agency, for example, arose in a context where cartel accusations on the fuel retail market were newspapers headlines, which generated significant public pressure on the Government to solve the problem.

As a final result, since public opinion is so crucial for successful competition policy initiatives and law enforcement activities, antitrust authorities should perceive it as an ally to promote compliance. That is precisely what SBDC authorities have been trying to do, yet much still needs to be done, in the first place, to widespread the "competition culture" among the society.

3. CONCLUDING REMARKS

Brazil has a long history of state intervention in the economy. The culture that predominated within the country until recently was one found on price control and anti-market approach. In such an environment there was no room for competition policy.

After only eight years of competition policy, it is still too early to say that competition is a value of the Brazilian society. The communications strategic positioning is perceived by Brazilian antitrust authorities as an important ally. It has been playing a major role both in spreading the very basic notions of competition throughout the society and also in increasing the level of compliance.