INTERNATIONAL COMPETITION LAW SERIES

Antitrust Law in Brazil Fighting Cartels

Eduardo Molan Gaban Juliana Oliveira Domingues



Antitrust Law in Brazil

Fighting Cartels

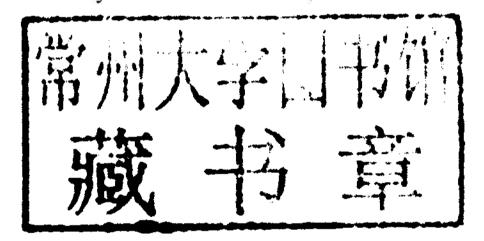
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Antitrust Law in Brazil

International Competition Law Series

VOLUME 49

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The titles published in this series are listed at the end of this volume.



Foreword

The star of Brazil is rising. Four years ago, Juan de Onis wrote an article in Foreign Affairs, Brazil's Big Moment – A South American Giant Wakes Up. 'Brazil today,' he wrote, 'seems poised to finally fulfil its long-unrealised potential as a global player.' (Foreign Affairs, November/December 2008) Brazil stands among the BRICS (with Russia, India, China, and more recently South Africa) as the rapidly rising developing nations.

The antitrust community of the world has taken note. The Brazil competition system is well regarded among its peers. Its anti-cartel system, especially, is praised. The Brazilian enforcement authorities are well represented on international competition programs and events, which proliferate around the world. The Brazilian authorities are known to the world, and Brazil is often regarded as a model for newer competition agencies.

This thorough and informative volume on antitrust law in Brazil by Eduardo Molan Gaban, Ph.D. in Law (Visiting Fulbright Fellow at New York University School of Law / Pontifical Catholic University of São Paulo), and Juliana Oliveira Domingues, Ph.D. in Law (Pontifical Catholic University of São Paulo), is therefore an especially welcome addition to the literature. Gaban and Domingues place the Brazilian law on competition into three contexts, all of which enhance an understanding of the law. The first context is the Brazilian Constitution, which guarantees the free exercise of economic opportunity and the protection against abuse of economic power. The second is comparative, especially US antitrust and EU competition policy. The third is global, including the world institutions that have an antitrust dimension. The authors also bring to bear the economics of antitrust, the several schools of thought on antitrust-economic paradigms, and analysis of antitrust economics fit for Brazil. The heart of the book is the Brazilian system of enforcement itself, with particular attention to cartels.

Foreword

The book is an unusual combination of theory, concept, doctrine, facts and figures. It should be of value to practitioners and scholars alike.

Eleanor M. Fox Walter J. Derenberg Professor of Trade Regulation New York University School of Law October 2011

List of Abbreviations¹

AGU Brazilian General Attorney's Office
ANATEL National Telecommunications Agency
APEC Asia-Pacific Economic Cooperation

CADE Administrative Council for Economic Defence

CCM MERCOSUR Trade Commission

CDPC Competition Law and Policy Committee CF 1998 Brazilian Federal Constitution

CLP Competition Law and Policy

CPR UN Commercial Code of Practice

DNPM National Department of Mineral Research

DPDC Consumer Protection Department

DPDE Department of Economic Protection and Defence

EC European Community

EU European Union

FBI Federal Bureau of Investigation FTC Federal Trade Commission

FURP Fundação para o Remédio Popular (Popular Drug Foundation)

GATT General Agreement on Tariffs and Trade

IAEAA International Antitrust Enforcement Assistance Act

IBRAC Brazilian Institute of Competition and Consumer Relations

Studies

ICN International Competition Network

MERCOSUR Common Market of the South

MPF Federal Public Prosecutor's Office

The Brazilian acronyms remain unchanged.

List of Abbreviations

MPF/DF Federal Public Prosecutor's Office in the Federal District and

Territories

MPF/GO Federal Public Prosecutor's Office in Goiás State

MPF/MG Federal Public Prosecutor's Office in Minas Gerais State
MPF/RJ Federal Public Prosecutor's Office in Rio de Janeiro State
MPF/RS Federal Public Prosecutor's Office in Rio Grande do Sul State

MPF/SP Federal Public Prosecutor's Office in São Paulo State

MP State Prosecutor's Office

MP/DF State Prosecutor's Office of the Federal District and Territories

MP/GO State Prosecutor's Office of the State of Goiânia

MP/MG
State Prosecutor's Office of the State of Minas Gerais
MP/RJ
State Prosecutor's Office of the State of Rio de Janeiro
MP/RS
State Prosecutor's Office of the State of Rio Grande do Sul

MP/SP State Prosecutor's Office of the State of São Paulo

NBAL New Brazilian Antitrust Law (passed on 5 October 2011 and

enforced in 2012)

NGO Non-Governmental Organisation

NGA Non-Governmental Advisors in the ICN

OCTG Oil Country Tubular Goods

OECD Organisation for Economic Cooperation and Development

PROCON Brazilian Unit for Consumer Protection SBDC Brazilian Competition Defence System

SDE/MJ Secretariat for Economic Law of the Ministry of Justice SEAE/MF Secretariat for Economic Monitoring of the Ministry of Finance

SNDE Secretariat of National Economic Law
STJ The Brazilian Superior Court of Justice

The Brazilian Supreme Court
Cease and Desist Agreement
UFIR
Unidades Fiscais de Referência

UN United Nations

UNCTAD United Nations Conference on Trade and Development

US United States of America

USDoJ United States Department of Justice

WGTCP Working Group on the Interaction between Trade and Competi-

tion Policy

WTO World Trade Organisation

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