

## ADMINISTRATIVE COUNCIL FOR ECONOMIC DEFENSE

### RESOLUTION No. 18, OF NOVEMBER 25, 1998

(Published in the Official Gazette of the Federal Executive, Section 1, December 7, 1998)

Regulates the procedure of consultations before the Administrative Council for Economic Defense - CADE, on issues under its jurisdiction.

**THE BOARD OF THE ADMINISTRATIVE COUNCIL FOR ECONOMIC DEFENSE – CADE**, exercising the powers bestowed thereon pursuant to Article 7, items XVII, XVIII and XIX of Law 8884 of June 11, 1994, hereby

#### **R E S O L V E S:**

##### **ON THE CONSULTATIONS**

**Article 1.** - Any interested party, including the Federal, State, City and all other public agencies may consult the CADE on issues under its jurisdiction.

**Article 2.** - All consultations shall contain:

- I. - the precise indication of their purpose and legal grounds;
- II. - evidence of the lawful interest of the inquirer.

##### **CHAPTER I. - ON CONSULTATIONS CONCERNING CONDUCTS**

**Article 3.** - Conducts under consultations may be on hypothetical or actual practices.

**Article 4.** - In the event of consultations on an actual practice, its processing shall be approved through an initial decision issued by the Reporting Commissioner, upon an *ad referendum* order of the Board, only if:

- I. - the inquirer is the party performing the practice;
- II. - the practice is not the object of a preliminary investigation or an administrative proceeding in progress or decided upon on a definitive basis.

**Paragraph 1.** - In case the requirement set forth in item I above is not fulfilled, the Reporting Commissioner shall determine that the records be forwarded to the Economic Law Office of the Ministry of Justice (SDE/MJ), upon an *ad referendum* order of the Board, so that a preliminary investigation or an administrative proceeding may be opened, depending on the case.

**Paragraph 2.** - In case the requirement set forth in item II above is not fulfilled, the Reporting Commissioner shall determine that the consultation be closed, upon an *ad referendum* order of the Board.

## **CHAPTER II. - ON CONSULTATIONS CONCERNING ACTS OR AGREEMENTS**

**Article 5.** - Consultations foreseen in this chapter may only be on hypothetical acts or agreements.

**Article 6.** - The processing of consultations on hypothetical acts or agreements shall be approved through an initial decision issued by the Reporting Commissioners, upon an *ad referendum* order of the Board, only if:

- I. - the inquirer may be considered as a direct participant in potential of the hypothetical transaction submitted to analysis;
- II. - the act or agreement under consultations has not been performed or entered into, is not about to be performed or entered into, and, pursuant to Article 2 of CADE Resolution 15/98, no changes in the competition relationships have occurred.

**Paragraph 1.** - In case the requirement set forth in item I above is not fulfilled, the Reporting Commissioner shall determine that the inquiry be closed upon an *ad referendum* order of the Board.

**Paragraph 2.** - In case the requirement set forth in item II above is not fulfilled, the Reporting Commissioner shall determine that the inquiry be converted into a concentration act, upon an *ad referendum* order of the Board, pursuant to Article 54 of Law No. 8884/94.

**Article 7.** - Inquirers shall submit a request pursuant to the form specified in Attachment I of the present Resolution, with due regard for the glossary specified in Attachment II, if applicable.

## **CHAPTER III. - ON THE CONSIDERATIONS**

**Article 8.** - All answers to consultations shall follow the model established under Articles 14 through 20 of CADE's Internal Regulations.

**Article 9.** - Answers to consultations about conducts may:

- (a) indicate that the practice of a hypothetical or actual conduct, i.e., the object of the consultation, represents no violation against the economic order.
- (b) characterize the hypothetical conduct as a violation against the economic order.
- (c) indicate the existence of indications of violation against the economic order in the actual practice, determining the remittance of the records to the SDE/MJ, for the opening of a preliminary investigation or of an administrative proceeding, depending on the case.
- (d) determine that other measures considered necessary be taken.

**Sole Paragraph** - Should the measures foreseen in item (c) above be taken by the SDE/MJ, then a Cease-and-Desist Commitment may be entered into by the party, in accordance with the provisions set forth in Article 53 of Law No. 8884/94.

**Article 10.** - Answers to consultations concerning acts and agreements may:

- (a) indicate whether the hypothetical act or agreement causes the effects foreseen in the main section of Article 54 and/or fulfills the requirements of admissibility foreseen in Paragraph 3 of the referenced article.
- (b) issue an opinion on significant aspects concerning the hypothetical act or agreement submitted by the inquirer.
- (c) determine that other measures considered necessary be taken.

**Article 11.** - In any event, the answer issued by the Board shall be strictly limited to the object of consultation as defined in the initial petition, and it shall not generate any binding effect on other proceedings.

#### **ON THE FINAL PROVISIONS**

**Article 12.** - Consultation shall be included in the judgment docketed within a period of sixty (60) days as of the date of their distribution to the Reporting Commissioner.

**Article 13.** - During any stage of a consultation, the President may invite the inquirer to provide clarifications before the CADE's Board, upon indication of the Reporting Commissioner.

**Article 14.** - Inquirers may make the following requests to the Reporting Commissioner, based on substantiated reasons therefor:

- I. - request for confidentiality, pursuant to Article 10 of CADE's Internal Regulations;
- II. - request for inclusion of the consultation in a session reserved for judgment.

**Article 15.** - This Resolution shall become effective on the date of its publication.

**GESNER OLIVEIRA**  
CADE President

## ATTACHMENT I

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| <b>PART I. - INQUIRERS</b>   |
| <b>I.1.</b> - Name in accordance with the Bylaws, name of the establishments, name of the legal representative, numbers of the respective enrollments with the National Registry of Legal Entities of the Ministry of Finance (CNPJ/MF) and the State.   |
| <b>I.2.</b> - Address of the principal office, telephone and facsimile numbers, and email address.   |
| <b>I.3.</b> - Name of the stockholders or quotaholders, indicating their respective holdings in the Corporate Capital and specifying the type of corporate interest (holdings exceeding 5%, on a mandatory basis).   |
| <b>I.4.</b> - Corporate group to which the company belongs.  |
| <b>I.5.</b> - Sales results for the last previous year-end of the totality of companies pertaining to the group in Brazil and abroad.  |
| <b>I.6.</b> - List of the acquisitions, mergers, joint-ventures and joint-incorporations of new companies effected by the group in Brazil and in the Mercosur during the last previous three years.  |
| <b>PART II. - HYPOTHETICAL ACT OR AGREEMENT</b>  |
| <b>II.1.</b> - Group to which the company with which the inquirer intends to perform or enter into the hypothetical act or agreement belongs.  |
| <b>II.2.</b> - Summarized description of the intended transaction, indicating its modality (acquisition, merger, incorporation of a new company, agreement, associations, joint- ventures, etc.).  |
| <b>II.3.</b> - List of the assets involved in the transaction and their location.  |
| <b>II.4.</b> - Justifications deemed to be decisive for the future performance or entering into of hypothetical act or agreement, including possible efficiencies.   |
| <b>PART III. - MARKETS</b>   |
| <b>III.1.</b> - Identification of products/services where vertical or horizontal relationships are verified among the companies of the inquirer's group and the companies pertaining to the corporate group of the company with which the inquirer intends to perform or enter into the hypothetical act or agreement. |
| <b>III.2.</b> - Identification of the companies pertaining to the corporate group of the inquirer engaged in activities in the referenced markets.   |
| <b>III.3.</b> - Identification, if possible, of the other companies pertaining to the corporate group of the   |

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| <p>company with which the inquirer intends to perform or enter into the hypothetical act or agreement and that are engaged in activities in the referenced markets.</p>   |
| <p><b>III.4.</b> - Estimate of the markets identified above in terms of sales amounts (R\$) and quantity in the last previous year.</p>   |
| <p><b>III.5.</b> - Sales amounts (R\$) and quantity, i.e., sales figures and percentages of the inquirer in each of the markets identified above, during the last previous year.</p>  |
| <p><b>III.6.</b> - Estimate of the market share of the main competitors (exceeding 5%), particularly of the company with which the inquirer intends to perform or enter into the hypothetical act or agreement.</p>   |
| <p><b>III.7.</b> - Indication of the methodology and sources used for the estimates.</p>  |
| <p><b>PART IV. - GENERAL MARKET CONDITIONS</b></p>  |
| <p><b>IV.1.</b> - Brief analysis of the market characteristics, such as quantity and size of purchasers, the seller's capacity of imposing its trade policy based on type of client, need of after-sales services, particularities in product distribution and other topics considered to be of importance.</p> |
| <p><b>IV.2.</b> - Market share estimate of independent imports in the domestic market.</p>  |
| <p><b>IV.3.</b> - Identification of factors that exert positive or negative influences on the entry into the relevant markets.</p>  |
| <p><b>PART V. - FINAL INFORMATION</b></p>   |
| <p><b>V.1.</b> - Additional pieces of information to be taken into consideration and that the company considers to be relevant.</p>   |
| <p><b>V.2.</b> - Name, address, telephone and facsimile numbers, and email address of the company's contact in charge of providing information regarding the inquiry. In cases of submission through an authorized attorney-in-fact, please submit the information together with the power-of-attorney.</p>     |

**ATTACHMENT II**

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| <b>1. - GLOSSARY</b>   |
| <b>1.1. - LEGAL REPRESENTATIVE</b>   |
| In accordance with Article 12, items VI, VII and VIII of the Brazilian Code of Civil Procedure, a legal representative is the individual with procedural capacity to represent the inquirer in Court, be it a corporation <i>de facto</i> or <i>de jure</i> (i.e., associations, joint-ventures, etc.), a foreign or a domestic legal entity.                      |
| <b>1.2. - CORPORATE GROUP</b>  |
| Group of companies subject to a common control.  |
| <b>1.3. - CONTROL</b>  |
| Authority to directly or indirectly direct the corporate activities and/or the operations of the company from the inside or from the outside, <i>de facto</i> or <i>de jure</i> , individually or by force of an agreement.  |
| <b>1.4. - HORIZONTAL RELATIONSHIPS</b>   |
| A horizontal relationship occurs whenever two or more companies are engaged in the same market as sellers of similar products (i.e., replaceable products), or whenever two or more companies are engaged in the same market as purchasers.  |
| <b>1.5. - VERTICAL RELATIONSHIPS</b>   |
| A vertical relationship occurs whenever a company operates as a seller in the market of inputs of the other company, even if there is no trade relationship between them.  |
| <b>1.6. - RELEVANT MARKETS</b>   |
| <b>1.6.1. - RELEVANT MARKET(S) FOR THE PRODUCT(S)</b>  |
| A relevant market for a product encompasses all the products/services considered to be replaceable one by another by the consumer due to their characteristics, prices and uses. A relevant market for a product may be comprised of a certain number of products/services that have physical, technical or commercial characteristics recommending such grouping. |
| <b>1.6.2. - RELEVANT GEOGRAPHIC MARKET(S)</b>  |
| A relevant geographic market encompasses the area where the companies offer and seek products/services under sufficiently homogeneous competition conditions considering prices, preferences of consumers, characteristics of products/services. The definition of a relevant geographic   |

market also requires the identification of hindrances to the entry of products offered by companies located outside such area. Companies capable of commencing the offer of products/services in the area under consideration after a small but substantial raise of the prices practiced belong to the relevant geographic market. Incidentally, all the companies taken into consideration by sellers and purchasers in negotiations for the fixation of prices and other trade conditions in the area under consideration are, in general terms, part of the relevant geographic market.

**1.7. - INDEPENDENT CLIENTS AND SUPPLIERS**

Independent clients and suppliers are those companies that do not participate in any of the applicants' groups.

**1.8. - INDEPENDENT IMPORTS**

Independent imports are those carried out by any company that does not belong to any of the applicants' groups.

**1.9. - EFFICIENCIES**

Efficiencies are understood as any type of cost reductions that can be estimated in quantitative terms and that are intrinsic to the type of operation in question, not obtainable only by means of an internal effort.