ANTICOMPETITIVE PRACTICES: HOW THE EUROPEAN ANTITRUST ENFORCEMENT HAS INFLUENCED THE ENFORCEMENT OF THE BRAZILIAN COMPETITION LAW

Práticas anticoncorrenciais: Como a aplicação da legislação antitruste europeia influenciou a aplicação da legislação brasileira de defesa da concorrência

Alana de Marchi Garcia[1]

DOI: https://doi.org/10.5281/zenodo.11537459

Resumo: O presente artigo busca analisar a influência do enforcement concorrencial europeu no enforcement concorrencial brasileiro. O principal objetivo do presente artigo é analisar se existem formas de se promover uma atuação antitruste mais coesa e uniforme, sem se utilizar dos instrumentos legais celebrados entre as autoridades concorrenciais, em casos que envolvam mais de uma autoridade concorrencial ou quando temas similares são analisados. Para esse propósito, este artigo busca estudar o enforcement concorrencial Brasileiro, analisando treze casos, com o objetivo de melhor compreender como a experiência da Comissão Europeia influenciou a análise realizada pela Superintendência Geral e pelos Conselheiros do CADE. A presente análise conclui que a experiência da Comissão Europeia é analisada pelo Conselho Administrativo de Defesa Econômica e utilizada como reforço argumentativo quando são provadas similaridades entre o caso europeu e o brasileiro. O artigo será divido de acordo com o momento de aplicação da jurisprudência europeia pelo Conselho Administrativo de Defesa Econômica.

Palavras-chave: Enforcement antitruste; Comissão Europeia; Enforcement concorrencial globalizado; Direito comparativo.

Abstract: This study analyzes the influence of the European Competition enforcement on the Brazilian Competition enforcement. The main object of the present article is to investigate if there are means apart from legal instruments to promote more cohesive and uniform antitrust enforcement in cases that involve different competition authorities and when similar matters are dealt with. For this purpose, this study examines the Brazilian Antitrust enforcement, and thirteen cases are scrutinized in order to understand how the European Commission experience has influenced the Superintendency General and the Brazilian Commissioners when analyzing cases brought to their attention. This study concludes that the European Commission experience is analyzed in different scopes by the Brazilian Competition Authority and is used to strengthen arguments when similarities between the cases are proven. This article will be divided by the topics in which the Brazilian Commissioner's and the Superintendence General found the European experience relevant and applied it for their reasoning.

Keywords: Antitrust enforcement; European Commission; Globalized competition enforcement; Comparative law.

[1] Advogada em Brasília com enfoque em direito concorrencial. Possui LLM na *European Legal Studies at the College of Europe*.

1 Introduction

Antitrust enforcement has a massive relevance in safeguarding the competition in the markets, enforcing competition laws has become more challenging as the global economy has become increasingly interconnected. It is to say, in a world filled with globalized markets, where the significance of international trade is always on the rise, it is not strange to observe that practices perpetrated by companies cannot always be caught and handled by only one competition authority, cartels and unilateral conducts with a cross-border element have increased in the past years.[2]

In this concern, the cooperation and cohesion of the Competition Authorities enforcement, as well as a convergence of antitrust legislation, appear to be relevant and to lead to a more uniform and coordinated approach from them.[3] In these lines, some instruments of coordination of Competition Authorities have been put into place, such as the Memorandum of Understanding signed between the European Union ("EU") and Brazil[4], among other agreements signed with multiple different countries, that establishes

[2] CARVALHO, Vinícius Marques de; RAGAZZO, Carlos Emmanuel Joppert; SILVEIRA Paulo Burnier da. *International Cooperation and Competition Enforcement: Brazilian and European Experiences from the Enforcers' Perspective*. Kluwer Law International, 2014. Available at: https://law-store.wolterskluwer.com/s/product/competition-law-enforcement-intl-co-operation-brazilian-exp/01t0f00000J3ajjAAB. Acesso em: 9 apr. 2024.

[3] KATSORCHI, Panagiota. *Le réseau des règles de droit international européen de la concurrence*. Preface: GERVASONI, Stéphane. Bruxelles: Bruylant, 2022. (Competition Law / Droit de la concurrence), p. 543.

[4] EUROPEAN COMMISSION. Directorate-General for Competition. *Memorandum of Understanding on Cooperation*, 8 oct. 2009. Available at: https://competition-policy.ec.europa.eu/document/download/13ec4ef9-e802-41e9-b1d2-b63fb53b0139_en?filename=Brazil-EU_memorandum-of-understanding_2009_en.pdf. Access in: 9 apr. 2024.

voluntary cooperation when required.[5] Therefore, it is important to question if other means aside from Cooperation Agreements and Memorandums of Understanding can encourage a more uniform and coordinated application of competition law in different jurisdictions.

In this sense, the influence of a jurisdiction, such as the EU, in another jurisdiction's antitrust enforcement appears as a relevant point and raises some questions such as the relevance of the European experience to other competition authorities. This is the question that this article proposes to investigate, and, to pursue this objective, the cases from the Brazilian Competition Authority ("CADE") that have used the European Commission experience as inspiration or as a supporting argument for the analysis done by the CADE will be analyzed.

2 CADE's jurisprudence and the influence of the European Commission experience on the case analysis

In order to analyze the influence of the European Commission's experience in CADE's jurisprudence, thirteen antitrust cases[6] were analyzed. It is important to clarify that the documents taken into consideration in this article are either the Technical Opinion of the Superintendency General ("SG") or the votes of the Commissioners that compose the CADE's Tribunal.

For the purpose of this analysis, this article will be divided by the motivation for which the Brazilian Commissioners and the SG chose to consider the European experience. First, the cases concerning an influence in the market definition will be analyzed. Secondly, the cases in which the European Commission experience was used as a supporting argument for the delimitation of the infringement will be examined. At last, similar cases will be analyzed; this subchapter will be divided between international cartels and abuse of dominant position that affected the Brazilian and the European Markets.

3 Market Definition

[5] KATSORCHI, Panagiota. *Le réseau des règles de droit international européen de la concurrence*. Preface: GERVASONI, Stéphane. Bruxelles: Bruylant, 2022. (Competition Law / Droit de la concurrence), p. 546/547.

[6] The cases analyzed in this chapter were researched in the CADE Jurisprudence website (https://jurisprudencia.cade.gov.br/). The search used the terms "European Commission", "Comissão Europeia", União Europeia" and "EU". The documents between the years 2019 and 2023, were selected for this analysis.

3.1 Investigation 08012.011615/2008-08 - Abbvie Farmacêutica Ltda. e Abbott Laboratories Inc. and Administrative Procedure 08012.007147/2009-40 - Genzyme do Brasil Ltda. e Genzyme Corporation

The analysis of the influence of the European experience on both cases was done together as both cases deal with suspected antitrust practices in the Brazilian pharmaceutical sector, and the analysis and considerations about the European Commission experience were the same.

After opening a preliminary investigation in Abbvies' case and investigations in Genzymes' case, the SG adopted a Technical Opinion in each case[7]. It is important to stress that the decision on Genzymes' case[8] adopted the market definition of the SG Technical Opinion; therefore, the analysis will focus on the Technical Opinion and not on the decision.

When defining the relevant market, the SG studied the pharmaceutical market's competitive strategies in both cases, and the European Commission experience was considered for that purpose. A study by the European Commission - the Pharmaceutical Sector Inquiry (EC 2009)[9] - and four European cases, (i.) Lundbeck[10]; (ii.) J&J and Novartis[11]; (iii.) Servier[12]; and (iv.) AstraZeneca[13] were analyzed.

Regarding the inquiry, the SG considered that the European Commission concluded that the European Commission should intensify the application of Articles 101 and 102 TFEU, as well as the European Merger Control Regulation in the pharmaceutical sector. Subsequently, the SG moved forward with the analysis of the cases mentioned in

[7] BRASIL. Ministério da Justiça e Segurança Pública. Conselho Administrativo de Defesa Econômica (CADE*). Nota Técnica nº 1/2019/CGAA1/SGA1/SG/CADE (SEI 0564869). Inquérito Administrativo nº* 08012.011615/2008-08. Data de julgamento: 14 jan. 2019; BRASIL. Ministério da Justiça e Segurança Pública. Conselho Administrativo de Defesa Econômica (CADE*). Processo Administrativo n° 08012.007147/2009-40.* Relator: Maurício Oscar Bandeira Maia. Data de julgamento: 17 jun. 2020.

[8] BRASIL. Ministério da Justiça e Segurança Pública. Conselho Administrativo de Defesa Econômica (CADE*). Processo Administrativo n° 08012.007147/2009-40*. Relator: Maurício Oscar Bandeira Maia. Data de julgamento: 17 jun. 2020.

[9] EUROPEAN COMMISSION. *Pharmaceutical Sector Inquiry. Final Report*, 8 jul. 2009. Available at: https://competition-policy.ec.europa.eu/system/files/2022-05/pharmaceutical_sector_inquiry_staff_working_paper_part1.pdf. Access in: 9 apr. 2024.

[10] EUROPEAN COMMISION. *Case AT.39226 – Antitrust: Commission fines Lundbeck and other pharma companies for delaying market entry of generic medicines.* Brussels, 19 jun. 2013. Available at: https://ec.europa.eu/commission/presscorner/detail/en/IP_13_563. Access in: 9 apr. 2024.

[11] EUROPEAN COMMISION. *Case AT.39685 – Fentanyl*. Strasbourg, 10 dec. 2013. Available at: https://ec.europa.eu/competition/antitrust/cases/dec_docs/39685/39685_1976_7.pdf. Access in: 9 apr. 2024.

[12] EUROPEAN UNION. Judgement of the General Court. *Case T-691/14 – ECLI:EU:T:2018:922.* Servier and Others v Commission. Judgement: 12 dec. 2018.

[13] EUROPEAN UNION. Judgement of the General Court. *Case T-321/05 – ECLI:EU:T:2010:266*. AstraZeneca v Commission. Judgement: 14 aug. 2010.

the Pharmaceutical Sector Inquiry. It was considered that Lundbeck[14] was the first case in which the European Commission has forbidden the usage of pay-for-delay agreements as a strategy to delay the entry of new competitors in the relevant market, as shown in the previous case analyzed.

In the J&J and Novartis[15] case involving fentanyl, the pay-for-delay agreement was referred to as a 'naked' one for not being related to the patent. In 2005, the fentanyl patent detained by J&J had expired in the Netherlands, and Sandoz (Novartis subsidiary) was close to launching a generic version of the drug. J&J, through its subsidiary Janssen-Cilag and Sandoz, signed a co-promotion agreement that gave high incentives for Sandoz not to enter the market. As a result, Sandoz didn't commercialize its drug until December 2006, when a third company entered the market. Ultimately, J&J and Novartis were fined by the European Commission.

In the Servier[16] case, two other infringements concerning a cardiovascular medicine – perindopril - were identified, a pay-for-delay agreement with competitors and the acquisition of competing technologies to delay new entries in the market, and the companies involved were also fined. The SG analyzed another case, the AstraZeneca[17] case. In this case, the investigated practices were supplying false information to national patent offices and the request to cancel the registration request in some member states with the subsequent withdrawal of a medicament from the markets to launch a new version. The European Commission fined AstraZeneca, but the European Court of Justice partially annulled the second practice.

As it can be seen, the SG considered, in both cases, the European Commission jurisprudence as a means to understand the business strategies applied in the pharmaceutical sector and the concerns that should be the object of a more meticulous analysis when practices in the pharmaceutical market are investigated.

4 Delimitation of the practice

[14] EUROPEAN COMMISION. *Case AT.39226 – Antitrust: Commission fines Lundbeck and other pharma companies for delaying market entry of generic medicines.* Brussels, 19 jun. 2013. Available at: https://ec.europa.eu/commission/presscorner/detail/en/IP_13_563. Access in: 9 apr. 2024.

[15] EUROPEAN COMMISION. *Case AT.39685 – Fentanyl*. Strasbourg, 10 dec. 2013. Available at: https://ec.europa.eu/competition/antitrust/cases/dec_docs/39685/39685_1976_7.pdf. Access in: 9 apr. 2024.

[16] EUROPEAN UNION. Judgement of the General Court. *Case T-691/14 – ECLI:EU:T:2018:922.* Servier and Others v Commission. Judgement: 12 dec. 2018.

[17] EUROPEAN UNION. Judgement of the General Court. *Case T-321/05 – ECLI:EU:T:2010:266*. AstraZeneca v Commission. Judgement: 14 aug. 2010.

4.1 Administrative Procedure 08700.004563/2017-48 - Technos da Amazônia Indústria e Comércio S.A.

After opening a formal investigation, the SG started its analysis by defining the alleged practice and its anticompetitive effects.[18] First, the SG considered that the fixation of minimum resale prices is an anti-competitive practice that would present more negative than positive effects. Regarding European legislation, it was considered that the practice is deemed to be an infraction by object in light of Article 101(1) TFEU.

Nevertheless, the SG did not leave article 101(3) out of the analysis, considering that the practice of fixating a minimum resale price could benefit from a block exemption or even a finding of inapplicability. It is important to stress in this point that during the analysis, only the possibility of a finding of inapplicability was considered, the lack of adoption of findings of inapplicability by the European Commission was never taken into consideration.[19]

Concerning the block exemptions, the SG considered the Vertical Block Exemption Regulation (VBER), in which the vertical agreements block exemptions were established and considered the two regulations adopted as of the moment the decision was adopted.[20] The SG clarified that the Guidelines on Vertical Restraints[21] explains that although hardcore restrictions, such as the fixation of minimum resale price, are presumed not to produce pro-competitive effects, this does not mean that they are considered infringements, the existence of efficiencies can still be proved.

Whereas the case analyzed by the CADE is about e-commerce, the SG also examined the "E-commerce Sector Inquiry" published by the European Commission in 2017.[22] The SG analysis of the European Inquiry concluded that it allowed the European

[18] BRASIL. Ministério da Justiça e Segurança Pública. Conselho Administrativo de Defesa Econômica (CADE*). Nota Técnica n° 6/2021/CGAA3/SGA1/SG/CADE (SEI 0909822). Processo Administrativo nº 08700.004563/2017-48*. Data de julgamento: 1.º jun. 2021.

[19] BLANCO, Luiz Ortiz. *European Union Competition Procedure*. 4th ed. Oxford University Press, 2021, p. 743.

[20] EUROPEAN UNION. *Commission Regulation (EC) nº 2790/1999 of 22 December 1999 on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices (Text with EEA relevance)*, 29 dec. 1999. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31999R2790. Access in: 9 apr. 2024; EUROPEAN UNION. *Commission Regulation (EU) nº 330/2010 of 20 April 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices. (Text with EEA relevance)*, 23 apr. 2010. Available at: https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:102:0001:0007:En:PDF. Access in: 9 apr. 2024.

[21] EUROPEAN UNION. *Communication from the Commission. Commission Notice. Guidelines on vertical restraints (2022/C 248/01)*. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.C_.2022.248.01.0001.01.ENG. Access in: 9 apr. 2024.

[22] EUROPEAN COMMISSION. *Antitrust: Commission publishes final report on e-commerce sector inquiry*, 10 may 2017. Available at: https://ec.europa.eu/commission/presscorner/detail/en/IP_17_1261. Access in: 9 apr. 2024.

Commission to recognize that the increase in price transparency and the competition for price led to a rise of the fabricant's control over the supply chain, which could lead to an augmentation of vertical agreements between fabricants and resellers, producing an effect of the intra-brand competition.

In the context of the analysis of these conclusions and the enforcement actions taken by the European Commission, the SG analyzed the cases opened to investigate antitrust practices of fixation of minimum resale prices in e-commerce. It was considered that some of the companies investigated in Europe were Asus[23], Denon & Marantz[24], Philips[25], and Pioneer[26]. The practices in the four cases concerned were similar to those complained to CADE.

Lastly, the SG considered the "Support studies for the evaluation of the VBER"[27], published by the European Commission in 2020. It was concluded that the referred study ascertained that the fixation of minimum resale prices is a practice that has not been adopted as much in the last years due to the high risks of being considered an antitrust infringement. However, it hasn't ceased to be adopted completely.

After analyzing the international experience and engaging in a comparative analysis with the Brazilian jurisprudence, the SG concluded that the investigation should consider pro-competitive effects in the same sense as shown by the European Commission publications and recommendations.

4.2 Investigation nº 08700.002142/2022-40 - UPL do Brasil Indústria e Comércio de Insumos Agropecuários S.A.

The *SG*, in its Technical Opinion[28], took into consideration the European Commission's contribution on "Getting the Deal Through – Pharmaceutical Antitrust

[23] EUROPEAN COMMISION. *Case AT.40465 – Asus*, 24 jul. 2018. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/%20PDF/?uri=CELEX:52018XC0921(01)&from=EN. Access in: 9 apr. 2024.
[24] EUROPEAN COMMISION. *Case AT.40469 – Denon & Marantz*. Brussels, 24 jul. 2018. Available at: https://ec.europa.eu/competition/antitrust/cases/dec_docs/40469/40469_329_3.pdf. Access in: 9 apr. 2024.
[25] EUROPEAN COMMISION. *Case AT.40181 - Philips*. Brussels, 24 jul. 2018. Available at: https://ec.europa.eu/competition/antitrust/cases/dec_docs/40181/40181_417_3.pdf. Access in: 9 apr. 2024.
[26] EUROPEAN COMMISION. *Case AT.40182 - Pioneer*. Brussels, 24 jul. 2018. Available at: https://ec.europa.eu/competition/antitrust/cases/dec_docs/40182/40182_370_3.pdf. Access in: 9 apr. 2024.
[27] EUROPEAN UNION. Directorate-General for Competition. *Support studies for the evaluation of the VBER. Support study and study on consumer purchasing behaviour in Europe: final report*. Luxembourg: Publications Office of the European Union, 5 jun. 2020.
[28] BRASIL. Ministério da Justiça e Segurança Pública. Conselho Administrativo de Defesa Econômica (CADE*). Nota Técnica nº 44/2022/CGAA1/SGA1/SG/CADE (SEI 11 38278). Inquérito Administrativo nº 08700.002142/2022-40.* Data de julgamento: 25 out. 2022.

2015"[29], in which the antitrust responsibility of the patent owner when they hold a dominant position and abuse the patent system, was considered.

Furthermore, when analyzing the international experience in sham litigation cases, the *SG* examined the European Court of Justice decision on *ITT Promedia NV v. Commission Case* T-111/96[30], where two cumulative criteria for a legal proceeding to be considered abusive were established. The criteria concerned the company's right to protect their rights lawfully and the objective to eliminate the competition. Ultimately, the SG analyzed how the patent registration system functions in other jurisdictions, including the EU.

4.3 Investigation nº 08700.001797/2022-09 – IFOOD

After opening an investigation in this case, the *SG* adopted a Technical Opinion[31] in which the European experience was deemed relevant. The *SG* considered that to analyze the practices, it was essential to consider the market's characteristics and the possibility that, in this case, IFOOD could be regarded as a Gatekeeper.

With this objective, the *SG* considered the Digital Markets Act 32 criteria to consider a digital platform as a Gatekeeper. The requirements mentioned in the Technical Opinion were: (i.) being a digital platform that provides one of the core platform services; (ii.) the annual turnover; and (iii.) the control of gateways for a large number of business consumers. It was considered that IFOOD is an online intermediary service. Subsequently, the *SG* considered that, although Brazil currently does not have a regulation imposing responsibilities to Gatekeepers, CADE needs to consider the risks of these platforms for the Brazilian markets.

Ultimately, when the SG proceeded to analyze the alleged practice of cross-subsidy, the European Commission's definition in the Guidelines on the Application of EEC Competition Rules in the Telecommunications Sector[32] was brought to the analysis.

---

[29] THILL-TAYARA, Mélanie; LLP, Norton Rose Fulbright. *Getting the Deal Through – Pharmaceutical Antitrust 2015*. London: Law Business Research, 2015. Available at: https://www.gurkaynak.av.tr/Content/dosya/393/getting-the-deal-through-pharmaceutical-antitrust-2015.pdf. Access in: 9 apr. 2024.

[30] EUROPEAN UNION. Judgement of the General Court. *Case T-111/96 – ECLI:EU:T:1998:183*. ITT Promedia NV v. Commission of the European Communities. Judgement: 17 jul. 1998.

[31] BRASIL. Ministério da Justiça e Segurança Pública. Conselho Administrativo de Defesa Econômica (CADE*). Nota Técnica nº 41/2022/CGAA1/SGA1/SG/CADE (SEI 1130456). Inquérito Administrativo nº 08700.001797/2022-09.* Data de julgamento: 11 out. 2022.

[32] EUROPEAN UNION. *Guidelines on the application of EEC competition rules in the telecommunications sector (1991/C 233/02).* Luxembourg: Publications Office of the European Union, 6 sep. 1991. Available

At this point, it was considered that cross-subsidy "means that an undertaking allocates all or part of the costs of its activity in one product or geographic market to its activity in another product or geographic market."[33]

4.4 Administrative Procedure nº 08700.001831/2014-27 – Gran Petro Distribuidora de Combustíveis Ltda.

Commissioner Victor Oliveira Fernandes, in his vote[34], analyzed the essential facility doctrine and the limits imposed for dominant companies to refuse to deal with their rivals by antitrust laws on regulated sectors, taking into consideration the EU experience.

A historical approach can be seen in the vote. First, it was considered that the essential facilities doctrine started to have some influence in the 1990s and was first mentioned by the European Commission in two interim measures cases of ports.[35] By any means, it was considered that its importance is controversial for the establishment of legal tests applied to Article 102 TFEU[36] cases. According to the Commissioner, although the European Commission has mentioned the essential facility criteria, the European Court of Justice hasn't done it yet.

Moreover, the Commissioner considered that the European experience was relevant for the analysis of the imposition of the obligation for the dominant firms to deal with their rivals. It was considered that the criteria for a dominant firm to be obliged to deal with their rivals was set on the Bronner case[37], in which it was established that a

at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A51991XC0906%2802%29. Access in: 9 apr. 2024.

[33] EUROPEAN UNION. *Guidelines on the application of EEC competition rules in the telecommunications sector (1991/C 233/02 - § 102).* Luxembourg: Publications Office of the European Union, 6 sep. 1991. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A51991XC0906%2802%29. Access in: 9 apr. 2024.

[34] BRASIL. Ministério da Justiça e Segurança Pública. Conselho Administrativo de Defesa Econômica (CADE*). Nota Técnica nº 52/2015/CGAA4/SGA1/SG/CADE. Inquérito Administrativo nº 08700.001831/2014-27.* Relator: Victor Oliveira Fernandes. Data de julgamento: 18 nov. 2022.

[35] EUROPEAN UNION. *Case 92/353/EEC: Commission Decision of 11 June 1992 laying down the criteria for the approval or recognition of organizations and associations which maintain or establish studbooks for registered equidae*. Available at: https://eur-lex.europa.eu/eli/dec/1992/353/oj. Access in: 9 apr. 2024.

[36] Any abuse by one or more undertakings of a dominant position within the internal market or in a substantial part of it shall be prohibited as incompatible with the internal market in so far as it may affect trade between Member States. Such abuse may, in particular, consist in: (a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions; (b) limiting production, markets or technical development to the prejudice of consumers; (c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage; (d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

[37] EUROPEAN UNION. Judgement of the General Court. *Case C-7/97 – ECLI:EU:C:1998:569.* Oscar Bronner GmbH & Co. KG v Mediaprint Zeitungs- und Zeitschriftenverlag GmbH & Co. KG, Mediaprint

dominant firm would only be obliged to give access to their platform to their rivals if it was proved that duplicating the platform would be impossible or unreasonably difficult.

Subsequently, it was affirmed that the European Commission and European Court of Justice jurisprudence evolved along the lines that, when dominant companies deal with their rivals due to regulatory obligations, the indispensability criteria defined in the Bronner case do not apply. According to the Commissioner, this understanding was followed in Slovak Telecom[38] and TeliaSonera cases.[39] Ultimately, the Commissioner considered the analysis of the European experience to affirm that the indispensability criteria does not have to be applied in all cases of refusal to deal.

5 Cartels

5.1 Administrative Procedure 08012.001395/2011-00 – Optical Disk Drives (ODD) International Cartel

In this case, the European jurisprudence was examined in the SG's Technical Opinion[40], in Commissioner João Paulo Rezende's vote[41], and in Commissioner Paula Azevedo's vote[42]. It is essential to clarify that only the votes and not the leading vote took into consideration the European jurisprudence in this case, but CADE's Tribunal did not adopt a unanimous decision in this case.[43]

Zeitungsvertriebsgesellschaft mbH & Co. KG and Mediaprint Anzeigengesellschaft mbH & Co. KG. Judgement, 26 nov. 2008.

[38] EUROPEAN UNION. Judgement of the General Court. *Case T-851/14 – ECLI:EU:T:2018:929*. Slovak Telekom v Commission. Judgement: 13 dec. 2018.

[39] EUROPEAN UNION. Judgement of the General Court. *Case C-52/09 – ECLI:EU:C:2011:83*. Konkurrensverket v TeliaSonera Sverige AB. Judgement: 17 feb. 2011.

[40] BRASIL. Ministério da Justiça e Segurança Pública. Conselho Administrativo de Defesa Econômica (CADE*). Nota Técnica Nº 108/2016/CGAA7/SGA2/SG/CADE (SEI 0285998)*. *Processo Administrativo nº 08012.001395/2011-00 (Apartado de Acesso Restrito Nº 08700.010800/2014-67)*. Data de julgamento: 29 dez. 2016.

[41] BRASIL. Ministério da Justiça e Segurança Pública. Conselho Administrativo de Defesa Econômica (CADE*)*. *Processo Administrativo nº 08012.001395/2011-0*. Relatora: Paula Azevedo. Data de julgamento: 30 jan. 2019.

[42] BRASIL. Ministério da Justiça e Segurança Pública. Conselho Administrativo de Defesa Econômica (CADE*). Processo Administrativo nº 08012.001395/2011-0*. Relator: Conselheiro João Paulo de Resende. Data de julgamento: 30 jan. 2019.

[43] BRASIL. Ministério da Justiça. Conselho Administrativo de Defesa Econômica (CADE). *Ata da 136ª Sessão Ordinária de Julgamento*, 30 jan. 2019. Brasília-DF: Diário Oficial da União: 25 set. 2019, Seção 1, p. 24.

In the SG's Technical Opinion[44], the European Commission's decision on the DRAM International Cartel[45] was used to strengthen the argument used when analyzing the consequences of exporting a cartelized product to a specific market. In the present case, it was considered that the export of a cartelized product to Brazil could demonstrate that the Brazilian jurisdiction was affected by the international cartel but not limit the liability to only the undertaking that exported to Brazil. In a similar way, the European Commission, when analyzing the DRAM International Cartel, had previously decided that:

> The mere fact that each participant in a cartel may play a role to this extent which is appropriate to its own specific circumstances does not exclude its responsibility for the infringement as a whole, including acts committed by other participants but which share the same unlawful purpose.[46]

The European Commission's description of the ODD International Cartel in the EEA territory was also considered. At this moment, the decision adopted by the European Commission is taken into consideration when the *modus operandi* of the referred cartel is examined. The point highlighted is the exchange of commercially sensitive information to adopt a coordinated strategy to reduce or eliminate the competition in the acquisition of ODD in different biddings.

In Commissioner Paula Azevedo's vote[47], it was informed that the public version of the European Commission was included in the Brazilian proceedings. Due to this fact, the similarities between the Brazilian and European cases could be analyzed, as well as the extent to which the European decision could be used as evidence of the materiality of the conduct in Brazil. Nevertheless, as the body of evidence and the proven facts were not made accessible to CADE, the Commissioner considered that the evidence presented for each competition authority might have been different, which imposed some difficulties to the analysis of the similarities of the cases.

---

[44] BRASIL. Ministério da Justiça e Segurança Pública. Conselho Administrativo de Defesa Econômica (CADE*). Nota Técnica Nº 108/2016/CGAA7/SGA2/SG/CADE (SEI 0285998)*. *Processo Administrativo nº 08012.001395/2011-00 (Apartado de Acesso Restrito Nº 08700.010800/2014-67)*. Data de julgamento: 29 dez. 2016.

[45] EUROPEAN UNION. *Case COMP/38.511 – DRAMs*, 19 may 2010. Available at: https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A52011XC0621%2803%29. Access in: 9 apr. 2024.

[46] EUROPEAN UNION. *Case COMP/38.511 – DRAMs*, 19 may 2010, p. 19-20. Available at: https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A52011XC0621%2803%29. Access in: 9 apr. 2024.

[47] BRASIL. Ministério da Justiça e Segurança Pública. Conselho Administrativo de Defesa Econômica (CADE*). Processo Administrativo nº 08012.001395/2011-0*. Relatora: Paula Azevedo. Data de julgamento: 30 jan. 2019.

However, some differences between the Brazilian and the European cases could be found in the decision. First, when considering the undertakings involved and the period investigated, Commissioner Paula Azevedo considered that the international cartel in Brazil lasted longer, starting one year before and ending one year after the European case. Also, one undertaking not included in the European case was included in the Brazilian case. Considering the possibility of differences in the documents added to the European and Brazilian cases, Commissioner Paula Azevedo considered that the European Commission decision could not have any proof value for the Brazilian case.

In the other vote[48], Commissioner João Paulo Rezende analyzed the investigation of the ODD International Cartel in different jurisdictions between them, the EU, and considered that the European decision was the most relevant one. The European experience was regarded as relevant for setting the fines, especially the Guidelines on the method of setting fines imposed under Article 23(2)(a) of Regulation N. 1/2003.[49]

5.2 Administrative Procedure 08012.005324/2012 – SKF

In this case, the European Commission's experience was considered in the SG's Technical Opinion[50] when the international investigations in the car parts sector were analyzed. It was considered that the investigation of the referred sector started in 2010 by European National Competition Authorities, as well as other jurisdictions. Regarding the rollers market, it was highlighted that the European Commission investigated the undertakings JTEKT, NSK, NTN, Nachi, SKF, and Schaeffler and signed settlement agreements with them.

Furthermore, the European Commission jurisprudence was used as a supporting argument to establish that hardcore cartels and cartels in public bindings are examples of antitrust infringements by object. For this point, the Pre-Insulated Pipe Cartel[51] was mentioned as, in that case, the European Commission considered that the existence of an

[48] BRASIL. Ministério da Justiça e Segurança Pública. Conselho Administrativo de Defesa Econômica (CADE*). Processo Administrativo nº 08012.001395/2011-0.* Relator: Conselheiro João Paulo de Resende. Data de julgamento: 30 jan. 2019.
[49] EUROPEAN UNION. *Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation nº 1/2003*. Luxembourg: Publications Office of the European Union, 1.º sep. 2006. Available at: https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2006:210:0002:0005:en:PDF. Access in: 9 apr. 2024.
[50] BRASIL. Ministério da Justiça e Segurança Pública. Conselho Administrativo de Defesa Econômica (CADE*). Nota Técnica n° 41/2019/CGAA6/SGA2/SG/CADE (SEI 0618456). Processo Administrativo nº 08012.005324/2012*. Data de julgamento: 28 maio 2019.
[51] EUROPEAN UNION. *Case nº IV/35.691/E-4: Pre-Insulated Pipe Cartel*, 21 out. 1998. Available at: https://eur-lex.europa.eu/eli/dec/1999/60(1)/oj. Access in: 9 apr. 2024.

agreement between competitors and concerted practices was a sufficient reason to determine the existence of the cartel.

5.3 Administrative Procedure nº 08700.010323/2012-78 – Car Airconditioning

The Rapporteur Commissioner[52] considered the European Jurisprudence in two different moments in his vote. The first time the European Commission case[53] was mentioned was in the description of the practice. At this moment, the Rapporteur Commissioner advanced that the European Commission investigated the present cartel, which has affected some Member States. It was considered that the European Commission fined the European subsidiaries of the Groups Denso, Behr, and Valeo due to four anticompetitive agreements that concerned the same products investigated in the Brazilian case.

The second moment in which the Rapporteur Commissioner considered the European case was when the participation of the subsidiaries of the Group Denso, Denso Curitiba, and Denso Betim, was analyzed. In this opportunity, it was considered that undertaking from the Group Denso reported to the European Commission their participation in three different cartels that affected the European market and lasted for the same period and concerned the same products and that subsequently, they recognized their participation in a fourth cartel that affect the EU territory.

Furthermore, the European Commission's press release[54] of the settlement agreement with undertakings investigated by them was added to the decision to demonstrate that the European Commission fined the European undertakings of the Groups Behr and Valeo and to elucidate that the Brazilian undertakings of these groups signed either a leniency or a settlement agreement with CADE.

6 Similar Cases - Abuse of Dominant Position

6.1 Administrative Procedure 08000.019160/2010-14 - Sindicato dos Artistas e Técnicos em Espetáculos de Diversões no Estado de São Paulo (“Sated”)

[52] BRASIL. Ministério da Justiça e Segurança Pública. Conselho Administrativo de Defesa Econômica (CADE*). Nota Técnica nº 41/2015/CGAA7/SGA2/SG/CADE. Processo Administrativo n° 08700.010323/2012-78*. Relator: Sérgio Costa Ravagnani. Data de julgamento: 30 dez. 2022.

[53] EUROPEAN COMMISION. *Case AT.39960 – Thermal Systems*. Brussels, 8 mar. 2017. Available at: https://ec.europa.eu/competition/antitrust/cases/dec_docs/39960/39960_2370_3.pdf. Access in: 9 apr. 2024.

[54] EUROPEAN COMMISSION. *Antitrust: Commission fines six car air conditioning and engine cooling suppliers € 155 million in cartel settlement*, 28 apr. 2023. Available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_17_501. Access in: 8 apr. 2024.

In this case, the European Commission's experience was analyzed in the SG's Technical Opinion[55] when national and international cases of influence on the adoption of commercial practices based on the pricing table were examined.

It was considered that the European Commission understands that scheduled fees must be regarded as illegal per se. This was consubstantiated by the Belgium Association of Architects case.[56] Afterward, the SG concluded that even if pro-competitive effects were to be examined, no benefits of imposition of schedule fees would be found.

6.2 The Google Cases

6.2.1 Administrative Procedure 08700.009082/2013-03 – Google Scrapping

In this case, the European experience was analyzed in two different moments: in the Technical Opinion of the Superintendency General[57] and Commissioner Paula Azevedo's vote.[58]

In the SG's Technical Opinion, the European Commission's experience was taken into consideration when the cases related to scrapping in different jurisdictions were analyzed. It was considered that the European Commission also investigated the same conduct supposedly adopted by Google in a joint investigation of four other practices.

Regarding the scrapping, it was affirmed that in the same line, as it was done by Google in the United States, commitments were presented to the European Commission. Commissioner Joaquín Almunia expressed his opinion that the previous commitment offered could address the European concerns. However, after Commissioner Margrethe Vestager substituted him, the commitments were rejected, and a Statement of Objection

---

[55] BRASIL. Ministério da Justiça e Segurança Pública. Conselho Administrativo de Defesa Econômica (CADE*). Nota Técnica nº 165/2021/CGAA6/SGA2/SG/CADE (SEI 0993602). Inquérito Administrativo nº 08000.019160/2010-14*. Data de julgamento: 16 dez. 2021.

[56] "Even though, for the purpose of applying Article 81(1), there is no need to take account of the concrete effects of an agreement or decision once it appears that it has as its object the prevention, restriction or distortion of competition, the investigation has shown that the scale was in fact applied, at least to a certain extent. This has not been denied by the Association". (EUROPEAN COMMISION. *Case AT.38549 – Commission Condemns Belgian Architects' Fee System*. Brussels, 24 jun. 2004. Available at: https://ec.europa.eu/commission/presscorner/detail/en/IP_04_800. Access in: 9 apr. 2024).

[57] BRASIL. Ministério da Justiça e Segurança Pública. Conselho Administrativo de Defesa Econômica (CADE*). Nota Técnica n° 15/2018/CGAA2/SGA1/SG/CADE (SEI 0475654). Processo Administrativo nº 08700.009082/2013-03*. Data de julgamento: 11 maio 2018.

[58] BRASIL. Ministério da Justiça e Segurança Pública. Conselho Administrativo de Defesa Econômica (CADE*). Processo Administrativo nº 08700.009082/2013-03*. Relator: Paula Azevedo. Data de julgamento: 1.º jul. 2019.

was adopted only related to the leverage strategy, without mentioning the scrapping practice.

Moreover, Commissioner Paula de Azevedo's vote first considered the European Commission's experience when the theory of harm was analyzed. For that purpose, the Commissioner examined the definition of leverage shown in the European Commission publication "Competition Policy for the Digital Era".[59] The referred publication was used to support the definition of leverage and its impact on the competition and the possibility of a perception of anticompetitive effects, such as an increase of the user's perceived value and the elimination of one of the most relevant pro-competitive factors of the relevant market, the acquisition of valuable content.

Subsequently, the same publication is taken into account for the definition of the relevant market. For this purpose, the differences between the market analysis when competition authorities are dealing with a traditional market in opposition to the approach when digital markets were examined and the analysis when multisided platforms are at the center of this analysis were considered. At this point, it was concluded that the interdependency between the three sides of Google's platform makes it impossible to dissociate their strategies when examining the rationality of the conduct.

6.2.2 Administrative Procedure 08700.005694/2013-19 – Google AdWords

In this case, the European Commission investigation was examined in the SG's Technical Opinion[60] and in the leading vote,[61] after the complainant informed the CADE that similar cases were being investigated in other jurisdictions, as was the case with the EU. The leading vote adopted the analysis of the Technical Opinion and included data made available after its adoption by the SG.

The SG considered that the European Commission opened four investigations, one of which focused on restricting cross-platform data portability. Three different commitments were offered to the European Commission and submitted to market test;

[59] MONTJOYE, Yves-Alexandre; SCHWEITZER, Heike; CRÉMER, Jacques. *Competition policy for the digital era*. *Final report.* European Commission, Directorate-General for Competition, Publications Office, 2019, retrieved on 13 April 2023. Available at: https://data.europa.eu/doi/10.2763/407537. Access in: 9 apr. 2024.

[60] BRASIL. Ministério da Justiça e Segurança Pública. Conselho Administrativo de Defesa Econômica (CADE*). Nota Técnica n° 16/2018/CGAA2/SGA1/SG/CADE (SEI 0475816). Processo Administrativo n° 08700.005694/2013-19*. Data de julgamento: 11 maio 2021.

[61] BRASIL. Ministério da Justiça e Segurança Pública. Conselho Administrativo de Defesa Econômica (CADE*). Processo Administrativo n° 08700.005694/2013-19*. Relator: Maurício Oscar Bandeira Maia. Data de julgamento: 19 jun. 2019.

the complainant included their communications with the European Commission in the case records of the Brazilian case. Regarding the commitments presented by Google, the European Commission had the same change of understanding as the previous case analyzed. The change of the Commissioner led to the rejection of the commitments and the adoption of the Statement of Objection concerning the price comparison, which led to Google being fined.

The leading vote also examined the cases handled by the European Commission after adopting the SG's Technical Opinion. The Google AdSense case[62] was analyzed, although the Commissioner stated that the referred case did not hold any similarity with the Brazilian case.

6.2.3 Administrative Procedure 08012.010483/2011-94– Google Shopping

The European Commission jurisprudence was examined in the leading vote,[63], and Commissioner Paulo Burnier's dissent vote[64]. Whereas this decision divided the Brazilian Competition Tribunal in a way that the Tribunal's president was the tiebreaker, the present analysis will examine how both Commissioners dealt with the European Commission jurisprudence.

The leading vote[65] mentioned in the European Jurisprudence when the lack of algorithms neutrality was analyzed. The leading vote brought up the implementation of the Panda algorithm and how it got well known after the European Commission decision about search bias, in which it was found that price comparison platforms from different countries lost visibility after its implementation.

Moreover, the European Commission jurisprudence in the supposed less visibility in organic search results in Google search was analyzed. In order to differentiate the Brazilian case from the European case, the European Commission decision is brought up as the source of data concerning the loss of visibility of price comparison platforms in

---

[62] EUROPEAN COMMISION. *Case AT. 40411 - Google Search (AdSense)*. Brussels, 3 may 2021. Available at: https://ec.europa.eu/competition/antitrust/cases/dec_docs/40411/40411_1619_11.pdf. Access in: 9 apr. 2024.

[63] BRASIL. Ministério da Justiça e Segurança Pública. Conselho Administrativo de Defesa Econômica (CADE*). Processo Administrativo n° 08012.010483/2011-94*. Relator: Maurício Oscar Bandeira Maia. Data de julgamento: 1.º jul. 2019.

[64] BRASIL. Ministério da Justiça e Segurança Pública. Conselho Administrativo de Defesa Econômica (CADE*). Processo Administrativo n° 08012.010483/2011-94*. Relator: Paulo Burnier. Data de julgamento: 1.º jul. 2019.

[65] BRASIL. Ministério da Justiça e Segurança Pública. Conselho Administrativo de Defesa Econômica (CADE*). Processo Administrativo n° 08012.010483/2011-94*. Relator: Maurício Oscar Bandeira Maia. Data de julgamento: 1.º jul. 2019.

France and Spain.[66] The differentiation was necessary because, while the European Commission found that the loss of visibility affected both Member States, the Rapporteur Commissioner did not reach the same conclusion when analyzing the Brazilian market. In the same line, it was stated that in the European case, it was found that price comparison websites, after adopting the Panda system, started to appear on the fourth page of results, which did not happen in Brazil.

Afterward, the leading vote considered that, as shown in the two Google cases previously analyzed, Google offered three commitments to the European Commission. Still, aftermarket tests, Commissioner Vestager substituted Commissioner Almunia, the commitments were all rejected, and a Statement of Objections was adopted. Eventually, the decision and the findings of the European Commission that led Google to be fined were considered and analyzed by the leading vote.

Ultimately, in his conclusions, the Rapporteur Commissioner declared that the CADE monitored the European case, that although similar to the Brazilian case, had different facts, and affirmed that the remedies imposed by the European Commission did not produce the desired effect. It was stated that this was not a surprise since the remedies usually imposed by Competition Authorities are of a behavioral or structural nature and rarely demand changes in the product because antitrust authorities do not have the technical expertise to interfere with product characteristics.

In the dissenting vote[67], the European Commission's experience is first considered when analyzing unilateral conduct in the digital economy. At this moment, the Report on "Competition Policy for the digital era"[68] is deemed relevant to understand the role played by data in the digital markets. The dissenting Commissioner was in favor of fining Google.

7 Conclusions

The present study proposed to investigate the possibility of a jurisdiction influencing the competition enforcement of another one. After this study, it was possible

[66] EUROPEAN COMMISION. *Case AT.39740 – Google Search (Shopping)*, 18 dec. 2017. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52018XC0112(01). Access in: 9 apr. 2024.

[67] BRASIL. Ministério da Justiça e Segurança Pública. Conselho Administrativo de Defesa Econômica (CADE*). Processo Administrativo n° 08012.010483/2011-94*. Relator: Paulo Burnier. Data de julgamento: 1.º jul. 2019.

[68] MONTJOYE, Yves-Alexandre; SCHWEITZER, Heike; CRÉMER, Jacques. *Competition policy for the digital era*. *Final report.* European Commission, Directorate-General for Competition, Publications Office, 2019, retrieved on 13 April 2023. Available at: https://data.europa.eu/doi/10.2763/407537. Access in: 9 apr. 2024.

to comprehend better how the European competition experience could affect the Brazilian competition enforcement regarding its legislation and enforcement.

In a world of globalized markets and international trade, the business strategies adopted by companies usually surpass the borders and the competence of national competition authorities or even the European Commission. In this sense, it is clear that a sole business strategy has to be investigated by different competition authorities and can be caught by various legislations. Due to this reality that the competition authorities and companies face, the cooperation and cohesion of the antitrust legislation and enforcement are relevant.

When analyzing the enforcement of the antitrust rules by the CADE, it was noted that in some cases, the European experience was considered as part of the analysis. The European Commission jurisprudence, regulations, guidances, and studies were brought to the Brazilian proceedings at different moments by different bodies to support various parts of their antitrust analysis.

As seen, the European Commission jurisprudence, its regulations, guidelines, and studies have played an essential role as a support agreement in multiple cases investigated by the CADE. In some cases, they were taken into consideration by the SG in their investigations and, in other cases, by the Commissioners when casting their votes. Because the European experience was considered, especially when similar companies or similar cases were in concern, the antitrust enforcement became broader. It was able to surpass the national borders in the same way as the business strategies investigated did.

8 Bibliography

BLANCO, Luiz Ortiz. *European Union Competition Procedure*. 4th ed. Oxford University Press, 2021.

BRASIL. Ministério da Justiça. Conselho Administrativo de Defesa Econômica (CADE). *Ata da 136ª Sessão Ordinária de Julgamento*, 30 jan. 2019. Brasília-DF: Diário Oficial da União: 25 set. 2019, Seção 1, p. 24.

BRASIL. Ministério da Justiça e Segurança Pública. Conselho Administrativo de Defesa Econômica (CADE*). Nota Técnica nº 1/2019/CGAA1/SGA1/SG/CADE (SEI 0564869). Inquérito Administrativo nº* 08012.011615/2008-08. Data de julgamento: 14 jan. 2019.

BRASIL. Ministério da Justiça e Segurança Pública. Conselho Administrativo de Defesa Econômica (CADE*). Nota Técnica n° 6/2021/CGAA3/SGA1/SG/CADE (SEI 0909822). Processo Administrativo nº 08700.004563/2017-48*. Data de julgamento: 1.º jun. 2021.

BRASIL. Ministério da Justiça e Segurança Pública. Conselho Administrativo de Defesa Econômica (CADE*). Nota Técnica n° 15/2018/CGAA2/SGA1/SG/CADE (SEI 0475654). Processo Administrativo nº 08700.009082/2013-03*. Data de julgamento: 11 maio 2018.

BRASIL. Ministério da Justiça e Segurança Pública. Conselho Administrativo de Defesa Econômica (CADE*). Nota Técnica nº 16/2018/CGAA2/SGA1/SG/CADE (SEI 0475816). Processo Administrativo n° 08700.005694/2013-19*. Data de julgamento: 11 maio 2021.

BRASIL. Ministério da Justiça e Segurança Pública. Conselho Administrativo de Defesa Econômica (CADE*). Nota Técnica nº 41/2015/CGAA7/SGA2/SG/CADE. Processo Administrativo n° 08700.010323/2012-78*. Relator: Sérgio Costa Ravagnani. Data de julgamento: 30 dez. 2022.

BRASIL. Ministério da Justiça e Segurança Pública. Conselho Administrativo de Defesa Econômica (CADE*). Nota Técnica n° 41/2019/CGAA6/SGA2/SG/CADE (SEI 0618456). Processo Administrativo nº 08012.005324/2012*. Data de julgamento: 28 maio 2019.

BRASIL. Ministério da Justiça e Segurança Pública. Conselho Administrativo de Defesa Econômica (CADE*). Nota Técnica nº 41/2022/CGAA1/SGA1/SG/CADE (SEI 1130456). Inquérito Administrativo nº 08700.001797/2022-09*. Data de julgamento: 11 out. 2022.

BRASIL. Ministério da Justiça e Segurança Pública. Conselho Administrativo de Defesa Econômica (CADE*). Nota Técnica nº 44/2022/CGAA1/SGA1/SG/CADE (SEI 11 38278). Inquérito Administrativo nº 08700.002142/2022-40*. Data de julgamento: 25 out. 2022.

BRASIL. Ministério da Justiça e Segurança Pública. Conselho Administrativo de Defesa Econômica (CADE*). Nota Técnica nº 52/2015/CGAA4/SGA1/SG/CADE. Inquérito Administrativo nº 08700.001831/2014-27.* Relator: Victor Oliveira Fernandes. Data de julgamento: 18 nov. 2022.

BRASIL. Ministério da Justiça e Segurança Pública. Conselho Administrativo de Defesa Econômica (CADE*). Nota Técnica Nº 108/2016/CGAA7/SGA2/SG/CADE (SEI 0285998). Processo Administrativo nº 08012.001395/2011-00 (Apartado de Acesso Restrito Nº 08700.010800/2014-67)*. Data de julgamento: 29 dez. 2016.

BRASIL. Ministério da Justiça e Segurança Pública. Conselho Administrativo de Defesa Econômica (CADE*). Nota Técnica nº 165/2021/CGAA6/SGA2/SG/CADE (SEI 0993602). Inquérito Administrativo nº 08000.019160/2010-14*. Data de julgamento: 16 dez. 2021.

BRASIL. Ministério da Justiça e Segurança Pública. Conselho Administrativo de Defesa Econômica (CADE*). Processo Administrativo nº 08012.001395/2011-0.* Relator: Conselheiro João Paulo de Resende. Data de julgamento: 30 jan. 2019.

BRASIL. Ministério da Justiça e Segurança Pública. Conselho Administrativo de Defesa Econômica (CADE*). Processo Administrativo nº 08012.001395/2011-0.* Relatora: Paula Azevedo. Data de julgamento: 30 jan. 2019.

BRASIL. Ministério da Justiça e Segurança Pública. Conselho Administrativo de Defesa Econômica (CADE*). Processo Administrativo n° 08012.007147/2009-40.* Relator: Maurício Oscar Bandeira Maia. Data de julgamento: 17 jun. 2020.

BRASIL. Ministério da Justiça e Segurança Pública. Conselho Administrativo de Defesa Econômica (CADE*)*. *Processo Administrativo n° 08012.010483/2011-94*. Relator: Maurício Oscar Bandeira Maia. Data de julgamento: 1.º jul. 2019.

BRASIL. Ministério da Justiça e Segurança Pública. Conselho Administrativo de Defesa Econômica (CADE*)*. *Processo Administrativo n° 08012.010483/2011-94*. Relator: Paulo Burnier. Data de julgamento: 1.º jul. 2019.

BRASIL. Ministério da Justiça e Segurança Pública. Conselho Administrativo de Defesa Econômica (CADE*)*. *Processo Administrativo n° 08700.005694/2013-19*. Relator: Maurício Oscar Bandeira Maia. Data de julgamento: 19 jun. 2019.

BRASIL. Ministério da Justiça e Segurança Pública. Conselho Administrativo de Defesa Econômica (CADE*)*. *Processo Administrativo nº 08700.009082/2013-03*. Relator: Paula Azevedo. Data de julgamento: 1.º jul. 2019.

CARVALHO, Vinícius Marques de; RAGAZZO, Carlos Emmanuel Joppert; SILVEIRA Paulo Burnier da. *International Cooperation and Competition Enforcement: Brazilian and European Experiences from the Enforcers' Perspective*. Kluwer Law International, 2014. Available at: https://law-store.wolterskluwer.com/s/product/competition-law-enforcement-intl-co-operation-brazilian-exp/01t0f00000J3ajjAAB. Acesso em: 9 apr. 2024.

EUROPEAN COMMISSION. *Antitrust: Commission fines six car air conditioning and engine cooling suppliers € 155 million in cartel settlement*, 28 apr. 2023. Available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_17_501. Access in: 8 apr. 2024.

EUROPEAN COMMISSION. *Antitrust: Commission publishes final report on e-commerce sector inquiry*, 10 may 2017. Available at: https://ec.europa.eu/commission/presscorner/detail/en/IP_17_1261. Access in: 9 apr. 2024.

EUROPEAN COMMISION. Case AT.38549 – Commission Condemns Belgian Architects' Fee System. Brussels, 24 jun. 2004. Available at: https://ec.europa.eu/commission/presscorner/detail/en/IP_04_800. Access in: 9 apr. 2024.

EUROPEAN COMMISION. *Case AT.39226 – Antitrust: Commission fines Lundbeck and other pharma companies for delaying market entry of generic medicines.* Brussels, 19 jun. 2013. Available at: https://ec.europa.eu/commission/presscorner/detail/en/IP_13_563. Access in: 9 apr. 2024.

EUROPEAN COMMISION. *Case AT.39685 – Fentanyl*. Strasbourg, 10 dec. 2013. Available at: https://ec.europa.eu/competition/antitrust/cases/dec_docs/39685/39685_1976_7.pdf. Access in: 9 apr. 2024.

EUROPEAN COMMISION. *Case AT.39740 – Google Search (Shopping)*, 18 dec. 2017. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52018XC0112(01). Access in: 9 apr. 2024.

EUROPEAN COMMISION. *Case AT.39960 – Thermal Systems*. Brussels, 8 mar. 2017. Available at: https://ec.europa.eu/competition/antitrust/cases/dec_docs/39960/39960_2370_3.pdf. Access in: 9 apr. 2024.

EUROPEAN COMMISION. *Case AT.40181 - Philips*. Brussels, 24 jul. 2018. Available at: https://ec.europa.eu/competition/antitrust/cases/dec_docs/40181/40181_417_3.pdf. Access in: 9 apr. 2024.

EUROPEAN COMMISION. *Case AT.40182 - Pioneer*. Brussels, 24 jul. 2018. Available at: https://ec.europa.eu/competition/antitrust/cases/dec_docs/40182/40182_370_3.pdf. Access in: 9 apr. 2024.

EUROPEAN COMMISION. *Case AT. 40411 - Google Search (AdSense)*. Brussels, 3 may 2021. Available at: https://ec.europa.eu/competition/antitrust/cases/dec_docs/40411/40411_1619_11.pdf. Access in: 9 apr. 2024.

EUROPEAN COMMISION. *Case AT.40465 – Asus*, 24 jul. 2018. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/%20PDF/?uri=CELEX:52018XC0921(01)&from=EN. Access in: 9 apr. 2024.

EUROPEAN COMMISION. *Case AT.40469 – Denon & Marantz*. Brussels, 24 jul. 2018. Available at: https://ec.europa.eu/competition/antitrust/cases/dec_docs/40469/40469_329_3.pdf. Access in: 9 apr. 2024.

EUROPEAN COMMISSION. Directorate-General for Competition. *Memorandum of Understanding on Cooperation*, 8 oct. 2009. Available at: https://competition-policy.ec.europa.eu/document/download/13ec4ef9-e802-41e9-b1d2-b63fb53b0139_en?filename=Brazil-EU_memorandum-of-understanding_2009_en.pdf. Access in: 9 apr. 2024.

EUROPEAN COMMISSION. *Pharmaceutical Sector Inquiry. Final Report*, 8 jul. 2009. Available at: https://competition-policy.ec.europa.eu/system/files/2022-05/pharmaceutical_sector_inquiry_staff_working_paper_part1.pdf. Access in: 9 apr. 2024.

EUROPEAN UNION. *Case 92/353/EEC: Commission Decision of 11 June 1992 laying down the criteria for the approval or recognition of organizations and associations which maintain or establish studbooks for registered equidae*. Available at: https://eur-lex.europa.eu/eli/dec/1992/353/oj. Access in: 9 apr. 2024.

EUROPEAN UNION. *Case 94/119/EC: Commission Decision of 21 December 1993 concerning a refusal to grant access to the facilities of the port of Rødby (Denmark).* Available at: https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A31994D0119. Access in: 9 apr. 2024.

EUROPEAN UNION. *Case COMP/38.511 – DRAMs*, 19 may 2010. Available at: https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A52011XC0621%2803%29. Access in: 9 apr. 2024.

EUROPEAN UNION. *Case nº IV/35.691/E-4: Pre-Insulated Pipe Cartel*, 21 out. 1998. Available at: https://eur-lex.europa.eu/eli/dec/1999/60(1)/oj. Access in: 9 apr. 2024.

EUROPEAN UNION. *Commission Regulation (EU) nº 330/2010 of 20 April 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices. (Text with EEA relevance)*, 23 apr. 2010. Available at: https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:102:0001:0007:En:PDF. Access in: 9 apr. 2024.

EUROPEAN UNION. *Commission Regulation (EC) nº 2790/1999 of 22 December 1999 on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices (Text with EEA relevance)*, 29 dec. 1999. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31999R2790. Access in: 9 apr. 2024.

EUROPEAN UNION. *Communication from the Commission. Commission Notice. Guidelines on vertical restraints (2022/C 248/01)*. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.C_.2022.248.01.0001.01.ENG. Access in: 9 apr. 2024.

EUROPEAN UNION. Directorate-General for Competition. *Support studies for the evaluation of the VBER. Support study and study on consumer purchasing behaviour in Europe: final report*. Luxembourg: Publications Office of the European Union, 5 jun. 2020.

EUROPEAN UNION. *Guidelines on the application of EEC competition rules in the telecommunications sector (1991/C 233/02).* Luxembourg: Publications Office of the European Union, 6 sep. 1991. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A51991XC0906%2802%29. Access in: 9 apr. 2024.

EUROPEAN UNION. *Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation nº 1/2003*. Luxembourg: Publications Office of the European Union, 1.º sep. 2006. Available at: https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2006:210:0002:0005:en:PDF. Access in: 9 apr. 2024.

EUROPEAN UNION. Judgement of the General Court. *Case C-7/97 – ECLI:EU:C:1998:569.* Oscar Bronner GmbH & Co. KG v Mediaprint Zeitungs- und Zeitschriftenverlag GmbH & Co. KG, Mediaprint Zeitungsvertriebsgesellschaft mbH & Co. KG and Mediaprint Anzeigengesellschaft mbH & Co. KG. Judgement, 26 nov. 2008.

EUROPEAN UNION. Judgement of the General Court. *Case C-52/09 – ECLI:EU:C:2011:83*. Konkurrensverket v TeliaSonera Sverige AB. Judgement: 17 feb. 2011.

EUROPEAN UNION. Judgement of the General Court. *Case T-111/96 – ECLI:EU:T:1998:183*. ITT Promedia NV v. Commission of the European Communities. Judgement: 17 jul. 1998.

EUROPEAN UNION. Judgement of the General Court. *Case T-321/05 – ECLI:EU:T:2010:266*. AstraZeneca v Commission. Judgement: 14 aug. 2010.

EUROPEAN UNION. Judgement of the General Court. *Case T-691/14 – ECLI:EU:T:2018:922.* Servier and Others v Commission. Judgement: 12 dec. 2018.

EUROPEAN UNION. Judgement of the General Court. *Case T-851/14 – ECLI:EU:T:2018:929*. Slovak Telekom v Commission. Judgement: 13 dec. 2018.

KATSORCHI, Panagiota. *Le réseau des règles de droit international européen de la concurrence*. Preface: GERVASONI, Stéphane. Bruxelles: Bruylant, 2022. (Competition Law / Droit de la concurrence).

MONTJOYE, Yves-Alexandre; SCHWEITZER, Heike; CRÉMER, Jacques. *Competition policy for the digital era*. *Final report.* European Commission, Directorate-General for Competition, Publications Office, 2019, retrieved on 13 April 2023. Available at: https://data.europa.eu/doi/10.2763/407537. Access in: 9 apr. 2024.

THILL-TAYARA, Mélanie; LLP, Norton Rose Fulbright. *Getting the Deal Through – Pharmaceutical Antitrust 2015*. London: Law Business Research, 2015. Available at: https://www.gurkaynak.av.tr/Content/dosya/393/getting-the-deal-through-pharmaceutical-antitrust-2015.pdf. Access in: 9 apr. 2024.