

FREE TRANSLATION*

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(Official Gazette of the Federal Executive - Section I, June 13, 1994)

LAW N.º. 8884 OF JUNE 11, 1994*

Changes the Administrative Economic Protection Council - CADE into an independent agency, regulates antitrust measures, and makes other provisions.

THE PRESIDENT OF THE REPUBLIC

I hereby make known that the Congress decrees and I sanction the following Law:

TITLE I. - GENERAL PROVISIONS

CHAPTER I. - Object

Article 1. - This Law sets out antitrust measures in keeping with such constitutional principles as free enterprise and open competition, the social role of property, consumer protection, and restraint of abuses of economic power.

Sole Paragraph - Society at large is entrusted with the legal rights protected herein.

CHAPTER II. - Territory

Article 2. - Without prejudice to any agreements and treaties to which Brazil is a party, this Law applies to acts wholly or partially performed within the Brazilian territory, or the effects of which are or may be suffered therein.

Paragraph 1. - The foreign company that either operates or maintains a branch, agency, subsidiary, office, establishment, agent or representative in Brazil shall be considered as domiciled in the Brazilian Territory. [As

* As versões em inglês presentes neste caderno foram gentilmente cedidas ao IBRAC por *Pinheiro Neto Advogados*
The following translations were kindly offered to IBRAC by *Pinheiro Neto Advogados*

amended by Law No. 10149/2000]

Paragraph 2. - The foreign company shall be notified and served process on all proceedings regardless of any power-of-attorney or contractual or statutory provision, in the person who is responsible for its branch, agency, subsidiary, establishment or office operating in Brazil. [*As amended by Law No. 10149/2000]*

TITLE II. - The Administrative Economic Protection Council - CADE

CHAPTER I. - Independent Agency

Article 3. - The Administrative Economic Protection Council - CADE, an agency with authority throughout the Brazilian territory and created by Law No. 4137 of September 10, 1962, shall henceforth become a federal independent agency (*autarquia federal*) reporting to the Ministry of Justice, with headquarters and jurisdiction in the Federal District, and duly commissioned for performance of the duties set forth herein.

CHAPTER II. - The CADE Board

Article 4. - The CADE Board shall be composed of a President and six Commissioners chosen from among citizens from thirty through sixty-five years of age reputed for their legal or economic knowledge and unblemished reputation, duly appointed by the President of the Republic after their approval by the Senate. [*As amended by Law No. 9021/1995]*

Paragraph 1. - The term of office of the President and Commissioners shall be two years, one reelection being hereby permitted.

Paragraph 2. - The President and Commissioner duties shall be discharged on an exclusive basis; accordingly, no overlapping of positions will be permitted, unless otherwise provided for in the Constitution.

Paragraph 3. - In the event of resignation, death or termination of a CADE President, the senior or eldest Commissioner (in this order) will take office as President until further appointment thereof, without prejudice to his/her corresponding duties as Commissioner.

Paragraph 4. - In the event of resignation, death or termination of a CADE Commissioner, a new Commissioner shall be appointed for the remaining term of office of the replaced member.

Paragraph 5. – If, under the circumstances set forth in the previous paragraph, or in the case of termination of the mandates of the Commissioners, the composition of the Board is reduced to a number inferior to what is set forth in Article 49, the terms established in Articles 28, 31, 32, 33, 35, 37, 39, 42, 45, 46, sole paragraph, 52, paragraph 2nd, e 54, paragraphs 4th, 6th, 7th and 10th, of this Law, will be automatically interrupted and the course of the proceedings will be suspended. The terms will start flowing again immediately after the re-composition of the "quorum". [*As amended by Law No. 9470/1997*]

Article 5. - The CADE President or Commissioners may only be ousted by a decision of the Senate, a request of the President of the Republic, as a result of unappealable criminal sentencing of any such member for malicious crime, or in light of disciplinary action as set forth in Law No. 8112 of December 11, 1990 and Law No. 8429 of June 2, 1992, as well as owing to violation of any of the limitations dealt with in article 6 hereof.

Sole Paragraph - Any CADE Member's absence at three consecutive ordinary meetings, or twenty intermittent ordinary meetings, shall cause automatic termination of his/her term of office, except for leaves of absence duly approved by the CADE Board.

Article 6. - The President and Commissioners shall not:

- I. - receive fees, percentages or other compensation in any way or on any pretext;
- II. - act as a self-employed workers;
- III. - participate--as controlling parties, officers, managers, agents or attorneys in fact--in any civil, commercial or like companies;
- IV. - render opinions on matters of their specialty, even if on a theoretical basis, or act as advisors to companies of any kind;
- V. - avail themselves of the media to render opinion on cases pending decision, or otherwise disparage orders, votes or sentences handed down by the courts, except for critique in case records, technical works or in the exercise of court duties; and
- VI. - carry out politics- or party-oriented activities.

CHAPTER III. - Authority of the CADE Board

Article 7. - The CADE Board shall:

- I. - ensure compliance with this Law and its regulations, as well as with the Board in-house rules;
- II. - resolve on purported violations of the economic order, and apply the penalties provided for by law;
- III. - resolve on proceedings instituted by the Economic Law Office - SDE of the Ministry of Justice;
- IV. - resolve on *ex officio* appeals from the SDE Secretary;
- V. - order that action be taken in restraint of violations of the economic order within the term scheduled therefor;
- VI. - approve both the cease-and-desist commitment (*compromisso de cessação de prática*) and the performance commitment, as well as order SDE to monitor compliance therewith;
- VII. - judge appeals against preventive action adopted by SDE or by the Board reporting official;
- VIII. - make its decisions known to interested parties;
- IX. - request information from individuals, agencies, authorities and other public or private entities, with due regard for the confidentiality ensured such information pursuant to law, if any, as well as determine the investigations required for performance of its duties;
- X. - request from the Federal Executive Branch agencies and from state, municipal, the Federal District and territorial authorities the taking of all acts required for compliance with this Law;
- XI. - retain the performance of examinations, inspections and studies, approving the respective professional fees and other expenditures on a case-by-case basis, all of which shall be borne by the company if it is eventually punished under this Law;
- XII. - analyze acts or conducts under any circumstance, subject to approval thereof pursuant to article 54 below, and establish a performance commitment as the case may be;
- XIII. - request court execution of its decisions pursuant to this Law;
- XIV. - request services and staff from any federal public agencies or entities;
- XV. - determine the adoption of administrative and court action by the CA-

DE Attorney General Office;

XVI. - sign contracts and agreements with Brazilian agencies or entities, and advance to the Minister of Justice for approval any such documents that are to be signed with foreign or international organisms;

XVII. - answer consultations on matters within its sphere of authority;

XVIII. - make the forms of violation of the economic order known to the public;

XIX. - draft and approve its in-house rules on operations, criteria for resolutions, and organization of in-house services, including for the purpose of establishing the recess of the Board and the Attorney General Office on account of vacation; during such period, the statute of limitations as well as the term set forth in article 54, paragraph 6 hereof shall be suspended; [*As amended by Law No. 9069/1995*]

XX. - draft the structure applying to the CADE staff, with due regard for article 37, II of the Constitution;

XXI. - draft budgetary proposals pursuant to this Law; and

XXII. - appoint the possible substitute of the Attorney General in the event of absences, dismissal or impairment. [*As amended by Law No. 9069/1995*]

CHAPTER IV. - Authority of the CADE President

Article 8. - The CADE President shall:

I. - act as the CADE legal representative in and out of court;

II. - preside over the CADE Board meetings, with the right to vote thereat, plus a casting vote;

III. - distribute processes by lot at the Board meetings;

IV. - call meetings and organize the corresponding agenda;

V. - comply and cause compliance with the CADE decisions;

VI. - determine that the CADE Attorney General Office take all court action required for execution of the CADE decisions and sentences;

VII. - sign the cease-and-desist commitments, as well as performance commitments;

VIII. - submit to the CADE Board for approval the budgetary proposal, as well as the intended assignment of the staff that is to render services to CADE; and

IX. - guide, coordinate and supervise the CADE administrative activities.

CHAPTER V. - Authority of the CADE Commissioners

Article 9. - The CADE Commissioners shall:

- I. - vote on cases and matters submitted to the CADE Board;
- II. - issue orders and decisions on the cases for which they act as reporting members;
- III. - submit to the CADE Board any requirements as to data and documents from individuals, agencies, authorities and other public or private entities, which data and documents are to be kept confidential pursuant to law, as the case may be, as well as order all investigations deemed required for performance of their duties;
- IV. - adopt preventive action, and establish a daily fine for noncompliance therewith; and
- V. - discharge all further duties ascribed thereto under the applicable rules.

CHAPTER VI. - The CADE Attorney General Office

Article 10. - An Attorney General Office shall be commissioned with CADE to:

- I. - render legal assistance to CADE, and provide for defense thereof in court;
- II. - arrange for judicial execution of CADE decisions and sentences;
- III. - subject to the CADE Board preliminary approval, request court measures with a view to curbing violations of the economic order;
- IV. - arrive at court settlements for cases involving violations of the economic order, subject to the CADE Board preliminary approval after hearing a representative of the Attorney General of the Republic;
- V. - render opinion on cases under the CADE authority;
- VI. - ensure compliance with this Law; and
- VII. - perform all further action incumbent thereon under the in-house rules.

Article 11. - The Attorney General--appointed by the Minister of Justice, and duly commissioned by the President of the Republic after consultation and approval of the Senate--shall be a Brazilian citizen with unblemished reputation and renowned legal expertise.

Paragraph 1. - The Attorney General shall attend the CADE meetings, with no right to vote thereat.

Paragraph 2. - The Attorney General shall be subject to the same rules on term of office, reelection, disqualification, termination and replacement as those applying to the CADE Commissioners.

Paragraph 3. - In the event of absences, temporary separation or impairment of the Attorney General, the plenary body will indicate and the CADE President will appoint a possible substitute to act for a period not exceeding ninety (90) days, with no need for Federal Senate approval; such substitute shall be entitled to compensation for the position held during such substitution. [*As amended by Law No. 9069/1995*]

TITLE III. - THE ATTORNEY GENERAL OF THE REPUBLIC AND CADE

Article 12. - The Attorney General of the Republic, after hearing the Higher Council, shall appoint a member of the Attorney General Office of the Republic to handle the cases submitted to CADE for review.

Sole Paragraph - CADE may request that the Attorney General Office of the Republic cause enforcement of the CADE decisions or of the cease-and-desist commitments, as well as that it adopt all court action provided for in article 6, XIV (b) of Supplementary Law No. 75 of May 20, 1993.

TITLE IV. - THE ECONOMIC LAW OFFICE

Article 13. - The Economic Law Office of the Ministry of Justice - SDE, as structured pursuant to law, will be headed by a Secretary appointed by the Minister of Justice from among Brazilian citizens of renowned legal or economic expertise and unblemished reputation, duly commissioned by the President of the Republic.

Article 14. - SDE shall:

I. - ensure compliance with this Law by monitoring and following up on market practices;

II. - provide for ongoing follow-up on business activities and practices from individuals or legal entities with overriding control over a relevant market for a certain product or service, in order to prevent violations of the economic order; for such purposes, all pertinent data and documents may be required, with due regard for the confidential status thereof pursuant to law, if any;

III. - carry out preliminary investigations on purported violations of the economic order, for further instatement of administrative proceedings;

IV. - acknowledge the lack of grounds or evidence, and shelve the preliminary investigation records;

V. - request data from individuals, agencies, authorities and other public or private entities, with due regard for the confidential status thereof under the law, if any, as well as determine the action required for exercise of its duties;

VI. - commence administrative proceedings intended to investigate and restrain violations of the economic order;

VII. - appeal *ex officio* to CADE for shelving of preliminary investigations or administrative proceedings;

VIII. - send on to CADE, for review, any cases commenced by SDE, if a violation of the economic order has been duly evidenced;

IX. - sign a cease-and-desist commitment on the agreed conditions and submit it to CADE, as well as monitor compliance therewith;

X. - advise CADE of certain conditions for signing of a performance commitment, and monitor compliance therewith;

XI. - adopt preventive measures intended to cease the act characterized as a violation of the economic order, and establish the deadline for compliance therewith as well as a daily fine applying to default thereon;

XII. - receive and substantiate cases to be judged by CADE, including consultations, and monitor compliance with the CADE decisions;

XIII. - advise the public authorities as to the adoption of any action required for compliance herewith;

XIV. - carry out studies and researches with a view to improving antitrust policies;

XV. - advise the public of the various forms of violation of the economic order, as well as the means to curb such violations; and

XVI. - perform other duties as provided for by law.

TITLE V. - VIOLATIONS OF THE ECONOMIC ORDER

CHAPTER I. - General Provisions

Article 15. - This Law applies to individuals, public or private companies, as well as to any individual or corporate associations, established *de facto* and *de jure*--even on a provisional basis--irrespective of a separate legal nature, and notwithstanding the exercise of activities regarded as a legal monopoly.

Article 16. - The company and each of its managers or officers shall be jointly liable to the various forms of violation of the economic order.

Article 17. - The companies or entities within a same economic group *de facto* and *de jure* shall be jointly liable to violations of the economic order.

Article 18. - The legal nature of any party charged with violation of the economic order may be disregarded whenever any such violation entails abuse of

power and rights, violation of the law, illicit facts or acts, or any breach of bylaws or articles of association. This legal nature shall also be disregarded in the event of bankruptcy, insolvency, discontinuance or suspended operations of the underlying company owing to poor management thereof.

Article 19. - The antitrust measures set forth herein do not exclude any punishment inflicted on other legal acts pursuant to law.

CHAPTER II. - Violations

Article 20. - Notwithstanding malicious intent, any act in any way intended or otherwise able to produce the effects listed below, even if any such effects are not achieved, shall be deemed a violation of the economic order:

- I. - to limit, restrain or in any way injure open competition or free enterprise;
- II. - to control a relevant market of a certain product or service;
- III. - to increase profits on a discretionary basis; and
- IV. - to abuse one's market control.

Paragraph 1. - Achievement of market control as a result of competitive efficiency does not entail an occurrence of the illicit act provided for in item II above.

Paragraph 2. - Market control occurs when a company or group of companies controls a substantial share of a relevant market as supplier, agent, purchaser or financier of a product, service or related technology.

Paragraph 3. - The *dominant position* mentioned in the preceding paragraph is presumed when a company or group of companies controls twenty percent (20%) of the relevant market; this percentage is subject to change by CADE for specific sectors of the economy. [*As amended by Law No. 9069/1995*]

Article 21. - The acts spelled out below, among others, will be deemed a violation of the economic order, to the extent applicable under article 20 and items thereof:

- I. - to set or offer in any way--in collusion with competitors--prices and conditions for the sale of a certain product or service;
- II. - to obtain or otherwise procure the adoption of uniform or concerted business practices among competitors;
- III. - to apportion markets for finished or semi-finished products or services, or for supply sources of raw materials or intermediary products;
- IV. - to limit or restrain market access by new companies;

V. - to pose difficulties for the establishment, operation or development of a competitor company or supplier, purchaser or financier of a certain product or service;

VI. - to bar access of competitors to input, raw material, equipment or technology sources, as well as to their distribution channels;

VII. - to require or grant exclusivity in mass media advertisements;

VIII. - to agree in advance on prices or advantages in public or administrative biddings;

IX. - to affect third-party prices by deceitful means;

X. - to regulate markets of a certain product or service by way of agreements devised to limit or control technological research and development, the production of products or services, or to dampen investments for the production of products and services or distribution thereof;

XI. - to impose on distributors, retailers and representatives of a certain product or service retail prices, discounts, payment conditions, minimum or maximum volumes, profit margins, or any other marketing conditions related to their business with third parties;

XII. - to discriminate against purchasers or suppliers of a certain product or service by establishing price differentials or discriminatory operating conditions for the sale or performance of services;

XIII. - to deny the sale of a certain product or service within the payment conditions usually applying to regular business practices and policies;

XIV. - to hamper the development of or terminate business relations for an indeterminate period, in view of the terminated party's refusal to comply with unreasonable or non-competitive clauses or business conditions;

XV. - to destroy, render unfit for use or take possession of raw materials, intermediary or finished products, as well as destroy, render unfit for use or constrain the operation of any equipment intended to manufacture, distribute or transport them;

XVI. - to take possession of or bar the use of industrial or intellectual property rights or technology;

XVII. - to abandon of cause abandonment or destruction of crops or harvests, without provenly good cause;

XVIII. - to unreasonably sell products below cost;

XIX. - to import any assets below cost from an exporting country other than those signatories of the GATT Antidumping and Subsidies Codes;

XX. - to discontinue or greatly reduce production, without provenly good cause;

XXI. - to partially or fully discontinue the company's activities, without pro-

venly good cause;

XXII. - to retain production or consumer goods, except for ensuring recovery of production costs;

XXIII. - to condition the sale of a product to acquisition of another or contracting of a service, or to condition performance of a service to contracting of another or purchase of a product; and

XXIV. - to impose abusive prices, or unreasonably increase the price of a product or service.

Sole Paragraph - For the purpose of characterizing an imposition of abusive prices or unreasonable increase of prices, the following items shall be considered, with due regard for other relevant economic or market circumstances:

I. - the price of a product or service, or any increase therein, vis-à-vis any changes in the cost of their respective input or with quality improvements;

II. - the price of a product previously manufactured, as compared to its market replacement without substantial changes;

III. - the price for a similar product or service, or any improvement thereof, on like competitive markets; and

IV. - the existence of agreements or arrangements in any way, which cause an increase in the prices of a product or service, or in their respective costs.

Article 22. - (VETOED)

Sole Paragraph - (VETOED)

CHAPTER III. - Penalties

Article 23. - The following antitrust penalties shall apply:

I. - for companies: a fine from one to thirty percent of the gross pretax revenue thereof as of the latest financial year, which fine shall by no means be lower than the advantage obtained from the underlying violation, if assessable;

II. - for managers directly or indirectly liable to their company's violation: a fine from ten to fifty percent of the fine imposed on said company, which shall be personally and exclusively imposed on the manager; and

III. - in the case of other individuals and other public or private legal entities, as well as any *de facto* or *de jure* associations of entities or persons, even temporary ones, with or without legal identity, that do not engage in business activities, when it is not feasible to use the gross sales value, the fine will be 6,000 (six thousand) to 6,000,000 (six million) UFIR or any other index replacing it. [*As amended by Law No. 9069/1995*]

Sole Paragraph - Fines imposed on recurring violations shall be doubled.

Article 24. - Without prejudice to the provisions of the preceding article, the fines listed below may be individually or cumulatively imposed on violations, whenever the severity of the facts or the public interest so requires:

I. - at the violator's expense, half-page publication of the summary sentence in a court-appointed newspaper for two consecutive days, from one to three consecutive weeks;

II. - ineligibility for official financing or participation in bidding processes involving purchases, sales, works, services or utility concessions with the federal, state, municipal and the Federal District authorities and related entities, for a period equal to or exceeding five years;

III. - annotation of the violator on the Brazilian Consumer Protection List;

IV. - recommendation that the proper public agencies:

(a) grant compulsory licenses for patents held by the violator; and

(b) deny the violator installment payment of federal overdue debts, or order total or partial cancellation of tax incentives or public subsidies;

V. - the company's spin-off, transfer of corporate control, sale of assets, partial discontinuance of activities, or any other antitrust measure required for such purposes.

Article 25. - If any acts or situations detrimental to the economic order are not discontinued after a CADE Board decision to this effect, or in the event preventive measures or any cease-and-desist commitment set forth herein are not complied with, a daily fine equal to or higher than 5,000 (five thousand) Fiscal Reference Units - UFIR or replacing index shall apply, which fine may be increased as many as twenty times in accordance with the severity of the violation and the violator's economic status.

Article 26. - In the event any data or documents requested by CADE, SDE, SPE or other public entity acting under this Law are unreasonably denied, concealed, tampered with or delayed, this shall constitute a violation subject to a daily fine of 5,000 (five thousand) UFIR, which fine may be increased up to twentyfold in keeping with the violator's economic status. [*As amended by Law No. 9021/1995*]

Paragraph 1. - The amount determined as the daily fine to which the main paragraph of this article refers shall be mentioned in the document that contains the request of the proper authority. [*As amended by Law No. 10149/2000*]

Paragraph 2. - The fine provided for in this article shall be computed on a

daily basis up to the limit of ninety days as from the date of the document to which the preceding paragraph refers. [*As amended by Law No. 10149/2000*]

Paragraph 3. - It is incumbent on the requesting authority to apply the fine referred to in the main paragraph of this article. [*As amended by Law No. 10149/2000*]

Paragraph 4. - The branch, subsidiary, office or establishment of the foreign company in Brazil shall be jointly and severally liable for payment of the fine to which this article refers. [*As amended by Law No. 10149/2000*]

Paragraph 5. - The unjustified absence of the representative or a third party when summoned for a hearing to provide explanations during the course of the process, preliminary investigation or administrative procedure shall subject the absentee to a fine of 500 to 10,000 UFIR's (Tax Reference Units), depending on the economic situation thereof, which shall be applied by means of an infraction notice issued by the proper authority. [*As amended by Law No. 10149/2000*]

Article 26-A. - *To impede, obstruct or in any other way hinder an inspection that has been authorized by SDE or SEAE under a preliminary investigation, administrative procedure or proceeding shall subject the inspected party to pay a fine from 20,000 to 400,000 UFIR's according to the economic situation of the violator, by means of an infraction notice issued by the competent Office.* [*As amended by Law No. 10149/2000*]

Article 27. - The penalties provided for in this Law shall apply with due regard for:

- I. - the severity of the violation;
- II. - the violator's good faith;
- III. - the advantages obtained or envisaged by the violator;
- IV. - actual or threatened occurrence of the violation;
- V. - the extent of damages or threatened damages to open competition, the Brazilian economy, consumers, or third parties;
- VI. - the adverse economic effects on the market;
- VII. - the violator's economic status; and
- VIII. - recurrences.

CHAPTER IV. - Statute of Limitations

Article 28. - [*Revoked by Law No. 9873/1999*]

CHAPTER V. - Cause of Action

Article 29. - Injured parties may--for themselves or for the privies under article 82 of Law No. 8078 of September 11, 1990--defend their individual or diffuse interests in court by way of antitrust measures and the awarding of losses and damages suffered in connection therewith, irrespective of the corresponding administrative proceeding which shall not be stayed in view of the court action.

TITLE VI. - ADMINISTRATIVE PROCEEDINGS

CHAPTER I. - Preliminary Investigations

Article 30. - The Economic Law Office (SDE) shall promote preliminary investigations on its own authority or upon written and documented representation of any interested party whenever the evidence of anticompetitive practices is insufficient to institute an administrative procedure. [*As amended by Law No. 10149/2000*]

Paragraph 1. - In the preliminary investigations, the Secretary for the SDE may adopt any of the measures provided for under articles 35, 35,-A and 35-B, and furthermore may require that written or personal explanations be provided by the party submitting the representation or by third parties. [*As amended by Law No. 10149/2000*]

Paragraph 2. - Commencement of administrative proceedings out of formal complaints addressed by the Senate or the House of Representatives is not conditioned to preliminary investigations.

Paragraph 3. - Preliminary investigations may take their course under secrecy in the interest of the investigation at the discretion of the SDE Secretary. [*As amended by Law No. 10149/2000*]

Article 31. - After conclusion of preliminary investigations within sixty days, the SDE Secretary shall order commencement of a corresponding administrative proceeding or the shelving thereof, subject to *ex officio* appeal to CADE in this latter case.

CHAPTER II. - Commencement and Discovery of Administrative Proceedings

Article 32. - Administrative proceedings shall be instituted no later than eight days after cognizance of the underlying fact, formal complaint or closing of the preliminary investigations, as per order issued by the SDE Secretary providing for the facts to be verified thereunder.

Article 33. - The defendant shall be summoned to file a defense within fifteen days.

Paragraph 1. - The initial summons shall bear the entire tenor of the order providing for institution of the administrative proceeding and the corresponding formal complaint, as the case may be.

Paragraph 2. - The defendant shall be first personally summoned by mail against receipt or, in case of failure thereof, by notice published in the Official Gazette of the Federal Executive and in a newspaper widely circulated in the state in which the defendant is resident or headquartered, with due regard for the periods required for attachment of the receipt notice or publication, as the case may be.

Paragraph 3. - Any summons under subsequent proceedings shall be made by publication in the Official Gazette of the Federal Executive, in which the name of the defendant and respective attorney shall be mentioned.

Paragraph 4. - The defendant's holders, officers or managers, or duly appointed attorney, may follow up on administrative proceedings, with full access to the case records at SDE and CADE.

Article 34. - Failure to file a defense in due course after duly notified to that effect will entail the defendant's judgment by default and acknowledgment of the charges against it/him, subject to all further terms irrespective of prior notice in that respect. The *in absentia* defendant may take part in any phase of the proceeding without recourse of preceding acts.

Article 35. - Upon termination of the time frame permitted to submit a defense, the SDE order the procedures to be carried out and the evidence to be presented, all of which are of interest to SDE and which are to be submitted within a fifteen-day period, and SDE shall be entitled to exercise its power to complete discovery as provided for in this Law, maintaining legal secrecy when required. [*As amended by Law No. 10149/2000*]

Paragraph 1. - The procedure and evidence determined by the SDE Secretary, including questioning of witnesses, shall be completed within forty-five days, subject to an extension of an equal period of time should there be a justified need for such extension. [*As amended by Law No. 10149/2000*]

Paragraph 2. - With due regard for the subject matter of the preliminary investigation, procedure or administrative proceedings, it shall be incumbent on the SDE Secretary to authorize by means of a substantiated order, an inspection at the principal place of business, establishment, office, branch or subsidiary of the investigated company, duly notifying the inspected party at least twenty-four hours in advance. The inspection may not begin before six a.m. or after six p.m. [*As amended by Law No. 10149/2000*]

Paragraph 3. - In the event of the inspection mentioned in the preceding paragraph, inventories, objects, papers of any kind, as well as accounting books, computers and magnetic files may be inspected, and copies or any documents or electronic data may be extracted or requested. [*As amended by Law No. 10149/2000*]

Article 35-A. - The Federal Attorney-General's Office upon request of SDE may order the Judicial Branch to issue a search and seizure warrant for papers of any kind, as well as accounting books, computers and magnetic files pertaining to the company or to an individual for the purpose of discovery in this procedure, preliminary investigation or administrative proceeding. In this case the provisions of article 839 et seq. of the Code of Civil Procedure, when suitable, shall apply, and filing of a main action is not required. [*As amended by Law No. 10149/2000*]

Paragraph 1. - During the course of an administrative proceeding for discovery for the representation to be forwarded to SDE, SEAE can exercise, when applicable, the authority set forth in the main section of this article and in article 35 of this Law.

Paragraph 2. - The administrative proceeding dealt with in the above paragraph shall be carried out confidentially in the interest of the investigations, at the discretion of SEAE (NR).

Article 35-B. - The Federal Government through SDE, may execute a leniency covenant, extinguishing the punitive action imposed by the public administration or reducing the applicable penalty by one to two thirds pursuant to the terms hereof, for individuals and legal entities that are authors of anticompetitive practices, provided they effectively cooperate with the investigations and the administrative procedure, and provided such cooperation results in:

- I. - the identification of the other co-authors of the anticompetitive practice;
- II. - the obtaining of information and documents that evidence the anticompetitive practice notified or under investigation;

Paragraph 1. - The provisions of this article do not apply to companies or individuals that have instigated the conduct considered an anticompetitive practice.

Paragraph 2. - The covenant dealt with in the main section hereof may only be executed if the following requirements have cumulatively been observed:

- I. - the company or individual is the first to qualify with regard to the anticompetitive practice notified or under investigation;
- II. - the company or individual ceases all involvement in the anticompetitive practice notified or under investigation as from the date on which the cove-

nant is proposed;

III. - SDE does not have sufficient evidence to ensure the sentencing of the company or the individual at the time the covenant is proposed; and

IV. - The company or individual confesses its participation in the unlawful practice and cooperates fully and permanently with the investigations and the administrative procedures, taking part, on its own expense whenever requested, in all procedural acts until they have been completed.

Paragraph 3. - The leniency covenant signed with the Federal Government through SDE, shall stipulate the conditions required to ensure actual collaboration and the useful results of the procedure.

Paragraph 4. - Execution of a leniency covenant is not subject to approval by CADE, which however, shall be responsible for verifying compliance with the covenant upon judgment of the administrative procedure and:

I. - decree extinguished the punitive action imposed by the public administration in favor of the violator, in the events that the proposal for a covenant has been presented to SDE, and SDE has not been previously informed of the notified anticompetitive practice; or

II. - in the remaining events, reduce the applicable fines by one to two thirds, with due regard for the provision set out in article 27 hereof, and when considering gradation of the fine the actual collaboration rendered and the good faith of the violator in complying with the leniency covenant;

Paragraph 5. - In the event of item II of the above paragraph, the fine on which the reduction factor shall be applied shall not exceed the lowest fine applicable to the other co-authors of the anticompetitive practice, relative to the percentages established for application of the fines dealt with in article 23 hereof.

Paragraph 6. - The effects of the leniency covenant shall be extended to the directors and officers of the qualified company, who are involved in the anticompetitive practice, provided they sign the respective instrument together with the company, with due regard for the conditions imposed in Paragraph 2, items II to IV hereof.

Paragraph 7. - The company or individual that does not obtain during the course of the investigation or administrative procedure, qualification to sign the covenant dealt with herein, may execute with SDE, until remittance of the procedure for judgement, a leniency covenant related to another anticompetitive practice, of which the SDE has not been previously informed.

Paragraph 8. - In the event of the above paragraph, the violator shall benefit from the one third reduction in the fine applicable thereto under the aforesaid procedure, without prejudice to enjoying the benefits dealt with in paragraph 4, item 1 of this article regarding the new alleged anticompetitive practice.

Paragraph 9. - The proposal for a covenant dealt with herein shall be consi-

dered confidential, except in the interest of the investigations and the administrative procedure.

Paragraph 10. - The proposal for a leniency covenant denied by the SDE Office, shall not entail confession as to the factual issue, nor acknowledgment of the unlawfulness of the analyzed conduct, and SDE shall not make any disclosure thereof.

Paragraph 11. - Application of the provisions of this article shall observe the regulation to be issued by the Minister of Justice. [*As amended by Law No. 10149/2000*]

Article 35-C - - With respect to the crimes against the economic order set forth by Law No. 8137, of November 27, 1990, the execution of the leniency covenant, under the terms of this Law, implies the suspension of the statute of limitations and impedes the filing of the accusation.[*As amended by Law No. 10149/2000*]

Sole Paragraph – If the leniency covenant is complied with by the undertaking, punishment for the crimes referred to in the main part of this article is extinguished. [*As amended by Law No. 10149/2000*]

Article 36. - Federal authorities, as well as officers of independent agencies, federal government-owned companies and mixed-capital companies, shall render all assistance and collaboration required by CADE or SDE, including as regards preparation of technical reports on the matters under the authority thereof, under penalty of liability.

Article 37. - The defendant shall produce any evidence within forty-five days after submission of defense, as well as put forth new documents at any time before the discovery phase lapses.

Sole Paragraph - The defendant may ask the SDE Secretary to set out a date, time and place for hearing of a maximum of three witnesses.

Article 38. - The Economic Policy Secretariat of the Ministry of Finance shall be informed by official letter of the institution of any administrative proceedings, and the Secretariat may elect to render an opinion on the matters within its sphere of authority, before the discovery phase lapses. [*As amended by Law No. 9021/1995*]

Article 39. - Upon conclusion of the discovery phase, the defendant will be summoned to put forth his/its final arguments within five days, after which the SDE Secretary will issue a substantiated report resolving on forwarding of

the case records to CADE for review or shelving thereof, subject to an *ex officio* appeal to CADE in this latter case.

Article 40. - The SDE Secretary, the CADE members, and their civil servants and officials shall exert their best efforts to develop and conclude preliminary investigations and administrative proceedings in the interest of proper expedition as required for clarification of the facts, under penalty of liability.

Article 41. - The SDE Secretary decisions cannot be appealed to higher ranks.

CHAPTER III. - CADE Judgment on Administrative Proceedings

Article 42. - Once the proceedings have been found admissible, the CADE President will randomly distribute such proceedings to the Reporting Official, who will be afforded a twenty-day term to render an opinion thereon. [*As amended by Law No. 9069/1995*]

Article 43. - The reporting official may order supplementary investigations or request further information pursuant to article 35 hereof, as well as allow for the production of new evidence to the case whenever he/she considers the existing data insufficient for a final determination on the case.

Article 44. - Upon invitation of the CADE President in response to an indication of the reporting official, any person may provide CADE with clarifications on relevant matters.

Article 45. - Upon board judgments--the date of which will be made known to the parties at least five days in advance--the Attorney General and the defendant, or his/its attorney, will be respectively offered the floor for fifteen minutes each.

Article 46. - The CADE decision--which in any event shall be duly substantiated against violations of the economic order--shall contain:

I. - a detailed report on the violating acts, and an indication as to the antitrust action to be taken by the proper authorities;

II. - the terms for commencement and conclusion of the action referred to in the preceding item;

III. - the applicable fine; and

IV. - a daily fine to apply while the violation is in effect.

Sole Paragraph - The CADE decision shall be published within five days in

the Official Gazette of the Federal Executive.

Article 47. - CADE shall monitor compliance with its decisions. [*As amended by Law No. 9069/1995*]

Article 48. - Total or partial noncompliance with the CADE decision shall be reported to the CADE President, who will ask the Attorney General to provide for execution thereof via court channels.

Article 49. - The CADE decisions shall be taken by majority vote, with the attendance of a minimum of five members.

Article 50. - The CADE decisions do not qualify for Executive Branch review; accordingly, any such decisions shall be promptly executed, the Attorney General Office being then advised in this respect for the purpose of taking all legal action within its sphere of authority.

Article 51. - The CADE regulations and in-house rules shall further regulate administrative proceedings.

CHAPTER IV. - Preventive Measures and Cease-and-Desist Orders

Article 52. - The SDE Secretary or reporting official may--upon his/her own initiative or at the request of the CADE Attorney General--adopt preventive measures in any instance of administrative proceedings, whenever there are signs or sound reasons to believe that the defendant directly or indirectly caused or may cause irreparable or substantial damages to the market, or that he/it may render the final outcome of the proceedings ineffective.

Paragraph 1. - The preventive measures issued by the SDE Secretary or reporting official shall order prompt cessation of damaging acts and the resumption of the preceding situation, if reasonably feasible, as well as impose a daily fine pursuant to article 25 hereof.

Paragraph 2. - The SDE Secretary or CADE reporting official decision on adoption of preventive measures may be voluntarily appealed to the CADE Board within five days, without suspensive effects.

CHAPTER V. - Cease-and-Desist Commitments

Article 53. - CADE or SDE--*ad referendum* CADE--may agree on a commitment to cease acts under investigation in any instance of administrative proceedings, which commitment shall by no means entail a confession as to

the matter under analysis nor acknowledgment of guilt for the acts thereunder.

Paragraph 1. - The commitment shall provide for:

(a) the defendant's commitment to cease the action under investigation in due course;

(b) a daily fine to be imposed in the event of default under article 25 hereof; and

(c) the defendant's commitment to issue periodical reports on the defendant's market performance, and an undertaking to make proper authorities aware of any changes in its corporate structure, control, activities and location.

Paragraph 2. - The case will be on hold while the cease-and-desist commitment is duly complied with, and after a preestablished time this case will be shelved if all conditions set out in the corresponding commitment have been fully met.

Paragraph 3. - The conditions spelled out in the commitment may be changed by CADE if they are provenly overburdensome for the defendant, provided that any such changes do not cause damages to third parties or to the society at large, and that the new conditions do not entail a violation of the economic order.

Paragraph 4. - The cease-and-desist commitment constitutes an extrajudicial execution instrument; accordingly, execution of this commitment shall be promptly petitioned in the event of default thereon or if monitoring thereof is in any way hampered, pursuant to articles 60 *et seq.* hereof.

Paragraph 5. - The provisions hereof do not apply to anticompetitive practices related to or resulting from the conduct set out in items I, II, III and VIII of article 21 hereof. [*As amended by Law No. 10149/2000*]

TITLE VII. - MONITORING MECHANISMS

CHAPTER I. - Monitoring of Acts and Agreements

Article 54. - Any acts that may limit or otherwise restrain open competition, or that result in the control of relevant markets for certain products or services, shall be submitted to CADE for review.

Paragraph 1. - CADE may authorize any acts referred to in the main section of this article, provided that they meet the following requirements:

I. - they shall be cumulatively or alternatively intended to:

(a) increase productivity;

(b) improve the quality of a product or service; or

(c) cause an increased efficiency, as well as foster the technological or eco-

conomic development;

II. - the resulting benefits shall be ratably allocated among their participants, on the one part, and consumers or end-users, on the other;

III. - they shall not drive competition out of a substantial portion of the relevant market for a product or service; and

IV. - only the acts strictly required to attain an envisaged objective shall be performed for that purpose.

Paragraph 2. - Any action under this article may be considered lawful if at least three of the requirements listed in the above items are met, whenever any such action is taken in the public interest or otherwise required to the benefit of the Brazilian economy, provided no damages are caused end-consumers or -users.

Paragraph 3. - The acts dealt with in the main section of this article also include any action intended for any form of economic concentration, whether through merger with or into other companies, organization of companies to control third companies or any other form of corporate grouping, when the resulting company or group of companies accounts for twenty percent (20%) of a relevant market, or in which any of the participants has posted in its latest balance sheets an annual gross revenue equivalent to R\$ 400,000,000 (four hundred million of Reais). [*As amended by Law No. 10149/2000*]

Paragraph 4. - The acts dealt with in the main section of this article shall be submitted to SDE--duly accompanied by three counterparts of the corresponding documentation--in advance or no later than fifteen business days after the occurrence thereof, and SDE shall promptly forward one such counterpart to CADE and another to SPE. [*As amended by Law No. 9021/1995*]

Paragraph 5. - Noncompliance with the deadlines set forth in the preceding paragraph will be punishable with a fine in an amount between 60,000 (sixty thousand) UFIR and 6,000,000 (six million) UFIR, imposed by CADE without prejudice to the opening of an administrative proceeding pursuant to article 32 hereof.

Paragraph 6. - Upon receipt of the SPE technical report issued within thirty days, SDE shall pronounce thereon within this same period and then send the case and evidentiary documents on to the CADE Board, which shall resolve thereon within thirty days. [*As amended by Law No. 9021/1995*]

Paragraph 7. - The effectiveness of any acts dealt with in this article will be conditioned to approval thereof, which approval shall be retroactive to the date of occurrence of such acts; if not looked into by CADE within the thirty-day period established in the preceding paragraph, the acts referred to above will be deemed automatically approved. [*As amended by Law No. 9021/1995*]

Paragraph 8. - The terms set forth in paragraphs 6 and 7 hereof will be stayed while the clarifications and documents considered essential for review of the case by CADE, SDE or SPE are not submitted as requested.

Paragraph 9. - In the event the acts specified in this article are subject to suspensive conditions or have already caused fiscal or other effects to third parties, the CADE Board--if it elects to deny approval thereof--shall determine that all applicable action be taken to totally or partially revert--by way of dissolution, spin-off or sale of assets, partial cessation of activities, among others--any action or procedure damaging to the economic order, notwithstanding any civil liability for losses and damages caused third parties.

Paragraph 10. - Without prejudice to the obligations of the parties involved, any change in the stock control of publicly-held companies or registration of amalgamations shall be reported to SDE by the Securities Commission - CVM and by the Brazilian Commercial Registry Department of the Ministry of Industry, Trade and Tourism - DNRC/MICT, respectively, within five business days for the SDE review, if applicable.

Article 55. - The approval dealt with in the preceding article may be reviewed by CADE *ex officio* or at the SDE request, if this approval was based on false or misleading information rendered by the interested party, in the event of default on obligations assumed hereunder, or if the intended benefits have not been attained.

Article 56. - The commercial registries or corresponding state entities cannot file any acts related to organization, transformation, amalgamation, merger or grouping of companies, as well as changes in incorporation acts, unless all such acts contain:

- I. - a clear-cut and detailed statement as to the subject matter thereof;
- II. - the interest of each partner, and the term for capitalization thereof;
- III. - full name and identification of each partner;
- IV. - the place where the headquarters is located and its respective address, including as regards any declared branches;
- V. - full name and identification of the company's officers;
- VI. - the term of duration of the company; and
- VII. - the number, type and value of the outstanding stock.

Article 57. - Articles of dissolution shall state the reasons thereof, apart from a statement re the amount ascertained among the partners and an indication of the persons that are to assume the company's assets and liabilities.

CHAPTER II. - Performance Commitment

Article 58. - The CADE Board will define performance commitments to be assumed by any interested parties that submitted acts for review pursuant to article 54 hereof, so as to ensure compliance with the conditions established in paragraph 1 thereof.

Paragraph 1. - Performance commitments will take into consideration the extent of international competition in a certain industry and their effect on employment levels, among other relevant circumstances.

Paragraph 2. - Performance commitments shall provide for volume or quality objectives to be attained within predetermined terms, compliance with which will be monitored by SDE.

Paragraph 3. - Failure without good cause to comply with performance commitments shall cause the CADE approval to be revoked pursuant to article 55 hereof, followed by the opening of an administrative proceeding for the adoption of the applicable measures.

CHAPTER III. - Consultation

Article 59. - *(Revoked by Law No. 9069/1995)*

TITLE VIII. - COURT EXECUTION OF CADE DECISIONS

CHAPTER I. - Processing

Article 60. - The CADE Board decisions imposing fines, as well as obligations to do or not to do, constitute an extrajudicial execution instrument.

Article 61. - Executions exclusively intended to collection of fines shall be carried out pursuant to Law No. 6830 of September 22, 1980.

Article 62. - In the event of executions intended to collection of fines and compliance with obligations to do or not to do, the courts shall order specific performance of any such obligations, or otherwise provide for acts that ensure an outcome equivalent to compliance therewith in practical terms.

Paragraph 1. - An obligation to do or not to do can only lead into a suit for losses and damages its specific performance or obtainment of an equivalent outcome in practical terms is not possible.

Paragraph 2. - Losses and damages shall be paid without prejudice to any applicable fines.

Article 63. - Execution shall be carried out by all means, including by way of intervention in the company, if necessary.

Article 64. - The CADE decisions shall be executed at the federal courts of the Federal District, or at the courts with jurisdiction over the executed party's headquarters or domicile, at the CADE discretion.

Article 65. - Motions or like action against an execution instrument shall not stay the execution itself, unless an amount corresponding to the fines imposed is deposited in court, and a bond is posted as determined by the courts to ensure compliance with a final decision on the case, including as regards daily fines.

Article 66. - Depending on the severity of the violation of the economic order, and should there be sound reasons to believe in irreparable or substantial damages, the courts may order prompt adoption of all or a portion of the action required under the execution instrument, notwithstanding the deposit of fines in court or the posting of bonds.

Article 67. - Daily fines on an ongoing violation shall be apply as from the deadline established by CADE for voluntary compliance with the CADE decision, up to the day of actual performance thereof.

Article 68. - The execution of CADE decisions shall be afforded priority over other kinds of action, except for habeas corpus and writ of mandamus.

CHAPTER II. - Judicial Intervention

Article 69. - The courts shall order intervention in a company whenever required to ensure specific performance hereunder, and appoint a receiver.

Sole Paragraph - The court decision on intervention shall be duly substantiated, as well as accurately establish the action to be taken by the appointed receiver.

Article 70. - If the executed party rebuts a court-appointed receiver within forty-eight hours on the arguments of ineptitude or lack of good standing, and if this claim is duly evidenced in three days, the courts shall render a decision thereon within this same period.

Article 71. - If the rebuttal is granted, the courts shall appoint another recei-

ver within five days.

Article 72. - The intervention may be terminated early if the obligation that gave rise thereto has been provenly complied with in full.

Article 73. - The court intervention shall be limited to those acts required for compliance with the court decision that gave rise thereto, and shall be effective for a maximum period of one hundred and eighty days; the receiver shall be held liable for his/her acts and omissions, especially in the event of abuse of power and departure from the original purposes of his/her appointment.

Paragraph 1. - The receiver will be subject to articles 153 through 159 of Law No. 6404 of December 15, 1976, to the extent applicable.

Paragraph 2. - The receiver will be entitled to a compensation stipulated by the courts, which may replace him/her at any time and whenever the receiver becomes insolvent, is charged with active or passive corruption or malfeasance in office, or violation of his/her duties.

Article 74. - The courts may withdraw the company's managers from their duties if they are provenly preventing performance of acts incumbent on the receiver. Any such managers shall be replaced as provided for in the company's bylaws or articles of association.

Paragraph 1. - If any managers still prevent the receiver from taking proper action after adoption of the procedures set forth in the main section of this article, then the courts shall proceed as per paragraph 2 below.

Paragraph 2. - If a majority of the company's managers deny assistance to the court-appointed receiver, the courts shall order that the receiver take over the company's management.

Article 75. - The receiver shall:

- I. - perform or order performance of all acts required under the execution process;
- II. - advise the courts of any irregularities committed by the company's management and of which the receiver may become aware; and
- III. - submit to the courts a monthly report on his/her activities.

Article 76. - The expenses arising from the intervention hereunder shall be borne by the executed party.

Article 77. - Upon lapse of the intervention, the receiver shall provide the federal courts with a detailed report on his/her action, and either propose the dismissal or shelving of the case or ask for an extension of the intervention

period should the execution decision have not been fully performed in due course.

Article 78. - Whoever opposes or prevents any intervention or, after termination thereof, performs any acts that directly or indirectly annul its effects in whole or in part, or even fails to comply with legal orders from the court-appointed receiver, will be held criminally liable for resistance, disobedience or coercion under the execution process, pursuant to articles 329, 330 and 344 of the Penal Code.

TITLE IX. - FINAL AND TEMPORARY PROVISIONS

Article 79. - (VETOED)

Sole Paragraph - (VETOED)

Article 80. - The CADE Attorney shall henceforth become an Attorney General official duly commissioned to the independent agency created hereunder, jointly with the CADE President and Commissioner positions.

Article 81. - The Executive Branch shall send to the Congress within sixty days a bill of law on the permanent staff of the new independent agency, as well as on the duties and compensation applying to the CADE President, the Commissioners, and the Attorney General.

Paragraph 1. - While CADE is not provided with staff of its own, civil servants may be temporarily assigned to this independent agency by commission or otherwise, without prejudice to the remuneration and other benefits originally afforded thereto, including for the purpose of representing this independent agency in court.

Paragraph 2. - The CADE President shall prepare and submit to the Board for approval a list of servants required for the independent agency, who may be placed at SDE disposal.

Article 82. - (VETOED)

Article 83. - The Code of Civil Procedure, as well as Laws Nos. 7347 of July 24, 1985 and 8078 of September 11, 1990, also apply to the administrative and court proceedings set forth herein.

Article 84. - The fines provided for herein shall be converted into Brazilian currency on the date of actual payment thereof, duly collected to the Fund

dealt with in Law No. 7347 of July 24, 1985.

Article 85. - Article 4, VII of Law No. 8137 of December 27, 1990 shall henceforth read as follows:

"Article 4. - (...)

VII. - increase without good cause the price of a certain product or service, in view of one's market control."

Article 86. - Article 312 of the Code of Criminal Procedure shall henceforth read as follows:

"Article 312. - Preventive imprisonment may be decreed so as to safeguard public or economic order in the interest of the criminal process, or to ensure enforcement of criminal laws, whenever a crime was provenly committed, or if there is sufficient evidence as to its perpetrator."

Article 87. - Article 39 of Law No. 8078 of September 11, 1990 shall henceforth read as follows, with the additional items below:

"Article 39. - The supplier of a certain product or service cannot, among other abusive practices:

(...)

IX. - refuse to sell products or render services directly to whomever is willing to purchase them against prompt payment, except for intermediation cases duly regulated by special laws; and

X. - increase without good cause the price of a certain product or service."

Article 88. - Article 1 of law No. 7347 of July 24, 1985 shall henceforth read as follows, with the additional item below:

"Article 1. - Without prejudice to class actions, this Law applies to actions for moral and property damages arising from:

(...)

V. - violation of the economic order."

Sole Paragraph - Article 5, II of Law No. 7347 of July 24, 1985 shall henceforth read as follows:

"Article 5. - (...)

II. - include in its institutional purposes the protection to the environment, consumers, economic order, open competition, or the artistic, aesthetic, historical, tourism, and landscape heritage;
(...)"

Article 89. - CADE shall be invited to take part as assistant in court actions involving application of this Law.

Article 90. - The periods for consultations submitted under article 74 of Law No. 4137 of September 10, 1962, as amended by article 13 of Law No. 8158 of January 8, 1991, are hereby interrupted, with due regard for Title VII, Chapter I hereof.

Article 91. - This Law does not apply to dumping and subsidies cases dealt with in the Accords for Implementation of Article VI of the General Agreement on Customs Tarrifs and Trade, duly enacted by Decrees Nos. 93941 and 93962 of January 16 and 22, 1987, respectively.

Article 92. - All provisions to the contrary are hereby revoked, as are Laws Nos. 4137 of September 10, 1962; 8158 of January 8, 1991; and 8002 of March 14, 1990, except for article 36 of Law No. 8880 of May 27, 1994, which remains effective.

Article 93. - This Law takes effect on the date of its publication.

Brasília, June 11, 1994; 173rd year of Independence and 106th of the Republic.

ITAMAR FRANCO

Alexandre de Paula Dupeyrat Martins

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