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**ADMINISTRATIVE COUNCIL OF ECONOMIC DEFENSE****RESOLUTION N.º 12 OF MARCH 31, 1998**

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*Approves the Internal Rules of the  
Administrative Council of Economic Defense - CADE*

The Board of the Administrative Council of Economic Defense - CADE, exercising the powers bestowed thereon pursuant to article 7, XIX of Law 8884 of June 11, 1994, hereby RESOLVES as follows:

**PART I  
PURPOSE AND STRUCTURE**

**Article 1.** - The Administrative Council of Economic Defense - CADE is an adjudication agency reporting to the Ministry of Justice and governed by Law No. 8884 of June 11, 1994, with main offices in the Federal District and jurisdiction throughout the Brazilian territory, and the purpose of which is to prevent and curb any practices in violation of economic policies.

**Article 2.** - The CADE Board shall be composed of the Chairman and six (6) Council members.

**PART II  
PROCEDURES**

**SECTION I  
CADE OPERATIONS**

**Article 3.** - Cases shall be filed with or entered at the CADE clerk office on the same date of their receipt, and the term for respective judgment shall run as from such date.

**Article 4.** - Cases under the CADE authority shall be distributed per type-Administrative Case, Preliminary Investigation, Concentration Act, Inquiry, and Voluntary Appeal-each of which bearing a distinct case number.

**Article 5.** - Cases shall be distributed by the Chairman, by drawing of lots, on an equitable basis, in public sessions held on Thursdays, at 10:00 a.m., and extraordinarily on Tuesdays, at 2:30 p.m.

**Article 6.** - CADE's full board will meet ordinarily from January 7<sup>th</sup> to December 19<sup>th</sup>, on Wednesdays, at a public session scheduled to begin at 2:00 p.m. and end at 6:00 p.m., which period may be extended to the extent necessary to deal with all items on the agenda, and extraordinarily, upon the call of the Chairman or as proposed by most of its members.

**Paragraph 1.** - The blanket vacations of the full board will be from December 20<sup>th</sup> to January 6<sup>th</sup>, during which period the procedural term established in article 54, paragraph 6 of Law No. 8884 of June 11, 1994 will be interrupted.

**Paragraph 2.** - The time frame for submission of the concentration acts referred to in article 54, paragraph 4 of Law No. 8884 of June 11, 1994, will not be suspended or interrupted due to vacation of the full board."

**Article 7.** - In the event of impairment or disqualification of:

- I. -the Reporting Member, the case shall be redistributed in the meeting thereafter, pursuant to article 5 hereof;
- II. -any other Board member, such impaired or disqualified member shall have no right to vote.

**Article 8.** - In the events of sick leave, vacation or justified absence, the Council member who is the next in the line of vote shall replace the Reporting Member, exclusively for the adoption of any diligence that is indispensable to the case development.

## **SECTION II CONFIDENTIALITY**

**Article 9.** - CADE shall make the case records available to the respondents, claimants or inquirers, or their respective lawyers, for review on the CADE premises.

**Paragraph 1.** - Interested third parties may be afforded access to the case records for review on the CADE premises, provided that a substantiated request to this effect is submitted to the Reporting Member, which request shall be attached to the respective records. Access to the documents and information identified as confidential pursuant to article 10 of these Rules is hereby prohibited.

**Paragraph 2.** - In the cases for which no Reporting Member has been appointed, or on which a conclusive decision has already been issued by the

CADE Board, the request set forth in paragraph 1 above shall be forwarded to the Chairman.

**Paragraph 3.** - Certificates and copies of the proceedings shall be supplied to the respondents, claimants and inquirers, or their lawyers, as well as to interested third parties, duly authorized by the Reporting Member or, in the event of paragraph 2 above, by the Chairman, against payment of the corresponding costs.

**Paragraph 4.** - The Reporting Member or, in the event of paragraph 2 above, the Chairman shall deny, through a circumstantiated order, any request for review of the case records, whenever there are sound reasons therefor.

**Paragraph 5.** - No CADE official shall disclose any information contained on the case records, unless with the prior express consent of the Reporting Member or, in the cases set out in paragraph 2 above, the Chairman, on pain of liability for undue disclosure.

**Article 10.** - To the extent required by law or in the public interest, the Reporting Member shall declare certain documents and information confidential, to be entered on separate records.

**Paragraph 1.** - The respondent, claimant or inquirer, or the respective lawyers, shall place a request for confidentiality to the Reporting Member, based on substantiated reasons therefor.

**Paragraph 2.** - The request dealt with above shall specify the persons who may be given access to the confidential documents and information, coupled with a non-confidential summary of the data contained therein. Whenever this summary report cannot be released, the respondent, claimant or inquirer, or the respective lawyers, shall make written justification thereof.

**Paragraph 3.** - The Reporting Member shall deny the request dealt with above, through a circumstantiated order, whenever there are sound reasons therefor; a Voluntary Appeal against this denial may be filed to the CADE Board within five (5) days after notice thereof, the respective confidentiality being assured throughout the appellate period.

**Paragraph 4.** - If an appeal is filed, the confidentiality status shall be in full force and effect until judgment thereon is rendered by the CADE Board in a closed session.

**Paragraph 5.** - The reserved nature of confidential information shall be warranted in every oral or written statement made by the Attorney General and CADE Board members.

**Paragraph 6.** - The confidential information and documents dealt with in this Section II, supplied by the respondents, claimants or inquirers, or their respective lawyers, cannot be made available to third parties.

### **SECTION III EVIDENTIARY PROCEDURES**

**Article 11.** - At any time throughout the evidentiary stage regarding any case distributed to him, the Reporting Member may require copies of documents or information from SDE, SEAE or other evidentiary agency, with a view to following up on the development of evidentiary procedures.

**Article 12.** - Evidentiary hearings shall be open to the public and presided over by the Reporting Member; minutes of the respective hearings shall be attached to the records.

**Paragraph 1.** - At the request of the Reporting Member, the Chairman may invite the respondent, claimant or inquirer, or their respective lawyers, to render clarifications to the CADE Board.

**Paragraph 2.** - The Reporting Member may hold evidentiary hearings in closed session, whenever the evidence to be submitted thereat has a confidential nature.

**Paragraph 3.** - Notice of evidentiary hearings shall be served by the Reporting Member on the respondents, claimants or inquirers, their legally appointed lawyers, as well as the Prosecutor Office and CADE Board members, at least five (5) business days in advance.

**Article 13.** - Every hearing instated by the Attorney General or CADE Board members to the respondents, claimants or inquirers, or their lawyers, shall be duly recorded, indicating the date, time and attendees thereof.

### **SECTION IV JUDGMENT**

**Article 14.** - On receipt of the case records, the Reporting Member shall make them promptly available to the Attorney General Office for its opinion thereon.

**Paragraph 1.** - The period of twenty (20) days referred to in article 42 of Law 8884/94 shall start running as from receipt of the case records by the Attorney General Office.

**Paragraph 2.** - Upon expiration of the period dealt with in the preceding paragraph, and if the supporting evidence is deemed satisfactory to the Reporting Member, he may enter the case at the judgment docket.

**Paragraph 3.** - If the Attorney General Office has not rendered an opinion on the case within the period dealt with in paragraph 1 above, the Attorney General shall hand down such opinion orally at the judgment session, unless he deems such pronouncement insufficient; in this case, the Reporting Member shall be informed thereof in a timely manner.

**Paragraph 4.** - Should the provisions of paragraph 3 above occur and to the extent deemed expressly indispensable for defense purposes, the respondent, claimant or inquirer, or their lawyers as well as interested third parties, may petition for a stay of judgment for review of the technical opinion handed down by the Attorney General Office.

**Paragraph 5.** - The stay dealt with in the preceding paragraph for review of the oral opinion shall not exceed five (5) business days as from publication of the minutes of the judgment session.

**Article 15.** - The Report shall be distributed to the CADE Board members, the Attorney General, and the respondents, claimants or inquirers, or their lawyers, at least five (5) business days prior to the judgment session, during which the reading of such Report shall be dispensed with.

**Paragraph 1.** - With due regard for the provisions of article 10 hereof, the report shall contain a summary of the facts and events occurring in the case development.

**Paragraph 2.** - Except for *ex officio* appeals in a Preliminary Investigation, the report shall be open to public scrutiny one (1) hour before instatement of the judgment session.

**Article 16.** - At the judgment session, the Reporting Member shall make a summary oral statement of the material factual aspects contained in his previously distributed report; thereafter, the Attorney General and the respondent, or its lawyer, shall have fifteen (15) minutes to make their respective oral statements.

**Article 17.** - The CADE Chairman shall take the vote of the Reporting Member, and then from the other Board members in decreasing order of seniority, and on equal conditions of age; the Chairman shall be the last to declare his vote.

**Paragraph 1.** - The Reporting Member may order an adjournment of the judgment session, whereas the other Board members and the Chairman may ask for a review of the case, which shall be returned on or before the second ordinary meeting thereafter.

**Paragraph 2.** - If any Board member asks for a review of the case, the judgment session shall be reinstated after his vote upon return of the case, even if this may entail a change in the order of votes.

**Paragraph 3.** - A request for review posed by one or more Board members shall not prevent the other qualified members from delivering their respective vote.

**Paragraph 4.** - Until a final decision is declared by the Chairman, the Council members may change their respective votes.

**Article 18.** - At the request of any Attorney General Office or CADE Board member, and after casting of vote by the Reporting Member, the Chairman may declare the session open for discussions during a period of fifteen (15) minutes, whenever deemed required to clarify certain factual or legal aspects on which a learned decision of the Board members shall rely.

**Paragraph 1.** - Only during the discussion period may be Chairman afford to any Board member the opportunity to bring forth objections or answers.

**Paragraph 2.** - The Chairman shall order the closing of oral discussions and the reopening of votes.

**Article 19.** - The Chairman shall declare the final decision handed down by CADE, to be reduced in writing by the Reporting Member.

**Paragraph 1.** - If the Reporting Member has issued a dissenting opinion, the CADE member who has first rendered a concurring opinion shall be appointed to make a written report on the CADE final decision.

**Paragraph 2.** - CADE final decisions shall rely on the shorthand notes taken during the judgment session, which shall become an integral part thereof.

**Paragraph 3.** - The CADE final decision shall be signed by the Chairman and the Reporting Member, or the CADE member who has prepared it.

**Paragraph 4.** - The CADE final decision shall be published in the Official Gazette of the Federal Executive within fifteen (15) business days of publication thereof.

**Article 20.** - Minutes of every Board meeting shall be submitted to the next

meeting for approval.

## SECTION V SPECIAL JUDGMENTS

**Article 21.** - The judgment on *ex officio* appeals in Preliminary Investigations shall be held in a closed session, at which only the Attorney General and the respondent or its lawyer shall attend.

**Article 22.** - If the Attorney General's opinion is unfavorable to an *ex officio* appeal in Preliminary Investigations, the Reporting Member may order the shelving thereof, *ad referendum* of the CADE Board.

**Paragraph 1.** - Every month, the decisions referred to in the main section of this article shall be taken to the CADE Board meetings by addressing only the case number and the names of the parties involved.

**Paragraph 2.** - If there is any request for review of a case, the respondents, claimants or inquirers, or their respective lawyers, as well as the Attorney General, shall be entitled to take the floor for a period not exceeding fifteen (15) minutes, during the session in which the case reenters the CADE Board docket for judgment purposes.

**Paragraph 3.** - At the end of the oral statements dealt with in paragraph 2 of this article, the procedural order of votes starting from y the Reporting Member shall be resumed.

## PART III ENFORCEMENT

**Article 23.** - Enforcement of the CADE decisions shall be inspected by an agency reporting directly to the CADE Chairmanship, to which the cases shall be forwarded as soon as a conclusive decision is handed down by the CADE Board.

**Paragraph 1.** - In the event of imposition of a fine or noncompliance with a decision, the CADE Board, through its Chairman, shall order that the Attorney General Office take the action required for judicial enforcement thereof.

**Paragraph 2.** - Any incident during the enforcement of the CADE decision shall be submitted to the CADE Board, by its Chairman, for review.

**Article 24.** - The Reporting Member may apply to the Chairman for assistance from the CADE administrative bodies in supervising compliance with the cease-and-desist orders and performance commitments.

**Article 25.** - CADE shall supervise compliance with any decision for the performance of actions intended to eliminate the damaging effects of any act or practice on economic policies.

#### **PART IV GENERAL PROVISIONS**

**Article 26.** - The CADE Board shall resolve on the rules and procedures related to the items listed below, among others:

- I. - the definition of supplementary rules on the CADE operations and judgment docket;
- II. - inquiries to CADE on matters under its authority;
- III. - the evidentiary procedures for administrative cases;
- IV. - collection of the fines dealt with in Law 8884/94;
- V. - the rules of ethical conduct to be followed by the CADE officials;
- VI. - the acts dealt with in article 54 of Law 8884/94;
- VII. - the voluntary appeals against preventive measures taken by the Reporting Member or by SDE; and
- VIII. - the CADE participation in the judicial proceedings set forth in Law 8884/94.

**Article 27.** - The Chairman, the Board members, and the Attorney General shall jointly render to the CADE Board an annual account of their activities, which shall contemplate, respectively:

- I. - the activities performed in representation of CADE as well as for enforcement of its decisions;
- II. - case reporting activities; and
- III. - legal counsel as well as administrative actions taken in the administrative and judicial spheres.

**Article 28.** - Any proposed amendment to the CADE Internal Rules shall be submitted by a Board member in an ordinary meeting, and shall remain open for suggestions in three consecutive ordinary meetings thereafter, whereupon the matter shall be discussed on and put to a vote.

**Article 29.** - Any amendment to these Rules shall be conditional on the favorable vote of at least five (5) Council members in an ordinary meeting.

**Article 30.** - CADE publications are as follows:

- I. - Judgment Docket;
- II. - Minutes of Board meetings and distributions, summary dockets, decisions, and orders;
- III. - CADE Newsletter;
- IV. - Annual Report;
- V. - CADE: Texts for Discussion; and
- VI. - Minutes of the Meetings of the Permanent Forum on Competition Issues.

**Article 31.** - The cases not dealt with herein, as well as any doubts arising out of these Rules, shall be settled by the Chairman, after hearing the Board meeting.

**Article 32.** - These Rules shall come into force on the date of their publication; all provisions to the contrary are hereby repealed.

GESNER OLIVEIRA  
CADE Chairman

