



AN OVERVIEW OF CADE'S RECENT JURISPRUDENCE REGARDING INTELLECTUAL PROPERTY

December, 2014

*Prepared for WIPO under
the Special Services Agreement
dated February 13, 2014*

AUTHORSHIP

This report was prepared for the World Intellectual Property Organization by the Center of International Law, Belo Horizonte, MG / Brazil. The team responsible for the research and drafting of this report was led by Professor Leonardo Nemer Caldeira Brant and Professor Délber Andrade Gribel Lage. The team is composed by Laura Cabral de Avelar Marques, Matheus Cid Loureiro Penido, Carolina Laboissiere Muzzi, Loni Melillo Cardoso, Ana Carolina Veloso Ferreira, André Costa Belfort and Felipe Renault C. da Silva Pereira.

TABLE OF CONTENTS

Introduction, 5

CADE and the Rule of Reason, 7

CADE and Intellectual Property, 9

Statistical data, 10

Table of cases, 12

Cases that took intellectual property into consideration, 18

Cases that did not take intellectual property into consideration, 59

Index of topics and companies, 220

INTRODUCTION

The evolution of CADE's activity and experience in recent years has elevated Brazil to a prominent position in the international scenario regarding case law on the interface between antitrust and intellectual property. For that reason, CEDIN was commissioned by WIPO to elaborate a systematic compilation of CADE's experience since 1994. As a result, this work presents a series of charts that resulted from the legal analysis of CADE's cases involving intellectual property. Moreover, summarized reports of all decided cases are also presented.

Since the Brazilian Administrative Council for Economic Defence (CADE) became an independent federal agency, according to Law No 8.884/1994, Brazil has experienced a significant increase in the number of mergers and acquisitions, a context in which CADE's intervention became more relevant. The number of cases filed went from 33 in the 34 previous years to 600 between 1996 and 2000¹. In the late 1990s, the merger between Brahma and Antártica was responsible for drawing public opinion's attention to competition issues, which had been far from the spotlight until then.

From this point, CADE's role has started to be contested, including before courts, in iconic cases such as Garoto-Nestlé (case no. 46). At the same time, more efficient investigation mechanisms were implemented by the Ministry of Justice and the focus of CADE's intervention started to shift from mergers to cases involving anticompetitive behaviour in general. In this context, partnerships were established with regulators, the National Institute for Industrial Property (INPI), the Federal Police, the Public Ministry and the Federal Attorney General's Office. With the introduction of measures such as dawn raids, CADE's intervention became stricter, especially in regards to cartels. The penalties applied to firms engaged in such conducts amounted BRL 2.3 billion by September 2010².

However, CADE's ex-post intervention in merger cases still contrasted with what was adopted and seen as a best practice internationally. Provisional remedies designed to preserve the reversibility of market conditions in relevant mergers proved themselves to be ineffective in regards to the aims pursued by the agency.

¹ CARVALHO, Vinícius Marques; RAGAZZO, Carlos Emmanuel Joppert. *Defesa da concorrência no Brasil: 50 anos (Economic Defense in Brazil: 50 years)*. Brasília: Conselho Administrativo de Defesa Econômica – CADE, 2013. p. 18.

² CARVALHO, Vinícius Marques; RAGAZZO, Carlos Emmanuel Joppert. *Defesa da concorrência no Brasil: 50 anos (Economic Defense in Brazil: 50 years)*. Brasília: Conselho Administrativo de Defesa Econômica – CADE, 2013. p. 25.

By the end of the first decade of the 21st century, CADE and stakeholders shared the view that a restructuring in Brazilian competition policy was needed. A recurring matter in previous years was the creation of a single antitrust agency that would unify and cover the attributions of SDE (Secretariat of Economic Law) and SEAE (Secretariat for Economic Monitoring), allowing a more appropriate intervention on the economy.

After a long congressional debate, Law No. Act 12.529/2011 was enacted. Not only did the new law mark the shift from ex-post to ex-ante analysis in merger cases but it also raised the thresholds for compulsory merger notification, filtering relevant transactions and allowing CADE to focus on the analysis of anticompetitive behaviour by firms acting on the Brazilian market.

Before the new law entered into force, a considerable number of companies took advantage of the last opportunity to notify mergers that were already consolidated in the market. In only 20 days, 141 mergers were accounted, establishing a record to CADE³. The transitioning phase from Law No 8.884/1994 to Law No 12.529/11 configured a *stock cleansing* period⁴, in which a large number of cases involving mergers and anticompetitive conducts went to trial.

As far as decisions concerning intellectual property rights are concerned, it is worth mentioning that CADE has come across with this topic more frequently in mergers than in cases involving anticompetitive practices. In a large number of the former, intellectual property rights were not influential to the decision. This is compatible with the increase of maturity acquired by the agency. Once the policy which guided the enacting of Law No, 12.529/2011 is implemented and Brazilian economy develops, an increase in the number of IP-related cases can be expected.

³ CARVALHO, Vinícius Marques; RAGAZZO, Carlos Emmanuel Joppert. *Defesa da concorrência no Brasil: 50 anos (Economic Defense in Brazil: 50 years)*. Brasília: Conselho Administrativo de Defesa Econômica – CADE, 2013. p. 28.

⁴ CARVALHO, Vinícius Marques; RAGAZZO, Carlos Emmanuel Joppert. *Defesa da concorrência no Brasil: 50 anos (Economic Defense in Brazil: 50 years)*. Brasília: Conselho Administrativo de Defesa Econômica – CADE, 2013. p. 29.

CADE AND THE RULE OF REASON

Brazilian legislation opted to consider antitrust cases according to the Rule of Reason⁵. In 2011, the Brazilian System of Economic Defense was restructured due to the passing of Law no. 12.529/2011. Despite the radical change in CADE's role and other agencies associated to its functioning, the causes for practices to be considered illegal and anticompetitive were mostly maintained: article 36 of the new act incorporated the provisions in the *main section*, items and paragraphs 1 and 2 from article 20 of Law no. 8.884/1994; the only difference between the two provisions is, indeed, the expansion of the violations against the economic order listed in paragraph 3 of article 36.

Accordingly, CADE's Regulation no. 20/1999 contains relevant guidelines that refer to the analysis of restrictive practices. Even though this Regulation has since been repealed by Regulation 45/2007, its guidelines continue to be relevant to the understanding of how the Rule of Reason orients CADE's work to identify and characterize competition practices. Annex II of Regulation 20 states that:

Under the *rule of reason*, these requirements are conditions that are necessary but not sufficient to consider a practice harmful to competition. In order to do so, it is necessary to evaluate the anticompetitive effects of the practice and weigh them against their possible compensatory benefits (efficiencies).

The basic steps of this analysis are:

1. Characterization of the practice
 - 1.1. Identification of the nature of the practice and definition its legal classification.
 - 1.2. Verification of whether there is sufficient evidence of the practice in the cases records.
2. Analysis of the dominant position
 - 2.1. Definition of the relevant market(s)
 - 2.2. Estimate of the total market share of the companies in the relevant market(s)

⁵ The Monograph number 23 of the American Bar Association, Section of Antitrust Law contains the definition of Judge Brandeis, from the North American Supreme Court: "The true test of illegality is whether the restraint imposed is such as merely regulates and perhaps thereby promotes competition or whether it is such as may suppress or even destroy competition. To determine that question the court must ordinarily consider the facts peculiar to the business to which the restraint is applied: its condition before and after the restraint was imposed; the nature of the restraint and its effect, actual or probable. The history of the restraint, the evil believed to exist, the reason for adopting the particular remedy, the purpose or end thought to be attained, are relevant facts"

- 2.3. Analysis of the actual and potential competitive conditions (barriers to entry) on the relevant market(s) (including institutional conditions).
- 3. Analysis of the specific practice
 - 3.1. Assessment of the anticompetitive damage cause by the practice on this (these) (or other) market(s).
 - 3.2. Examination of possible economic efficiency gains and other benefits generated by the practice.
 - 3.3. Final assessment (balance) of the anticompetitive effects and the economic efficiencies of the practice.
According to the rule of reason, *practices whose anticompetitive effects cannot be sufficiently offset by possible compensatory benefits/efficiency should be condemned.* (emphasis added)

As can be seen, CADE adopts the concrete consideration of possible anticompetitive effects on case decisions. Therefore, practices are not rejected by themselves; they are evaluated against the relevant market involved and the actual effects of the practice so that, even though there are a few abuses (horizontal mergers, for example), the resulting market power will be evaluated, and if it is insignificant, it will not prevent the approval of the transaction.

CADE AND INTELLECTUAL PROPERTY

Amongst the cases and decisions analysed in this study, some tendencies regarding the relationship between CADE and Intellectual Property can be clearly identified:

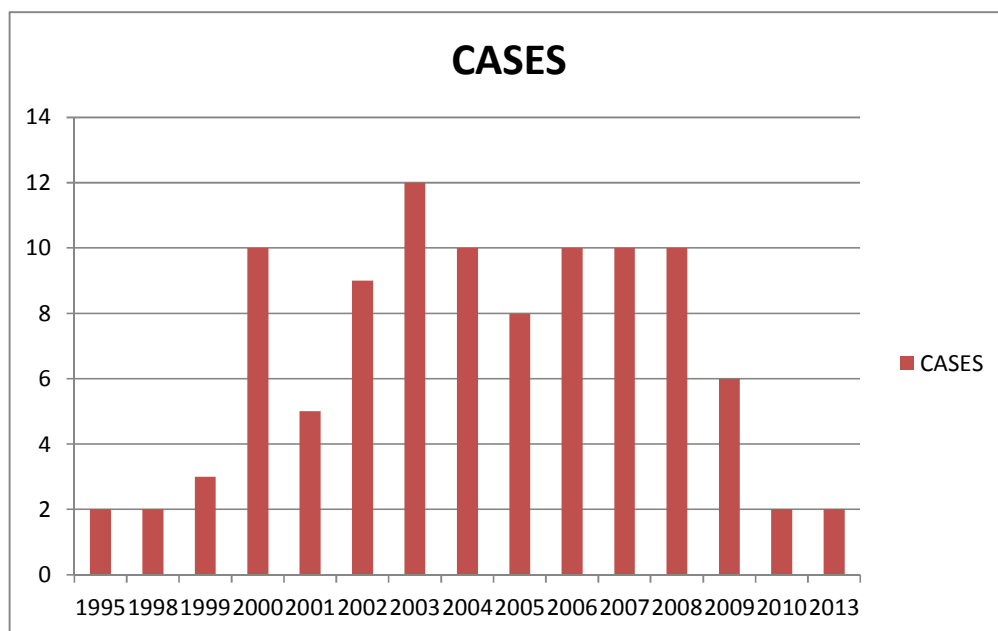
- a) CADE's main concern, as Brazil's antitrust agency, is the effects in competitions of the practices, mergers, acquisitions and agreements analysed. Because of this, several cases which involve intellectual property are closed even before any direct analysis is had on the topic. That is due to the fact that, in most cases, the absence of any effects in competition can be determined without the need to analyse the intellectual property elements of the case;
- b) CADE expressly recognizes the possibility that Intellectual Property Rights can be exercised or licensed in an abusive manner. Such possibility embodies one aspect of the relationship between Intellectual Property and Competition Law: that uses legally permitted or granted under Intellectual Property Law (such as the right to exclusively license one's patent) may be illegal or have illegal effects from a competition point of view;
- c) The vast majority of cases analysed by CADE which involve Intellectual Property are cases based on the transfer of assets and cases based on agreements and Intellectual Property licenses. Even though there are cases related to the abusive exercise of Intellectual Property Rights, those cases are still few in comparison to the previously mentioned ones.
- d) CADE clearly identifies the possible market power arising from Intellectual Property Rights, specially Trademarks, Industrial Design and Patents. In some cases, the amendment of exclusive licenses in order to remove the exclusivity, or the determination of sale of trademarks to third parties were found to be necessary measures to prevent harm to competition in involved markets.

As CADE's analysis of intellectual property evolves, new tendencies will undoubtedly arise. However, the compilation of CADE's decisions, presented in this study, can shed some light into how Intellectual Property relates to – and affects – competition.

STATISTICAL DATA

1. Number of cases submitted per year

YEAR	CASES
1995	2
1998	2
1999	3
2000	10
2001	5
2002	9
2003	12
2004	10
2005	8
2006	10
2007	10
2008	10
2009	6
2010	2
2013	2
TOTAL	101



2. Relevant Geographic Markets

REGIONAL	DOMESTIC	INTERNATIONAL	DOMESTIC AND INTERNATIONAL	NOT APPLICABLE OR UNDEFINED
3	59	13	7	19

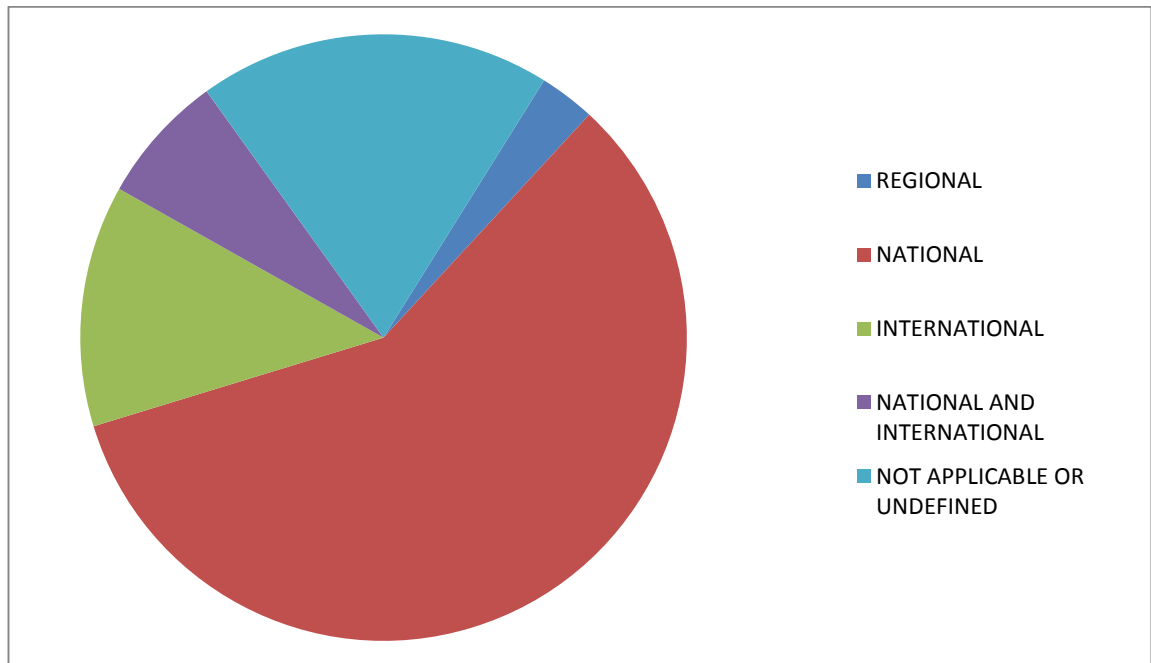


TABLE OF CASES

1. Number of cases submitted per year.....	8
2. Relevant Geographic Markets	9
CASES THAT TOOK INTELLECTUAL PROPERTY INTO CONSIDERATION	16
1. Nilton Matos Fragoso Filho and Alcoa Alumínio S/A, – <i>abusive exercise of industrial design rights and utility models, sham litigation, appeal in preliminary investigation</i> – Case No 08012.005727/2006-50	17
2. Associação Nacional dos Fabricantes de Autopeças (ANFAPE), Volkswagen do Brasil Indústria de Veículos Ltda., Fiat Automóveis S.A. and Ford Motor Company Brasil Ltda. – <i>Abuse of Industrial Design Rights</i> – Case no. 08012.002673/2007-51.....	19
3. Braspak and Totvs Microsiga – <i>Abusive Software Licenses, Lock-in, Market Division, Tying Arrangements.</i> - Case no. 08012.008005/2008-19.....	22
4. Companhia de Bebida das Américas (AmBev) – <i>Anticompetitive Practices, Market Closure, Increase in Competitors’ Costs, Abuse of Industrial Design Rights</i> - case no. 08700.002874/2008-81	24
5. Editora Nova Atenas Ltda. and Ediouro Publicações S/A – <i>Trade Secrets, Abuse of a Dominant Position, Sham Litigation</i> – case no. 08012.005335/2002-67.....	26
6. Associação Brasileira das Indústrias de Medicamentos Genéricos – Pró Genéricos; Eli Lilly do Brasil Ltda. and Eli Lilly and Company – <i>Patents, Sham Litigation</i> – case no. 08012.011508/2007-91	28
7. Gemplus and Axalto – <i>Merger, Approval with Restrictions, Patent Licensing</i> – case no. 08012.011178/2005-71	30
8. Syngenta and Monsanto – <i>Agreement, Patent Licensing Agreement, Anticompetitive Effects of Licensing Agreement</i> – case no. 08012.000311/2007-26.....	32
9. Ambev and Cervejaria Cintra – <i>Asset Acquisition, Determination for the Sale of a Trademark</i> – case no. 08012.003302/2007-97.....	34
10. Monsanto and Brasmax – <i>Patent Licensing Agreement, Anticompetitive Effects of Licensing Agreement</i> – case no. 08012.003296/2007-78	36
11. Monsanto, FMT and Unisoja – <i>Agreement, Patent Licensing, Potential Harm to Competition</i> – case no. 08012.003997/2003-83.....	38
12. Sadia S/A and Perdigão S/A – <i>Merger, Compulsory Assignment of Trademarks, Suspension of Trademark Use</i> – case no. 08012.004423/2009-18.....	40
13. Becton and 3M – <i>Asset Acquisition, Assignment of Trademarks and Patents</i> – Case no. 08012.010538/2009-41	42

14. Dow Agrosiences LLC and Rohm and Haas Company – <i>Asset Acquisition</i> – case no. 08012.001852/2001-86	44
15. Monsanto do Brasil Ltda. and Bayer S.A. – <i>Agreement</i> – case no. 08700.004957/2013-72	46
16. Monsanto do Brasil Ltda. and Embrapa – <i>Agreement</i> – case no. 08700.006336/2013-23	47
17. K&S Aquisições Ltda. and Kolynos do Brasil Ltda – <i>Company Acquisition, Determination of Sale, Licensing or Suspension of Use of Trademark</i> – case no. 0027/1995	48
18. Datasul S.A., Meya Computer Services Brazil Ltda. and Meya Argentina S.A. – <i>Asset Acquisition, Assignment of Intellectual Property Rights, Trademarks, Software</i> – case no. 08012.000233/2007-60	50
19. Datasul and Bonagura – <i>Asset Acquisition, Assignment of Intellectual Property Rights, Software</i> – case no. 08012.014701/2007-83	52
20. Global Cosmetics Brasil Ltd., NY Looks Ltd., Mr. Alexandre de Andrade Romerroad and Hypermarcas S.A. – <i>Asset Acquisition , Assignment of Intellectual Property Rights</i> – case no. 08012.008943/2008-19	54
CASES IN WHICH INTELLECTUAL PROPERTY WAS NOT TAKEN INTO CONSIDERATION	56
21. Sociedade Brasileira de Instrução and Microsoft Informática Ltda. – <i>Anticompetitive Practices</i> – Case no. 08012.004570/2000-50	57
22. Paiva Piovesan and Microsoft Informática Ltda – <i>Abuse of Dominant Position, Predatory Pricing, Exclusionary Practices</i> – Case no. 08012.002034/2005-24	59
23. Notrox S.A. and Monsanto do Brasil Ltda. – <i>Tying, Exclusionary Practices</i> - case no. 08012.008659/1998-09	61
24. Microlite S.A. and Coats Corrente Ltda. – <i>Merger, Horizontal Integration, Purchase of Trademarks</i> - case no. 00511995.....	63
25. Cargill Incorporated and Monsanto Company – <i>Merger</i> – case no. 08012.005135/1998-01	65
26. Cisco Systems Inc and International Business Machines Corporation – <i>Merger</i> – case no. 08012.008794/99-27	67
27. ITW Chemical Products Ltda. And Morganite do Brasil – <i>Merger</i> – case no. 08012.009013/1999-49	69
28. Dow Chemical Company and Union Carbide Corporation – <i>Merger</i> – case no. 08012.007759/1999-91	71
29. Sara Lee and Zorba Têxtil S/A – <i>Merger</i> – case no. 08012.002366/2000-02	74
30. Cryovac and Menegotti – <i>Merger</i> - case no. 08012.003095/2000-04	75

31. PCS Fosfatos do Brasil Ltda. and Fertilizantes Mitsui S/A Indústria e Comércio – <i>Merger</i> - 08012.003097/2000-21.....	77
32. Monsanto and Coodetec – <i>Agreement</i> – case no. 08012.003711/2000-17.....	79
33. Coopers Brasil and Bayer S.A. – <i>Merger</i> – case no. 08012.005202/2000-29.....	81
34. Creo Products Inc. and Scitex Corporation Ltd – <i>Acquisition</i> – case no. 08012.001103/00-51.....	83
35. Novartis and AstraZeneca – <i>Merger</i> – case no. 08012.003098/00-38.....	85
36. Gillette Company and Newell Rubbermaid Inc. – <i>Asset Acquisition</i> – case no. 08012.003973/2000-81.....	89
37. Bunge Alimentos S/A and Moinhos de Trigo Indígena S/A (Motrisa)- <i>Asset Acquisition</i> – case no. 08012.006365/2001-18.....	91
38. Huffy Corporation and Schwinn Group – <i>Asset Acquisition</i> – case no. 08012.004762/2001-47.....	93
39. GVT and American Tower do Brasil Ltda – <i>Agreements</i> – case no. 08012.003245/2001-51.....	95
40. Unidas and SAG Group – <i>Merger</i> – case no. 08012.003569/2001-99.....	97
41. Parmalat Brasil S.A Indústria de Alimentos and Chocoleite Indústria de Alimentos Ltda. – <i>Asset Acquisition</i> – case no. 08012.003595/2002-06.....	99
42. Procter & Gamble Clairol Inc. (P&G); Procter & Gamble do Brasil & Cia. (P&G Brasil) and Metalúrgica Cabomat S.A – <i>Asset Acquisition</i> – case no. 08012.004563/2002-10.....	101
43. Illbruck and Sonex – <i>Asset Acquisition</i> – case no. 08012.005787/2002-49.....	103
44. Littlejohn and Goodyear Chemicals Europe – <i>Merger</i> – case no. 08012.0001400/2002- 21	105
45. The Kignsford Products Company, Aventis CropScience AS and Aventis Environmental Science AS – <i>Asset Acquisition</i> – case no. 08012.001212/2002-57.....	107
46. Nestlé Brasil Ltda. and Chocolates Garoto S/A – <i>Merger</i> – case no. 08012.001697/2002-89.....	109
47. Rohm and Haas Company and Kureha Chemical Industry Co. Ltd. – <i>Asset Acquisition</i> – case no. 08012.008595/2002-94.....	111
48. Siol Alimentos Ltda and Unilever Bestfoods Brasil Ltda. – <i>Asset Acquisition</i> – case no. 08012.009459/2003-01.....	113
49. Joint Venture (JVC), 3COM and Huawei – <i>Joint Venture Agreement</i> - case no. 08012.009457/2003-11.....	115
50. Kaleidoscope Enterprises Inc and The Clorox International Company – <i>Asset</i> <i>Acquisition</i> – case no. 08012004224/2003-14.....	117
51. Invista Inc and Koch Industries – <i>Merger</i> – case no. 08012.009500/2003-31.....	119

52. Jauense and Bunge – <i>Lease Agreement</i> – case no. 08012.007052/2003-31.....	121
53. Molecular Probes, Inc and Mallard Acquisition Coporation – <i>Merger</i> – case no. 08012.005446/2003-54	123
54. BASF Corporation and Honeywell International Inc. – <i>Asset Acquisition</i> – case no. 08012.000615/2003-60	125
55. Siemens and Alstom Inc – <i>Asset Acquisition</i> - case no. 08012.003574/2003-63	127
56. Reckitt Beckinser (Brasil) Ltda. And Clorox do Brasil Ltda – <i>Asset Acquisition</i> – case no. 08012.002877/2003-69	129
57. Pfizer Animal Health and Bayer AG – <i>Asset Acquisition</i> – case no. 08012.008115/2003-76	130
58. Atlas Copco AB and Ingersoll Rand Company Limited - <i>Asset Acquisition</i> – case no. 08012.001907/2004-09	132
59. Ksin Holdings, Ltd and Grupo Singer – <i>Merger</i> – case no. 08012.005228/2004-09 ..	133
60. Gillette and Den Mat – <i>Asset Acquisition</i> – case no. 08012.002856/2004-24	135
61. Dystar, Hochwaldhäuser Vermögensverwaltungsgesellschaft mbH (NewCo) and Rotta GmbH I.I. – <i>Asset Acquisition</i> – case no. 08012.010295/2004-37	137
62. Otto Kaiser GmbH and Fielder International GmbH – <i>Asset Acquisition</i> – case no. 08012.008128/2004-26	139
63. Resolution Speciality Materials (Grupo Apollo) and Exxon Mobil Company – <i>Asset Acquisition</i> – case no. 08012. 009380/2004-52	141
64. União Química Farmacêutica Nacional S.A. and Wyath – <i>Asset Acquisition, Trademark</i> – case no. 08102.006622/2004-56	143
65. Syngenta CP, Fox Paine and Advanta – <i>Asset Acquisition</i> – case no. 08012.004341/2004-69	145
66. Phillips Van Heusen Corporation, Cleutt American Corp, Consumer Direct Corporation and Cluett Peabody Holding Corp. <i>Asset Acquisition, Trademark</i> – case no. 08012.010523/2004-79	147
67. União Química Farmacêutica Nacional Ltda. and Laboratories Wyeth-Whitehall. – <i>Asset Acquisition, Trademark</i> – case no. 08012.004956/2004-95	149
68. Fortune Brands, Inc and Pernod Ricard S.A. – <i>Asset Acquisition, Trademark</i> – case no. 08012.004044/2005-02	151
69. Submarino S.A. and Ingresso.com S.A. – <i>Merger</i> - case no. 08012.010683/2005-07.	153
70. Devintex Cosméticos Ltda and Armkel Brasil Cosméticos Ltda. – <i>Asset Acquisition, Intellectual Property Rights</i> – case no. 08012.005322/2005-31	155
71. DM and Laboratórios Wyeth – <i>Asset Acquisition, Trademark, Know-how</i> – case no. 08012.002931/2005-38	157

72. DuPont Deutschland GmbH and Pedex & Co. GmbH – <i>Asset Acquisition</i> – case no. 08012.010910/2005-96	158
73. DuPont and Syngenta – <i>Asset Acquisition</i> – case no. 08012.001576/2006-61	160
74. Grupo Asahi Kasei and Grupo Lanxess – <i>Asset Acquisition</i> – case no. 08012.000206/2006-14	162
75. Cleanese Corporation and Acetate Products Ltda – <i>Asset Acquisition</i> – case no. 08012.008877/2006-15	164
76. Performance Fibers Inc. and Invista Resins & Fibers GMBH. – <i>Asset Acquisition</i> – case no. 08012.006221/2006-68	165
77. Lucent Technologies, Inc. and Riverstone Networks, Inc. – <i>Asset Acquisition</i> – case no. 08012.001214/2006-70	166
78. Bausch & Lomb and Surgin – <i>Asset Acquisition</i> – case no. 08012.000876/2006-22 ..	168
79. Degussa AG and The Dow Chemical Company – <i>Asset Acquisition</i> - case no. 08012.001253/2006-77	170
80. Panseg and The Client – <i>Asset Acquisition</i> – case no. 08012.002412/2006-51	172
81. Lanxess Deutschland and Kemira OYJ – <i>Acquisition</i> – case no. 08012.000164/2006-11 174	
82. Hypermarcas Industrial Ltda and Boehringer Ingelheim of Brazil Chemicals and Pharmaceuticals Ltd – <i>Asset Acquisition</i> - 08012.000793/2007-14	176
83. Bunge Alimentos S.A. and Unilever Brasil Ltd. – <i>Asset Acquisition, Trademarks</i> – case no. 08012.000174/2008-19	178
84. Bombril and Milana Trade / Milana Industrial – <i>Asset Acquisition</i> – case no 08012.008021/2008-10	180
85. Margarita and Dow – <i>Asset Acquisition, Assignment of Intellectual Property Rights, Fungicides</i> – case no. 08012.008718/2008-82	182
86. Ideiasnet S.A. and Canopus Comércio Eletrônico Ltda. – <i>Acquisition, Assignment of Trademarks</i> – case no. 08012.008903/2008-77	184
87. Pernod Ricard and Dramd, Miolo and Lovara – <i>Asset Acquisition, Assignment of Trademarks</i> – case no. 08012.008546/2009-28	186
88. Aspen Global Incorporated and Glaxo Group Limited – <i>Asset Acquisition, Assignment of Intellectual Property Rights, Trademarks, Patents</i> – case no. 08012.004168/2009-11	188
89. E.I Du Pont de Nemours and Company e Merial Limited – <i>Agreement, Patent Licensing</i> – case no. 08012.005179/2009-19	190
90. Melhoramentos Papéis Ltda. and Companhia Melhoramentos de São Paulo – <i>Asset Acquisition, Trademarks</i> – case no. 08012.004726/2009-31	191

91. Bayer CropScience AG and CVR Plant Breeding Ltda – <i>Asset Acquisition, Assignment of Intellectual Property Rights</i> – case no. 08012.000797/2010-06	193
92. Monsanto and Embrapa – <i>Agreement</i> – 08012.004808/2000-01	195
93. Monsanto Company and Pharmacia Corporation – <i>Sale of Shares, Change in Company Control</i> – case no. 08012.005172/2002-12	197
94. Mitsui Coal Holding and Anglo Coal – <i>Asset Acquisition</i> – case no. 08102.008916/2003-31	199
95. Monsanto do Brasil Ltda. and Agroeste Sementes S.A – <i>Agreement, Trade Secret and Patent Licensing</i> – case no. 08012.008359/2005-11	201
96. Embrapa and Basf SA – <i>Agreement</i> – case no. 08012.010000/2007-75	203
97. Monsanto and BasfPlant Science – <i>Agreement</i> – case no. 08012.002933/2007-99...	205
98. Monsanto and Syngenta – <i>Agreement</i> – case no. 08012.006556/2008-48.....	207
99. Monsanto and Aly Participações S.A. – <i>Acquisition</i> – case no. 08012.011210/2008-61 209	
100. Monsanto and Nidera – <i>Agreement, Licensing</i> – case no. 08012.006198/2008-73....	211
101. Vidfarma and Merck – <i>Asset Acquisition</i> – case no. 08012.004909/2010-90	213

CASES THAT TOOK INTELLECTUAL PROPERTY INTO CONSIDERATION

1. Nilton Matos Fragoso Filho and Alcoa Alumínio S/A, – *abusive exercise of industrial design rights and utility models, sham litigation, appeal in preliminary investigation* – Case No 08012.005727/2006-50

 **Parties**

Nilton Matos Fragoso Filho and Alcoa Alumínio S/A

 **Case Type**

Appeal in Preliminary Investigation

 **Syllabus**

Appeal in Preliminary Investigation. Alleged practices of i) sham litigation, through the filing of applications for industrial design rights (ID) before the INPI over unprotectable objects relating to the market of aluminium profiles to be used in the manufacturing of doors and windows; ii) providing the market with misleading information regarding alleged violation of proprietary rights by competitors and refusals to supply within the meaning of articles 2º and art. 21, IV e XIII, of Law 8.884/1994. Non-characterization of alleged violations. ID applications analysed by the INPI. Information released to the market concerned the protection of the defendant's trademarks. Alleged refusal to supply not proved. Dismissal.

 **Summary**

Preliminary investigation initiated in order to gather information on alleged abusive exploitation of intellectual property rights by Alcoa Alumínio S/A, accused of applying for the protection of industrial designs and utility models, which already belonged to public domain, before filing lawsuits against competitors claiming violation of proprietary rights and issuing misleading press releases.

 **Result**

No evidence of the alleged anticompetitive behaviour was found. CADE recognised that the products to which Alcoa applied for IP protection corresponded to a small fraction of its portfolio and that INPI had analysed their subject matter before

granting the respective intellectual property rights. As for the press releases, CADE considered that they were intended to enforce Alcoa's trademark against violations perpetrated by competitors. In light of those circumstances, the judicial procedures started by Alcoa were legitimate.

The Importance of IP to CADE

The intellectual property rights involved in the dispute were important not only to the solution of the controversy, but also as a part of the process for defining the relevant market. If CADE was to adopt a narrower definition of the product Market (by restricting it to the market for aluminium profiles for the manufacturing of doors and windows), such intellectual property rights could be considered as barriers to the entry.

Relevant Market

CADE did not define a single relevant market. Rather, the analysis it carried out focused on a broad (aluminium profiles for general application) and narrow (aluminium profiles for the manufacturing of doors and windows) definitions. As for the geographic dimension, the relevant market was defined as nationwide.

2. Associação Nacional dos Fabricantes de Autopeças (ANFAPE), Volkswagen do Brasil Indústria de Veículos Ltda., Fiat Automóveis S.A. and Ford Motor Company Brasil Ltda. – *Abuse of Industrial Design Rights* – Case no. 08012.002673/2007-51

 **Parties**

Associação Nacional dos Fabricantes de Autopeças – ANFAPE, Volkswagen do Brasil Indústria de Veículos Automotivos Ltda., Fiat Automóveis S.A and Ford Motor Company Brasil Ltda.

 **Case Type**

Preliminary Investigation.

 **Syllabus**

Representation filed by National Association of Automotive Spare Parts Manufacturers (Associação Nacional dos Fabricantes de Autopeças – “ANFAPE”) against carmakers Volkswagen, Fiat and Ford. Alleged infraction of Article 20, items I, II and IV, and Article 21, items IV and V, of Law no. 8883/94. Prevalence of manufacturer’s protected designs against spare parts, with the alleged intent to prevent the transaction of independent spare parts manufacturers in the market. Opinions by SDE and ProCADE for the dismissal of the investigation. Provision of mandatory appeal as suggested by the Public Prosecutor’s Office. Primary market of vehicle manufacturing. Secondary market of spare parts protected by registered designs. Relevant product markets for each part object of a registration⁶. Lack of antitrust immunity to intellectual property rights. Possibility of intervention by the CADE. Exclusivity. Anticompetitive effects arising from the practice. Monopoly. Lock-in. Consumer information asymmetry. Consumer’s over-optimism. Competition in the primary market insufficient to assure competition in the secondary market. Possible absence of objective justification. R&D cost recovery in the primary market. Continuity of innovation incentives. Implausibility of security, quality and cream skimming arguments. Principle of proportionality. Abuse of rights. CADE’s jurisdiction. Brazil’s National Institute of Industrial Property (“INPI”). Sham litigation and abusive prices not characterized. Evidence of damage

⁶ Under Brazil’s Industrial Property Law, Designs are protected through registration, which, if successful, results in a number of registration, used to identify the protected subject-matter.

to competition. Mandatory appeal's provision for the establishment of administrative proceedings.

Summary

Representation filed by the National Association of Auto Parts Manufacturers (Associação Nacional dos Fabricantes de Autopeças - "ANFAPE"), on 4 April 2007, against Volkswagen do Brasil Indústria de Veículos Automotivos Ltda. ("VW"), Fiat Automóveis S/A ("Fiat") and Ford Motor Company Brasil Ltda ("Ford"), for alleged abuses of intellectual property rights, constituting practices subject to the provisions of Article 20, II and IV and Article 21, V of Law no. 8.884/1994. ANFAPE argued that the represented automotive assemblers were abusing their economic power, by the means of the exploitation of intellectual property rights.

Result

In accordance with the Public Prosecutor's Office opinion, the decision was for the provision of the mandatory appeal and the subsequent initiation of administrative proceedings, in order to develop a deeper understanding of the matters at hand.

The importance of IP to CADE

In its decision, CADE understood that even though intellectual property and competition law are, generally, complementary, for they value differentiation, competitiveness, and innovation, on behalf of society, the exercise of an intellectual property right, sometimes, can reveal itself illegitimate and characterize an anticompetitive practice, which allows the intervention of the antitrust authority. The anticompetitive practice may result from frauds or abuses in the proceedings for the registration of the intellectual property rights as well as abuses in the exercise of the right itself. The simple act of registering the design rights by the Defendants, (even if such registration occurred in accordance with the provisions set out in the Intellectual Property Act and were endorsed by INPI) does not eliminate the possibility that these rights may be used in an abusive way, if the use of those rights departs itself from the social and economic goals that support the granting of those rights.

Relevant Market

Domestic market for automotive spare parts.

3. Braspak and Totvs Microsiga – *Abusive Software Licenses, Lock-in, Market Division, Tying Arrangements.*- Case no. 08012.008005/2008-19

Parties

Braspak and Totvs Microsiga

Case Type

Preliminary Investigation.

Syllabus

Preliminary Investigation. Market for business management software – “ERP”. Electronic complaint. Lock-in. Practice of market division. Tying. Non characterization of anticompetitive practices. Dismissal of the investigation.

Summary

Preliminary Investigation motivated by the representation, made through an electronic message received by “Clique Denúncia” feature of SDE’s website. The complaint made by Braspak against Totvs Microsiga alluded to the supposed adoption of abusive practices, by the latter, in the licensing of its business manage software, as well as collusion between Totvs and its franchisees.

Result

No infraction defined on Law no. 8.884/1994 was characterized. Claim was dismissed.

The importance of IP to CADE

When analysing the claim of lock-in practice, CADE considered, amongst other reasons, that the practice had not been characterized, as the inability to customize TOTVS’s software could derive from intellectual property rights, fully justifiable to the extent that they encourage innovation and promote consumer welfare, which was a known limitation and taken into consideration by the client at the time of purchase of the high-tech product. However, it was highlighted, in accordance with

Preliminary Investigation no. 08012.002673/2007-51, that intellectual property rights, patrimonial in nature, are not exempt from being abusively exercised, and are not in any way absolute rights. Thus, the mere detention of intellectual property rights by Totvs Microsiga, in relation to the software that it provides, do not prevent the company from behaving anticompetitively.

Relevant Market

The relevant market was defined as the domestic market for business software.

4. Companhia de Bebida das Américas (AmBev) – *Anticompetitive Practices, Market Closure, Increase in Competitors’ Costs, Abuse of Industrial Design Rights* - case no. 08700.002874/2008-81

Parties

Companhia de Bebidas das Américas (AmBev)

Case Type

Voluntary Appeal

Syllabus

Voluntary appeal. Preventive measure imposed by the SDE. Investigation of practices set out in article 20, sections I, II and IV and article 21, sections IV, V and VI of Law no. 8.884/1994. Regional relevant market for beer. Introduction of returnable beer bottles – 630ml AmBev bottles. PROCADÉ’s report recommended partial upholding of the claim, amending the original Preventive Measure. Preliminaries consist on offense to the principle of due process of law. Presence of *fumus boni iuris*. Increase in competitors’ costs. Market closure. Presence of *periculum in mora*. Presence of reverse *periculum in mora* from SDE’s decision. High costs of 630ml bottle collection, storage and brand damage. The expansion of the usage of the 630ml bottle in other states would make the practice irreversible due to the impossibility to collect the 630ml bottles if, in the final decision of the procedure, this practice was considered unlawful. Claim partially upheld. Amendment of the Preventive Measure. Maintenance of AmBev’s Skol brand 630ml bottles only in the State of Rio de Janeiro and Bohemia brand in the state of Rio Grande do Sul. Imposition of a bottle exchange mechanism.

Summary

Voluntary appeal filed by *Companhia de Bebidas das Americas* against a decision rendered by SDE that determined a Preventive Measure in Administrative Process no. 08012.002474/2008-24, to which the Representing parties are the Association of Soft Drinks Manufacturers in Brazil - AFREBRAS, the *Cervejaria Imperial*, the Brazilian Association of Beverages - ABRABE and Cervejaria Kaiser Brasil S/A.

Result

Appeal partially upheld, CADE having determined the amendment of the preventive measure imposed by SDE. It was decided that the Applicant must: I) refrain from bottling any other brand of beer that is not Bohemia, in the state of Rio Grande do Sul, and Skol in the State of Rio de Janeiro, in 630ml bottles; II) refrain from distributing Bohemia beers in 630ml bottles in states other than Rio Grande do Sul; III) refrain from distributing Skol beers in 630ml bottles in states other than Rio de Janeiro; IV) provide a bottle exchange system within 5 working days after the publication of the decision; amongst others.

The importance of IP to CADE

AmBev's 630ml bottle was protected by design rights. The difficulty in the separation of regular beer bottles from the protected 630ml bottles could lead competitors to wrongfully using AmBev's exclusive bottles, which would technically qualify as infringement of its design rights. The analysis of the intellectual property rights involved were decisive in solving the case.

Relevant Market

Regional beer market.

5. Editora Nova Atenas Ltda. and Ediouro Publicações S/A – *Trade Secrets, Abuse of a Dominant Position, Sham Litigation* – case no. 08012.005335/2002-67

 **Parties**

Editora Nova Atenas Ltda. and Ediouro Publicações S/A

 **Case Type**

Administrative Process

 **Syllabus**

Ongoing case, syllabus is not yet available.

 **Summary**

Administrative process initiated by request of Editora Nova Atenas Ltda., who claims to be targeted by threats of judicial action from Ediouro Publicações S/A should the claimant introduced its products (trivia magazines) in the market. According to the defendant, such threats were founded on the fact that the publication of the claimant's magazines would violate its trade secrets, to which the claimant had illegally had access to by hiring a former employee of the defendant, as well as its trademarks.

 **Result**

Initiated as a preliminary investigation, the process is still ongoing. So far, no opinion or decision has been issued.

 **The importance of IP to CADE**

The main discussion point concerns the alleged abusive exploitation of the intellectual property rights held by Ediouro Publicações S/A as a means to exclude its competitor, Editora Nova Atenas Ltda., from the market, to which Ediouro's allegation of violation of its intellectual property rights is opposed. So far, there is no opinion or decision as to the merits of the discussion.

Relevant Market

In the initial Preliminary Investigation the relevant market was defined as the one for the publication of trivia magazines in Brazil. However, this definition is subject to revaluation in the ongoing administrative process.

6. Associação Brasileira das Indústrias de Medicamentos Genéricos – Pró Genéricos; Eli Lilly do Brasil Ltda. and Eli Lilly and Company – *Patents, Sham Litigation* – case no. 08012.011508/2007-91

 **Parties**

Associação Brasileira das Indústrias de Medicamentos Genéricos - Pró Genéricos;
Eli Lilly do Brasil Ltda. and Eli Lilly and Company

 **Case Type**

Administrative process

 **Syllabus**

Ongoing case, syllabus is not yet available.

 **Summary**

The administrative process was initiated on request by Associação Brasileira das Indústrias de Medicamentos Genéricos - Pró Genéricos, who accused Eli Lilly do Brasil Ltda. and Eli Lilly and Company of engaging in sham litigation for (i) having applied for a patent for the “difluorodeoxycytidine” compound, a component of its Gemzar medicine, despite being aware that such compound was already in public domain and therefore was not patentable; (ii) having applied for amendments to the scope of said patent application, also being aware that such amendments were forbidden, in order to (iii) initiate lawsuits, in different jurisdictions, requiring the suspension of the administrative patent examination process by INPI while using a different lawsuit to claim, as an injunction, the exclusive rights that were to be conferred by the same patent.

 **Result**

The process is still ongoing. So far, no decision has been issued. The Secretariat-General has issued an opinion according to which the defendants should be found guilty.

 **The importance of IP to CADE**

The accusation of sham litigation is based upon the undue exploitation of the rights conferred by the patent applied for by the defendants. While the Secretariat-General recognised the defendants' anticompetitive behaviour, the Tribunal, CADE's jurisdictional entity, has not rendered a judgement yet.

Relevant Market

The relevant market was not defined in its product dimension. The analysis carried out by the Secretariat-General identified one broad (chemical component group, as defined by the European Pharmaceutical Marketing Research Association) and one narrow (the component itself) definition. As for the geographical dimension, the relevant market was defined as nationwide.

7. Gemplus and Axalto – Merger, Approval with Restrictions, Patent Licensing – case no. 08012.011178/2005-71

Parties

Gemplus and Axalto

Case Type

Merger

Syllabus

Hypothesis set forth in article 54, paragraph 3, of Law no. 8.884/1994 – market share. Transaction acknowledged. Timely submission. Procedural fee collected. Horizontal concentration. Possibility of entry. Patent domain. Approval subjected to a Term of Commitment of Performance.

Summary

S1 and S2 are the major shareholders of Gemplus. The transaction will occur in at least two phases: i) S1 and S2 will transfer its respective shares from Gemplus to Axalto in exchange of new shares to be issued by the latter; ii) after completion of the first step, Axalto will make a public offer for the remaining shares of Gemplus in Euronext and NASDAQ.

The Rapporteur voted indicating that there was no risk to competition in the payment cards relevant market. In the SIM (mobile communication) cards market, even though the applicants' market share was above the legal threshold of 20%, the possibility of entry into the market by payment card companies would be enough to mitigate the conditions for the exercise, by the applicants, of their market power. However, the control, by the applicants, of technological resources – namely, patents – could adversely affect competition in the SIM (mobile communication) cards market. In order to reduce this risk, the Rapporteur suggested the approval of the transaction under the condition that the applicants signed a Term of Commitment of Performance, which established a general obligation of patent licensing to competitors.

Result

Favourable report from the SDE and the SEAE for the approval without restrictions. Opinion, by the Rapporteur, of approval subjected to a Term of Commitment of Performance. Unanimous decision, by CADE, for approval subjected to the aforementioned Term, as suggested by the Rapporteur.

The Importance of IP to CADE

Considerations and analysis regarding the transfer of patents are one of the main topics of the case and were crucial to the final decision.

The Rapporteur considered that the control, by the applicants, of technological resources – namely, patents – could adversely affect competition in the SIM (mobile communication) cards market. In order to reduce this risk, the Rapporteur suggested the approval of the transaction under the condition that the applicants signed a Term of Commitment of Performance, which established a general obligation of patent licensing to competitors..

The Term determined that Gemalto (the company resulting from the Gemplus-Axalto merger) would be obligated to license its patents in Brazil, relevant to the SIM cards market, to any interested company that operated in the Brazilian SIM cards market or that expressed, in good faith, an interest to enter the market, through a written request, under just, reasonable and non-discriminatory conditions. A draft of the Term was provided.

Relevant Market

Domestic market of plastic payment cards and other cards and domestic market of SIM (mobile communication) cards.

8. Syngenta and Monsanto – Agreement, Patent Licensing Agreement, Anticompetitive Effects of Licensing Agreement – case no. 08012.000311/2007-26

 **Parties**

Syngenta and Monsanto

 **Case Type**

Agreement .

 **Syllabus**

Technology licensing agreement by Monsanto. Innovative markets. Definition of relevant international market for the technology for the production of glyphosate-resistant soybean seeds. Anticompetitive effect of the clauses. Approval with restrictions.

 **Summary**

Agreement establishing the conditions under which Syngenta will produce and commercialize, either directly or through third parties, soybean seeds resistant to the herbicide glyphosate, through the licensing and use of genetic improvement technology under the patent held by Monsanto ("Monsanto Technology").

 **Result**

Favourable report by ProCADE, with restrictions. Favourable report by SDE and SEAE without restrictions Favourable. Approval with restrictions.

 **The Importance of IP to CADE**

The main topic of the case was the analysis of potential anticompetitive effects of the licensing agreement related to Monsanto's patents. CADE decided that there were potential anticompetitive effects in the agreement, and therefore approved the transaction with restrictions. The analysis of intellectual property rights' effects on competition were fundamental for the solution of the case.

Relevant Market

International market for the technology for the production of glyphosate-resistant soybean seeds.

9. Ambev and Cervejaria Cintra – *Asset Acquisition, Determination for the Sale of a Trademark*– case no. 08012.003302/2007-97

Parties

Ambev and Cervejaria Cintra.

Case Type

Asset Acquisition

Syllabus

Asset Acquisition. Acquisition, by AmBev, of two industrial plants from Cintra Brewery. Turnover in Brazil of at least one of the parties exceeds BRL 400 million. Hypothesis set forth in article 54, paragraph 3 of Law no. 8.884/1994. Timely notification. Opinions from SEAE and SDE for the sale to a third party of the Cintra trademark and related industrial assets. Opinion from ProCADE for the non-approval of the transaction. Trademarks and industrial assets sold to Primo Schincariol company before the trial. Opinion by the Public Prosecutor's Office for the approval without restrictions. Unrestricted approval.

Summary

Acquisition, by AmBev, of industrial assets owned by Mr. Jose Sousa Cintra as well as the Cintra trademarks and distribution assets. The transaction is structured through the means of the acquisition of all the shares owned by Mr. Jose Sousa Cintra in the following companies: Cervejaria Cintra Breweries e Comercio Ltda, Bar e Restaurante Ramonik. Ltda. and Goldensand.

Result

Transaction approved without restrictions after the parties sold a set of trademarks to third parties.

The Importance of IP to CADE

CADE did a long examination of the case from the competition and horizontal concentration points of view, which were the main issues in the decision.

Whilst intellectual property was not directly relevant to the decision, both SEAE and SDE recommended that the transaction should only be approved if Cintra sold the Cintra trademark (and other assets) to a third party, as a means to reduce potential harm to competition. Therefore, intellectual property ownership was indirectly decisive to the resolution of the case.

Relevant Market

Domestic beer market, especially in the Brazilian southeast.

10. Monsanto and Brasmax – *Patent Licensing Agreement, Anticompetitive Effects of Licensing Agreement* – case no. 08012.003296/2007-78

Parties

Monsanto and Brasmax

Case Type

Agreement

Syllabus

Agreement between Monsanto and Brasmax for the licensing of technology for the production of genetically modified soybeans seeds. Hypothesis provided for in article. 54, paragraph 3 of Law no. 8.884/1994 - Turnover. Acknowledgment of the transaction. Timely notification. Relevant technology markets. Absence of significant horizontal overlapping. Social benefits from the technology diffusion. Vertical integration. Existence of exclusivity clauses. Approval with restriction concerning the modification of clauses.

Summary

Trade agreement executed in Brazil between Monsanto and Brasmax on 29 March 2007, effective until 31 December 2014, aiming at establishing rules and conditions so that Brasmax can commercially exploit the RoundUp Ready (RR) technology in Brazil, directly through the production and sales of own seeds containing the technology or through third party licensees.

Result

Favourable report by SDE, SEAE and ProCADE, with restrictions. Approval with restrictions related to the modification of specific clauses.

The Importance of IP to CADE

One of the main issues with the case was the analysis of the potential anticompetitive effects of the exclusivity clause in the licensing agreement related

to Monsanto's patents. CADE decided that there were potential anticompetitive effects arising from the exclusivity clause, and therefore approved the transaction with restrictions, so that the transaction could only be consummated if the licensing agreement was no longer of an exclusive nature. The analysis of intellectual property rights' effects on competition were fundamental for the solution of the case.

Relevant Market

The relevant markets considered in this transaction were: (i) development of technology for the production of glyphosate resistant soy seeds; (ii) incorporation of the technology to the different varieties of soy; (iii) multiplication of seeds; (iv) seed commercialization.

The technology market (i) encompasses the licensing of patents and know-how (trade secrets) necessary to the development of glyphosate resistant soy seeds. Although Brasmax does not operate in the Brazilian market, Don Mario (part of the Brasmax group) operates in segments (ii), (iii) and (iv).

As the parties operate in a vertical relationship, all markets in which there is interaction between the parties must be considered relevant markets for the analysis of anticompetitive effects.

Regarding the technology market, the relevant market must be considered the global market for the development of glyphosate resistant soy seeds. The other relevant markets are domestic.

11. Monsanto, FMT and Unisoja – Agreement, Patent Licensing, Potential Harm to Competition – case no. 08012.003997/2003-83

Parties

Monsanto, FMT and Unisoja

Case Type

Agreement

Syllabus

Agreement. Commercialisation of genetically-modified soy. Relevant product market: soy seeds for planting. Geographic market: domestic. Hypothesis set forth in article 54, paragraph 3 of Law no. 8.884/1994. Timely notification. Divergent reports from SEAE, SDE, and ProCADE regarding the imposed restrictions. Existence of damages to competition. Approval with restrictions.

Summary

Commercial agreement entered into by Monsanto, FMT and Unisoja, which determines conditions for the commercialization of a variety of soy seeds that belong to FMT and Unisoja, containing the Roundup Ready (RR) gene, which belongs to Monsanto Company. The agreement grants a “non-exclusive and non-transferrable license to use Monsanto’s patent” to FMT and Unisoja, “for the purpose of producing and commercializing the aforementioned seeds in Brazilian territory”.

Even though the agreement does not prevent Monsanto from licensing the RR technology to other individuals/firms, FMT and Unisoja cannot explore rival glyphosate-tolerant seed technologies, according to clause 2.4 of the agreement.

Prior to the transaction, Monsanto, FMT and Unisoja had signed a Technical Cooperation Agreement for the purposes of producing and evaluating the development of soy lines that contain the Roundup Ready (RR) gene. The agreement regulates, then, the licensing for third parties (multiplicators) to

commercially explore soy cultivations that contain the RR technology developed by the parties to the agreement in question.

Result

Favourable opinions from ProCADE, SDE, SEAE and the Public Prosecutor's Office, with restrictions. Approval subjected to clause modification.

The Importance of IP to CADE

The considerations regarding the licensing of intellectual property rights are the main topic of the case, and the amendment of the terms of the licensing agreement were the focus of CADE's restrictions which accompanied the approval of the transaction.

Relevant Market

Relevant product market: soy seeds for planting. Geographic market: domestic.

12.Sadia S/A and Perdigão S/A – Merger, Compulsory Assignment of Trademarks, Suspension of Trademark Use – case no. 08012.004423/2009-18

 **Parties**

Sadia S/A. and Perdigão S/A.

 **Case Type**

Merger.

 **Syllabus**

Merger. Ordinary procedure. Incorporation of Sadia S/A' shares. by Perdigão S/A., resulting in the creation of BRF Brasil Foods S/A. Transaction analyzed under article 54, paragraph 3 of act no. 8.884/1994 due to the resulting market and revenues of the applicants. Approval subjected to a Term of Commitment of Performance.

 **Summary**

Acquisition of Sadia S/A. by Perdigão S/A., which will result in a third company, called BRF Brasil Foods S/A.

 **Result**

Favourable reports from SDE, SEAE and ProCADE, with restrictions. Approved with restrictions, subjected to a Term of Commitment of Performance..

 **The importance of IP to CADE**

The main concern in the analysis of the case was the resulting company's market share concentration. CADE's approval was subjected to a Term of Commitment of Performance.

Whilst the analysis did not specifically focus on Intellectual Property, the Term of Commitment of Performance clearly determined two transactions related to the

parties' trademarks. The Term established the obligation of the parties to sell a specified group of trademarks and also suspend the use of the "Perdigão" trademark. Therefore, intellectual property was fundamental for the approval of the transaction, as an instrument for reducing potential harm to competition.

Relevant Market

The relevant markets affected by the operation, as defined by the Rapporteur, are: i) acquisition of animals for slaughter (swine and poultry); ii) *in natura* meat (swine, poultry and beef); (iii) poultry and swine meat party kits; (iv) ready-to-eat or semi cooked frozen meals; (v) processed margarine and vegetable oils.

Geographically, the relevant markets were defined as domestic, with the exception of the market of animals for slaughter, which was considered limited to the states of Goiás, Mato Grosso, Rio Grande do Sul for the chicken market; 150 kilometer radius from the producers to the slaughterhouses for the turkey market; and the states of Rio Grande do Sul, Paraná and Santa Catarina for the swine market.

13.Becton and 3M – *Asset Acquisition, Assignment of Trademarks and Patents* – Case no. 08012.010538/2009-41

Parties

Becton and 3M

Case Type

Asset Acquisition

Syllabus

Merger. Acquisition of trademarks and patents by Becton from 3M. Intellectual property rights which were not used for about eight years. Non acknowledgment of the transaction.

Summary

Acquisition of 3M Company's assets related to the research, development, production, commerce, sales and distribution of "soft orthopedic products" and thermometers in the United States by Becton, Dickinson and Company. In Brazil, the transaction resulted in the acquisition by Beckton, Dickinson and Company, of three trademarks and two patents which had not been used for over 5 years.

Result

Transaction not acknowledged by CADE because it did not correspond to any of the hypotheses dealt with by article 54, paragraph 3 of Law no. 8.884/1994. Antitrust analysis not applicable to the case because it had no economic relevance..

The Importance of IP to CADE

Whilst the related intellectual property rights did not influence the decision directly, the fact that the assigned intellectual property rights had not been used for a long period was fundamental to CADE's decision that there was no potential harm to competition.

Relevant Market

According to decisions in similar cases, CADE decided that there was no need to define the relevant market.

14. Dow Agrosciences LLC and Rohm and Haas Company – Asset Acquisition – case no. 08012.001852/2001-86

Parties

Dow Agrosciences LLC and Rohm and Haas Company

Case Type

Asset Acquisition

Syllabus

Asset Acquisition. Acquisition by Dow Agrosciences LLC of the worldwide business of agrochemicals belonging to Rohm and Haas Company, including its working capital. Timely notification. Market defined as: registered insecticides for the following pests/crops: a) leaf miner - coffee; b) coffee berry borer - coffee; c) whitefly - beans; d) green leafhopper - beans; e) lima bean pod borer- bean; f) leafroller - apple; g) armyworm - corn; h) tomato fruit borer - tomato; i) tomato leafminer - tomato; and j) onion thrips - tomato; registered herbicides for the following crops: a) rice; b) coffee; c) sugar cane; d) citrus; and d) soy; and registered fungicides for the control of diseases on the following crops: a) pumpkin; b) garlic; c) rice; d) potato; e) eggplant; f) onion; g) citrus; h) cloves; i) chrysanthemum; j) pea; k) beans; l) gladiolus; m) apple; n) growth tomato; o) wheat; and p) grape. Geographic market defined as domestic. Horizontal concentration was unable to generate harm to competition in the analysed markets due to the lack of patents over the mentioned products, the presence of generic products and large agents in the market, competition from unregistered products and existence of cross competition. Approval without restrictions.

Summary

It is a worldwide transaction, by the means of which Dow Agrosciences LLC acquired Rohm and Hass Company's agrochemical products business. The transaction meant the full transference of Rohm and Haas' agricultural division to Dow, which contained the agrochemicals business, including products and brands, usage licenses, biotechnology assets and manufactures (including manufacturing plant in Jacarei - SP).

Result

Favourable opinions from ProCADE, SDE and the Public Prosecutor's Office. Approved without restrictions.

The importance of IP to CADE

Amongst the reasons analysed by CADE to verify the possibility of the exercise of market power was the lack of patent protection. Accordingly, CADE concluded that the transaction could not cause concentration of market power nor damages to competition.

Relevant Market

Geographic market defined as domestic. From the product point of view, the market was defined as: registered insecticides for the following pests/crops: a) leaf miner - coffee; b) coffee berry borer - coffee; c) whitefly - beans; d) green leafhopper - beans; e) lima bean pod borer- bean; f) leafroller - apple; g) armyworm - corn; h) tomato fruit borer - tomato; i) tomato leafminer - tomato; and j) onion thrips - tomato; registered herbicides for the following crops: a) rice; b) coffee; c) sugar cane; d) citrus; and d) soy; and registered fungicides for the control of diseases on the following crops: a) pumpkin; b) garlic; c) rice; d) potato; e) eggplant; f) onion; g) citrus; h) cloves; i) chrysanthemum; j) pea; k) beans; l) gladiolus; m) apple; n) growth tomato; o) wheat; and p) grape

15. Monsanto do Brasil Ltda. and Bayer S.A. - Agreement- case no. 08700.004957/2013-72

 **Parties**

Monsanto do Brasil Ltda. and Bayer S.A.

 **Case Type**

Agreement

 **Syllabus**

Agreement. Monsanto do Brasil Ltda. and Bayer S.A.. Acquisition of equity interest. Nonexclusive licensing of biotechnology applied to soybeans. Summary procedure. Art. 8, VI, of CADE Regulation no. 2/2012.

 **Summary**

Nonexclusive license granted by Monsanto to Bayer of the former's technology for the development, testing, production and commercialization, in Brazil, of varieties of soybeans containing the *Intacta RR2 PRO* technology, which simultaneously grants to the plants tolerance to glyphosate and resistance to insects.

 **Result**

Favourable report from ProCADE. Transaction was approved with restrictions.

 **The importance of IP to CADE**

Intellectual property was relevant to the decision of the case, since CADE considered the characteristic of the nonexclusive license in its analysis, but, the most relevant aspect was the analysis of the potential harm to competition.

 **Relevant market**

Domestic biotechnology market.

16.Monsanto do Brasil Ltda. and Embrapa - Agreement - case no. 08700.006336/2013-23

 **Parties**

Monsanto do Brasil Ltda. and Empresa Brasileira de Pesquisa Agropecuária (Embrapa).

 **Case Type**

Agreement

 **Syllabus**

Agreement. Monsanto do Brasil Ltda. and Empresa Brasileira de Pesquisa Agropecuária. Nonexclusive license of biotechnology applied to cotton seeds. Summary procedure. Article 8, VI, of CADE Regulation no. 2/2012.

 **Summary**

An agreement through which Monsanto grants to Embrapa a nonexclusive license to use the RRFLex and BGII/RRFlex technologies, owned by Monsanto, with the specific purpose of commercially exploring cotton varieties imbued with this technology in Brazil

 **Result**

Unfavourable report from CADE's General Superintendence. Approved without restrictions.

 **The importance of IP to CADE**

Intellectual property was relevant to the decision of the case, since CADE considered the characteristic of the nonexclusive license in its analysis, but, the most relevant aspect was the analysis of the potential harm to competition.

 **Relevant market**

Brazilian market for cotton seeds.

17.K&S Aquisições Ltda. and Kolynos do Brasil Ltda –Company Acquisition, Determination of Sale, Licensing or Suspension of Use of Trademark – case no. 0027/1995

 **Parties**

K&S Aquisições Ltda and Kolynos do Brasil Ltda.

 **Case Type**

Acquisition

 **Syllabus**

Acquisition. Law no. 8884/94, article 54. Acquisition of Brazilian company. Operation executed abroad. Law no. 8884/94, article 2º, man section. Absence of harm to competition in the relevant markets of dental floss, mouthwash and toothbrush. Operation approved. Potential harm to competition in the relevant market of toothpaste. Approval of the operation subject to the acceptance of conditions imposed by the collegiate body. Complementary requirement of commitment of performance.

 **Summary**

Operation in which Colgate-Palmolive Company, through its' controlled company K&S Aquisições Ltda., acquires the entirety of the oral health business from Laboratórios Wyeth-Whitehall Ltda., Brazilian subsidiary company of American Home Products Corporation.

While the operation would not result in harm to competition in the relevant markets of dental floss, mouthwash and toothbrush, CADE found that the horizontal concentration in the relevant market for tooth paste would represent a serious threat to competition in the market, given the market share of both Colgate and Kolynos on this market.

 **Result**

Approved with restrictions. CADE found that, in regards to relevant markets of dental floss, mouthwash and toothbrush, no harm to competition was present, and the operation was approved without restrictions in these markets.

However, given that Colgate and Kolynos held the two highest market shares in the toothpaste relevant market – with Kolynos being the dominating brand in the market – there was a serious risk to competition should the operation be approved without restrictions. Therefore, a Term of Commitment of Performance was imposed on the applicant, which, amongst other operational obligations, was given the option to (i) sell the “Kolynos” trademark to a third party, (ii) exclusively license the “Kolynos” trademark to a third party or (iii) suspend the use of the “Kolynos” trademark, market leader for toothpaste in Brazil.

The Importance of IP to CADE

Whilst CADE’s main preoccupation was the possible damages that the operation could cause to competition, the sale, licensing or suspension of use of intellectual property rights, specifically trademarks, were the main measure through which CADE limited the potential anticompetitive effects of the operation. Therefore, intellectual property was fundamental in the decision.

Relevant Market

Domestic market for oral health, specifically in the relevant markets of dental floss, mouthwash, toothbrush and toothpaste.

18.Datasul S.A., Meya Computer Services Brazil Ltda. and Meya Argentina S.A. – *Asset Acquisition, Assignment of Intellectual Property Rights, Trademarks, Software* – case no. 08012.000233/2007-60

 **Parties**

Datasul S.A., Meya Computer Services Brazil Ltda. and Meya Argentina S.A.

 **Case Type**

Asset Acquisition

 **Syllabus**

Asset Acquisition . Transaction based in Brazil, with the assignment of intellectual property rights in Argentina. Acquisition, by Datasul SA, of intellectual property rights relating to software, trademarks and customer contracts of Meya Computer Services Brazil Ltda. and Meya Argentina SA. Absence of opinions against the transaction. Timely notification. Absence of harm to competition. Unrestricted approval.

 **Summary**

Acquisition of intellectual property rights, software, trademarks and customer contracts. Successive transactions. Acknowledgment of the transaction even if the legal threshold of 20% of joint market share is not met. ProCADE and SDE disagreed, on the grounds that the joint market share is below the 20% threshold would not qualify the transaction for analysis under article 54, paragraph 3 of act no. 8.884/98.

 **Result**

Approved without restrictions. Transaction creates horizontal concentration in the Enterprise Resource Planning sector. Rapporteur notes that it is necessary to look at the relevant market as an estimated group of all parties involved.

 **The Importance of IP to CADE**

CADÉ considered the possible damages that the operation could cause to competition without directly referring to intellectual property rights.

Relevant Market

National Market of ERP Software.

19.Datasul and Bonagura – Asset Acquisition, Assignment of Intellectual Property Rights, Software – case no. 08012.014701/2007-83

 **Parties**

Datasul and Bonagura

 **Case Type**

Asset Acquisition

 **Syllabus**

Asset Acquisition. Transaction comprised within the meaning of article 54, paragraph 3 of Law no. 8.884/1994, due to Datasul's market share of the domestic market of ERP being approximately 20%. Acquisition, by Datasul SA, of the intellectual property rights of software, methodology and processes of Bonagura Data Processing SA and the execution of a purchase option agreement by which Datasul SA will acquire Bonagura companies. Non-competition clause in accordance with the CADE's previous decisions. Procedural fee collected. Timely notification. Transaction unable to generate anticompetitive effects. Unrestricted approval.

 **Summary**

Acquisition of intellectual property software, methodology and processes. Datasul also purchased options to acquire the control of the Bonagura companies, under certain conditions.

 **Result**

Unrestricted approval.

 **The Importance of IP to CADE**

CADE considered the possible damages that the merger could cause to competition without directly referring to intellectual property rights.

Relevant Market

Brazilian market of enterprise management software (EAS), more specifically the segment of Enterprise Resource Planning (ERP).

20.Global Cosmetics Brasil Ltd., NY Looks Ltd., Mr. Alexandre de Andrade Romerroad and Hypermarcas S.A. –Asset Acquisition , Assignment of Intellectual Property Rights – case no. 08012.008943/2008-19

 **Parties**

Global Cosmetics Brasil Ltd., NY Looks Ltd., Mr. Alexandre de Andrade Romero, Hypermarcas S.A.

 **Case Type**

Asset Acquisition

 **Syllabus**

Asset Acquisition . Acquisition of all intellectual property rights owned by Global Cosmetics Brazil Ltda., NY Looks Ltda. and Mr. Alexandre Andrade Romero by Hypermarcas SA. Domestic markets of shampoos, after-shampoos, 2-in-1 products and body moisturizers. Hypothesis set forth in article 54, paragraph 3 of Law no. 8.884/1994 – revenue. Timely notification. Procedural fee collected. No harm to competition. Unrestricted approval, in accordance with the report from SEAE.

 **Summary**

Acquisition of intellectual property rights in the market of shampoos, after-shampoos, 2-in-1 products and body moisturizers. No alteration in the capital stock of the applicants.

 **Result**

Unrestricted approval. Results in horizontal concentration in the shampoos, after-shampoos, 2-in-1 products and body moisturizers markets. Same machinery and personnel; substitution on the supply side, but not on the demand side.

 **The Importance of IP to CADE**

Whilst the acquisition, , by Hypermarcas of intellectual property of shampoo, after-shampoos, 2 in 1 products and body moisturizers markets of Brazil Global Cosmetics LTD. NY Looks Industry and Trade LTD., was the main object of analysis

during the execution of the operation, the lack of anticompetitive effects meant that no direct intellectual property analysis needed to be performed. The considerations and analysis concerning the acquisition of intellectual property, did not directly influence the decision. In analyzing the case, CADE considered mainly the possible damage that the transaction could cause to competition.



Relevant Market

Shampoos, after-shampoos, 2-in-1 products and body moisturizers in the domestic market.

CASES IN WHICH INTELLECTUAL PROPERTY WAS NOT TAKEN INTO CONSIDERATION

21. Sociedade Brasileira de Instrução and Microsoft Informática Ltda. – *Anticompetitive Practices* – Case no. 08012.004570/2000-50

Parties

Sociedade Brasileira de Instrução and Microsoft Informática Ltda.

Case Type

Preliminary Investigation

Syllabus

Request for reconsideration and amendment of judgment rendered in preliminary investigation. Plea referring to the timing of the lodging of the request for amendment of previous judgment, allowing it to be considered for its merits. Absence of legal prerequisites. Plea dismissed.

Summary

Preliminary investigation established due to the filing of a claim⁷ by Sociedade Brasileira de Instrução (“SBI”) before the Secretariat of Economic Law (SDE), in September 20th, 2000, for the investigation and repression of anticompetitive practices supposedly carried out by Microsoft Informática Ltda. (“Microsoft”). As per the claim, the represented party allegedly committed the violations defined in article 20, items I to IV and in article 21, items II, IV, V, VI X, XI, XII, XIV, XVI, XXIII e XXIV, both from Law no. 8.884/1994.

Result

The Federal Attorney’s Office within CADE (“ProCADE”), the Public Prosecutor’s Office and the SDE decided to dismiss the plea without further action.

The Importance of IP to CADE

⁷ The terms ‘claim’, ‘complaint’ and ‘representation’ are used to define both the act and the set documents and claims through which a party – the representative, plaintiff or claimant of the administrative procedure in CADE – denounces or requests further investigation against another party – the represented, defendant or respondent in the administrative procedure – for the reasons and motives expressed in the representation.

CADÉ considered mostly the possible damages that the action could cause to competition. Intellectual Property was irrelevant to the decision.

 **Relevant Market**

Not applicable.

22. Paiva Piovesan and Microsoft Informática Ltda – *Abuse of Dominant Position, Predatory Pricing, Exclusionary Practices* – Case no. 08012.002034/2005-24

Parties

Microsoft Informática Ltda and Paiva Piovesan

Case Type

Preliminary Investigation

Syllabus

Preliminary investigation relating to practices that allegedly prevented software development. Dominant position in the market for operating systems. Alleged practices: predatory pricing, discrimination by financial institutions in favor of the represented party, and refusals to supply essential technology. Necessity to deepen the investigations. Possible discriminatory practices regarding time and commercial conditions when providing software development tools.

Summary

Preliminary investigation initiated in order to verify the alleged existence of violations of Law no. 8.884/1994, committed by Microsoft Informática Ltda., which were reported in the administrative procedure no. 08012.001182/1998-31, to which Paiva Piovesan and Microsoft Informática Ltda. were parties. The claim refers to alleged violations of Brazilian antitrust legislation by Microsoft, seeking to prevent the development of software by third parties in the relevant market for financial applications for Microsoft Windows. Microsoft was accused of having abused its dominant position to create difficulties to the establishment, functioning or the development of competitors by refusing to supply essential interoperability information.

Result

ProCADE considered that there is not enough evidence to initiate an administrative process, which justifies the dismissal of the case. SDE also considered that the case should be dismissed.

The Importance of IP to CADE

In this case, the analysis and considerations regarding the intellectual property rights involved in the discussion did have a direct influence on the decision. In the analysis it carried out, CADE considered mostly the possible damages that the practice could have on competition and the several complaints that have been presented to that same extent.

Relevant Market

The relevant product market was defined by the SDE as the market for financial control applications developed to operate on Windows platforms for domestic users and small companies. Geographically, the relevant market was defined as domestic, due to the limitations imposed by language and particularities of the Brazil's financial system.

23. Nortox S.A. and Monsanto do Brasil Ltda. – *Tying, Exclusionary Practices* - case no. 08012.008659/1998-09

Parties

Nortox S.A. and Monsanto Do Brasil Ltda.

Case Type

Administrative Process

Syllabus

Appeal in administrative process. Alleged establishment of tying arrangements regarding genetically modified soy seeds and glyphosate-based herbicides, as well as adoption of practices aiming at preventing the access of competitors to the aforementioned seeds. Practices contrary to article 21, IV, V, VI, XII and XXIII of Law no. 8.884/1994. Violation not characterized. Case dismissed.

Summary

In a petition lodged before SDE on 11 November 1998, Nortox S.A. accused Monsanto do Brasil Ltda. of allegedly tying the sales of genetically modified soy seeds to the ones of glyphosate-based herbicides, whilst also preventing the access of the competitors to the aforementioned seeds, as a means to eliminate competition from the market.

Result

Case dismissed.

The Importance of IP to CADE

Even though the observations and analysis regarding the grant of intellectual property are the main topic of the case, CADE considered, mostly, the damages that the action could cause to competition.

Relevant Market

International market for soy seeds and herbicides.

24. Microlite S.A. and Coats Corrente Ltda. – *Merger, Horizontal Integration, Purchase of Trademarks* - case no. 00511995

 **Parties**

Microlite S.A. and Coats Corrente Ltda.

 **Case Type**

Merger

 **Syllabus**

Merger. Horizontal integration. Purchase of industrial assets, inventories and trademarks of the competitor company. Exit from the market. Domestic market for industrial and household sewing threads. Damaging effects reduced due to the particular characteristics of the sector. Favourable legal opinions from SEAE and SDE. The essential requirements set out at article 53, paragraph 1 of Law no. 8884/1994 were fulfilled. Merger approved.

 **Summary**

Acquisition of the Textile Division from Microlite S.A., named Liapsa, by Linhas Corrente Ltda., currently named Coats Corrente Ltda. By the terms of the transaction, executed by an assets' sale and purchase contract dated of 24 July 1995, Coats Corrente acquired Microlite's industrial assets, inventories and brands, including the Liapsa trademarks.

 **Result**

Unrestricted approval.

 **The Importance of IP to CADE**

The acquisition of industrial assets, inventories and brands, including Liapsa trademarks by Linhas Corrente Ltda. was under scrutiny in this case. However, CADE considered the possible damages that the merger could cause to competition without directly referring to intellectual property rights.

Relevant Market

Market for natural or synthetic sewing threads. The manufacturing of both types requires the same equipment and the technology employed does not present relevant innovations. There are approximately 70 thread manufacturing companies and a dozen importers of the final product on the market. The claimants operate in different areas. The imported product has little significance in the overall market, which is why the relevant geographic market was defined as domestic.

25.Cargill Incorporated and Monsanto Company - *Merger* - case no. 08012.005135/1998-01

Parties

Cargill Incorporated and Monsanto Company

Case Type

Merger

Syllabus

Merger. Acquisition of Cargill Incorporated by Monsanto Company. Timely presentation. Relevant market: hybrid seeds, related to the agricultural pesticides market. Transaction approved without restrictions. If the commercialization of genetically modified seeds is authorized, there is a possibility of tied sales by Monsanto, given the connection between the guarantee granted to genetically modified seeds and the use of the herbicide produced by the company. A change in the guarantee policy of Monsanto in the market for genetically modified seeds was recommended. Order for SDE to initiate investigations if such change does not occur.

Summary

Purchase and Sale Agreement signed on 28 June, 1998, by Monsanto do Brasil and Cargill Incorporated, in which Monsanto acquired the international seeds business from Cargill.

Result

Favourable legal opinions from SDE and SEAE. Public Prosecutor's Office required clarifications.

The Importance of IP to CADE

CADE considered the possible damages that the merger could cause to competition without directly referring to intellectual property rights.

Relevant Market

Domestic market for hybrid seeds related to agricultural pesticides market, which was also defined as domestic.

26. Cisco Systems Inc and International Business Machines Corporation – *Merger – case no. 08012.008794/99-27*

Parties

Cisco Systems Inc. and International Business Machines Corporation

Case Type

Merger

Syllabus

Merger - Law no. 8884/1994, article. 54, paragraph 3. Acquisition, by Cisco, of intellectual property rights related to specific products (routers and switches) for computer networks, developed and sold, at the relevant time, by the Network Hardware Division of the International Business Machines Corporation. 1) Relevant market: domestic market for data transmission components. 2) Market share alteration from 49.3% to 50.1%. Absence of barriers to entry. Unrestricted approval.

Summary

Acquisition, by Cisco, of intellectual property rights over specific products (routers and switches) for computer networks (data transmission), developed and sold, at the relevant time, by the Network Hardware Division of IBM.

Result

Favourable legal opinions from SEAE, SDE and PROCADÉ. Unrestricted approval.

The Importance of IP to CADE

CADE considered the possible damages that the merger could cause to competition without directly referring to intellectual property rights.

Relevant Market

According to the parties, the relevant market for the transaction should be defined as the worldwide market for telecommunications equipment, because even though data network equipment includes routers and switches, they are considered parts of the same product. Also accordingly to the parties, the market is worldwide because there is no local production of the devices involved in the transaction, and import duties and transportation costs are low. However, SEAE only considered the domestic market for routers and switches as relevant to the transaction because the imports are made by Brazilian independent distributors and subsidiaries of Brazilian companies.

27.ITW Chemical Products Ltda. And Morganite do Brasil – *Merger* – case no. 08012.009013/1999-49

Parties

ITW Chemical Products Ltda and Morganite do Brasil

Case Type

Merger

Syllabus

Merger consisting of the acquisition of all the assets, client lists, intellectual property rights, etc. used by Morganite do Brasil's Maintenance, Repairs and Others (MRO) business by ITW Chemical Products Ltda. (ITW). The transaction was concluded abroad by the means of a Sale and Purchase Agreement on 1 September 1999, between Illinois Tool Works Inc., ITW's parent company, and Morgan Crucible Company plc, Morgan Group's parent company. Domestic relevant market for special lubricants and cutting oils related to maintenance and repair activities acquired from Morganite. These product groups have few substitutes on the supply-side because their production methods are different, and on the demand side, because their applications differ. The conclusion of the transaction will not result in an increase in the level of market concentration since ITW did not act on it before the transaction. Hence, there is only a substitution of economic agents. The participation of Morganite in the relevant markets is limited: 15% of the market for special lubricants and 1% of the market for cutting oils, which makes the possible anticompetitive effects stemming from the transaction insignificant. Markets with barriers for entry. The transaction does not generate anticompetitive effects, nor culminates in the domination of the relevant market according to article 54 of Law no. 8884/1994. Unrestricted approval.

Summary

Acquisition of all the assets, client lists, intellectual property rights, etc. used by Morganite do Brasil's Maintenance, Repairs and Others (MRO) business by ITW Chemical Products Ltda. (ITW). The transaction was concluded abroad by the means a Sale and Purchase Agreement.

Result

Approved unanimously and without restrictions. The rapporteur highlights that there might be vertical concentration and, consequently, a restriction of Morganite's participation in the relevant market by the ITW. However, the limited participation of Morganite in this market makes the anticompetitive effects diminute.

The Importance of IP to CADE

CADE considered the possible damages that the merger could cause to competition without directly referring to intellectual property rights.

Relevant Market

Brazilian markets for special lubricants and cutting oils.

28. Dow Chemical Company and Union Carbide Corporation – *Merger* – case no. 08012.007759/1999-91

Parties

Dow Chemical Company and Union Carbide Corporation

Case Type

Merger

Syllabus

Merger regarding the worldwide transaction by the means of which Dow Chemical Company acquired all the assets from Union Carbide Corporation. The transaction resulted in the transfer of the control of owned by the UC Group in Brazil to the Dow Group. The relevant product markets were: ethylene, propene, polyethylene, ethanolamine, alkyl alkanolamine, ethyleneamine, polyglycol (PEG and PAG), oxygenated solvents (E and P series) and technology for the production of polyethylene.

The relevant geographic market of ethane and propene is limited to the respective areas of petrochemical hubs where they are produced. The relevant geographic market of ethanolamine is domestic. The relevant markets of polyethylene, alkyl alkanolamine, ethyleneamine, polyglycol, oxygenated solvents and the technology for the production of polyethylene were defined as worldwide.

In the markets for ethane and propene, the transaction did not alter the offer and demand structures, therefore, it did not cause restrictions to competitors by the means of vertical integration between 1st and 2nd generation industries. In the worldwide market for polyethylene, the joint participation of the Claimants (12.5% in the worldwide market and 23% in MERCOSUR) did not generate nor reinforce a dominant position. In the domestic market for ethanolamine, the transaction did not generate any effects, because Dow did not commercialize this product internally. In the market for alkyl alkanolamine market, the joint participation of the parties is 20%. Besides, there are three other significant participants that hold approximately the same market. In the worldwide market for ethyleneamine, the high concentration that resulted from the transaction (62%, 84% C4) culminated

in the determination, by antitrust agencies in the USA and in the EU, that Dow should transfer certain ethyleneamine activities in the world, thus decreasing the aforementioned concentration, as well as its eventual damages to competition. In the worldwide market for polyglycol, the joint participation of the parties after the transaction was only 8.5%. In the international market for oxygenated solvents, the concentration generated by the transaction corresponded to 18% of the total sales value, being therefore insufficient to allow the parties to exert market power. Regarding the worldwide market for the technology for the production of polyethylene, considering the high pressure process, only UC licensed technology to third parties, holding a small participation in the market. In the low pressure processes, none of the parties were licensors. In the low pressure processes in gas phase, the UC was the biggest global licensor of the technology, owning 63% of the licenses. Dow was also owner of polyethylene production technology, but was not an active licensor of their production in gas phase.

The antitrust agencies from the EU and the USA determined that Dow should make some compromises as a condition for the approval of the transaction, in order to re-establish the competitive conditions in the market for the technology for the production of polyethylene. Given that the relevant market for technology licenses is international, such compromises generated effects in the domestic market as well. As those effects were absorbed by the Brazilian market for polyethylene, it did not present any damaging consequences to competition. As there are no patents over the parties' properties related to gas phase polyethylene production and metallocene catalysts in the country, any determination of CADE related to the broadening of the access to the Brazilian market for those assets would be redundant.

The filing of the merger notification was done timely. The transaction does not generate an increase in Dow's participation in the relevant markets that is capable to effectively raise or grant conditions for the exertion of market power. Also, there is no limitation to the competition through the vertical integration of the Brazilian petrochemical market. The possible sources of restrictive effects to competition in the market for the licensing of technologies for the production of polyethylene were eliminated by the restrictions imposed to the transaction by the EU and the USA, the effects of which were absorbed by the domestic market. The Merger was approved without restrictions according to article 54 of Law no. 8.884/1994.

Summary

Merger relating to the worldwide transaction by the means of which Dow Chemical Company incorporated all the assets from Union Carbide Corporation. The transaction resulted in the transfer of the control of owned by the UC Group in Brazil to the Dow Group.

Result

Unrestricted unanimous approval.

The Importance of IP to CADE

The transaction relates to the acquisition of trademark and patent rights. However, the protection of intellectual property was not an issue. The absence of damages to competition was enough to CADE approve the transaction.

Relevant Market

The parties operate in the worldwide markets for chemical and petrochemical products. In this case, the relevant markets are:

- a) Ethane and propane (each one has a particular market) – limited to the respective areas of the petrochemical hubs where they are produced
- b) Polyethylene – single international market
- c) Amines (each one has a particular market)
 - Ethanelamine – domestic
 - Alkyl alcanolamine, ethileneamene – international
- d) polyglycol – polyethylene glycols and polyalkylene glycols – single international market
- e) oxygenated solvents – E and P series – single international market
- f) Polyethylene production technology – international market

29. Sara Lee and Zorba Têtil S/A – *Merger* – case no. 08012.002366/2000-02

Parties

Sara Lee and Zorba Têtil S/A

Case Type

Merger

Syllabus

Merger. Acquisition, by Sara Lee, of the assets related to development, production, wholesale, export and representation of textile and knitted articles, usually destined to male clothing, including the “Zorba” trademark and other commercial brands owned by Zorba Têtil S/A. National market for male intimate apparel. Absence of horizontal concentration and vertical integration. Fragmented market. Low barriers to entry. Timely presentation. Unrestricted approval.

Summary

Acquisition, by Sara Lee, of the assets related to development, production, wholesale, export and representation of textile and knitted articles usually destined to male clothing, including the “Zorba” trademark and other commercial brands owned by Zorba Têtil S/A.

Result

Favourable legal opinions from SEAE, SDE and PROCADÉ. Unrestricted approval.

The Importance of IP to CADE

CADE did not express interest in IP matters in the case.

Relevant Market

Textile products, especially male intimate apparel. National market.

30. Cryovac and Menegotti – Merger - case no. 08012.003095/2000-04

Parties

Cryovac and Menegotti

Case Type

Merger

Syllabus

Merger. Acquisition, by Cryovac, of the assets related to polystyrene trays and plastic films' businesses, as well as the buildings and other properties where these businesses are located, the industrial property rights related to the businesses, and Menegotti's businesses inventories. Relevant product market: polystyrene trays and plastic films. Geographic market: domestic. Absence of horizontal concentration in the polystyrene trays' segment. Small increase in the participation in the market for plastic films. Substitutability of the products on both supply and demand sides. Fragmented market. Low barriers to entry. Bargain power on the demand side. Timely presentation. Approved without restrictions.

Summary

Acquisition, by Cryovac, of the assets related to polystyrene trays and plastic films' businesses, as well as the buildings and other properties where these businesses are located, the intellectual property rights related to the businesses, and Menegotti's businesses inventories. SEAE understands that there is no horizontal concentration, vertical integration or clustering that can reduce consumer welfare.

Result

Unrestricted unanimous approval.

The Importance of IP to CADE

The intellectual property rights related to polystyrene trays and plastic films business acquired by Cryovac were considered during CADE's analysis, but they

did not influence the decision. CADE mostly analysed the economic weight of the transaction in the market.

Relevant Market

The relevant market was defined as the domestic market of polystyrene trays and plastic films.

31.PCS Fosfatos do Brasil Ltda. and Fertilizantes Mitsui S/A Indústria e Comércio – *Merger* - 08012.003097/2000-21

Parties

PCS Fosfatos do Brasil Ltda. and Fertilizantes Mitsui S/A - Indústria e Comércio

Case Type

Merger

Syllabus

Merger. Acquisition of operational assets. The transaction occurred in Brazil. Article 54, paragraph 3 of Law no. 8.884/1994. Unrestricted approval. Agreement signed by PCS Fosfatos do Brasil Ltda. and Fertilizantes Mitsui S/A – Indústria e Comércio, in which the acquisition of the operational assets related to the production of supplies for animal food from Fertilizantes Mitsui S/A - Indústria e Comércio by PCS Fosfatos do Brasil Ltda., which includes the transfer of trademarks. The transaction was notified in accordance to paragraph 3 of article 54 of Law no. 8.884/1994. Approved unanimously without restrictions due to the absence of damages to competition.

Summary

Acquisition of operational assets that correspond to the transfer of rights, contracts, brands and assets related to the production, distribution and sale of supplies for animal food from Fertilizantes Mitsui S/A - Indústria e Comércio by PCS Fosfatos do Brasil Ltda.

Result

Favourable legal opinions from SEAE, SDE and PROCADE. Unrestricted approval.

The Importance of IP to CADE

CADE did not express interest in IP matters in the case.

Relevant Market

Domestic market for animal food.

32. Monsanto and Coodetec – *Agreement* – case no. 08012.003711/2000-17

Parties

Monsanto and Coodetec

Case Type

Agreement

Syllabus

Agreement. Transaction that requires approval, in accordance with paragraph 3 of article 54 of Law no. 8.884/1994 due to the parties' turnovers and market participation, and to article 54's *main section* due to the existence of potentially anticompetitive clauses. Timely notification. Possibility of market closure. Immediate exclusion of exclusivity clauses. Approval with restrictions.

Summary

Commercial agreement entered into by Monsanto and Coodetec that establishes conditions to commercially explore various soy seeds owned by Coodetec that contain the Roundup Ready gene – whose patent belongs to Monsanto Company. Dated from 28 July 2000, this agreement generates effects specifically in this country, and allows Coodetec to commercially explore – directly or through third parties – transgenic soy.

Result

PROCADE, SDE and Public Prosecutor's Office provided favourable legal opinions to the transaction, with the imposition of restrictions. SDE's legal opinion did not refer to any restrictions. The transaction and some clauses were set to be modified.

The Importance of IP to CADE

CADE considered the possible damages that the merger could cause to competition without directly referring to intellectual property rights.

 **Relevant Market**

Domestic market of soy seeds – both organic and genetically modified.

33.Coopers Brasil and Bayer S.A. – *Merger* – case no. 08012.005202/2000-29

Parties

Coopers Brasil Ltda. and Bayer S.A.

Case Type

Agreement

Syllabus

Agreement related to Bayer S.A.'s packaging producing services contracted by Coopers Brasil Ltda. for specific veterinary products. The transaction will not result in joint administration of assets nor any other type of joint operation by the Claimants in the domestic market for veterinary products. It will not result in the transfer of any trademark rights to Bayer from Coopers' nor in the power to establish the types of product produced by them. Bayer's ability to determine its output will not be compromised by the agreement. The most significant joint participation of both companies in all therapeutical classes involved does not exceed 1/3 of their turnover in the domestic market for that class. The transaction does not alter the market's structure nor generates increase in market power. Therefore, it is unlikely that it causes any kind of damages to the market. Timely notification. Unrestricted approval.

Summary

Bayer S.A.'s packaging producing services contracted by Coopers Brasil Ltda. for specific veterinary products.

Result

SEAE, SDE and CADE provided favourable legal opinions. Unrestricted approval.

The Importance of IP to CADE

CADÉ considered the possible damages that the merger could cause to competition without directly referring to intellectual property rights.

Relevant Market

Regarding the product side, the market for veterinary products from therapeutical classes is relevant. Geographically, regarding distribution, the relevant market is domestic. However, in the production level, the market for some therapeutical classes can be considered as worldwide.

34. Creo Products Inc. and Scitex Corporation Ltd – *Acquisition* – case no. 08012.001103/00-51

Parties

Creo Products Inc. and Scitex Corporation Ltd.

Case Type

Acquisition

Syllabus

Acquisition of Scitex Corporation Ltd.'s assets related to digital technology for the preprinting of images by Creo Products Inc., including the production units, distribution and logistics, inventories and patents. Besides that, 29% of Creo's stock will be transferred to Scitex, who will have the corporate control of the first company. The relevant market is the international market for technology in preprint of digitalized images. The parties' production line has horizontal concentration in the technology named computer to plate (CTP). Scitex has, approximately, a 4% share of the international relevant market and Creo's market share is inferior to 1% share of the relevant market. The transaction does not generate anticompetitive effects, nor can lead to the domination of the relevant markets, in accordance to article 54 of Law no. 8.884/1994. Transaction notified timely. Approval without restrictions.

Summary

Acquisition of Scitex Corporation Ltd.'s assets destined to the digital technology for the preprinting of images by Creo Products Inc., including the production units, distribution and logistics, inventories and patents.

Result

Unrestricted unanimous approval.

The Importance of IP to CADE

CADÉ considered the possible damages that the acquisition could cause to competition without directly referring to intellectual property rights.

Relevant Market

The relevant market was defined as the international market for equipment for the preprinting of images, including the parties' products, as well as their replacements.

35. Novartis and AstraZeneca – *Merger* – case no. 08012.003098/00-38

Parties

Novartis and AstraZeneca

Case Type

Merger

Syllabus

Notification of a transaction concluded abroad, with consequences in the domestic market, that resulted in the constitution of Syngenta AG, to which the parties' agrochemical businesses and Novartis' seed business were transferred. The relevant product market is the market for insecticides, herbicides, fungicides, adhesive spreaders, growth regulators, ectoparasiticides, sanitary insecticides, biological larvicides and rat poison. Geographically, the relevant market is domestic. When analysing the market shares, SEAE only considered the relevant markets in which both parties were active and in which a product had concentrated more than 10% of their total sales. Therefore, regarding competitive conditions, it only examined the markets in which the horizontal concentration exceeded 20% or the C4 rate exceeded 75% and to which one of the parties alone contributed to an increase bigger than 5%.

It came to the conclusion that there was no concentration of patented products in the market for insecticides, which means that none of the parties or only one of them owned patented products. On the other hand, there were 13 insecticides in the cotton market, 32 in the soy market, and 13 in the maize market. In the herbicide market there was also no concentration of patented products, whereas there were 15 other products offered by competitors. In the fungicide market for tomatoes, Zeneca and Novartis participated with 7 products each, and only one product from each party was protected by a patent, while in that the market there were 31 other products offered by competitors. In the fungicide market for beans, Zeneca participated with 8 products and Novartis participated with 3, and only one product from each party was protected by a patent. There were 17 other products in the market that were offered by competitors. According to information provided by the parties, regarding the other relevant markets, the horizontal concentration

for adhesive spreaders was observed in banana cultures (Novartis: 18.38%, Zeneca: 18.84%), coffee cultures (Novartis: 8.05%, Zeneca: 44.16%), and tomato cultures (Novartis: 19.74%, Zeneca: 13.41%). In the relevant market for adhesive spreaders for bananas the products are not protected by patent rights. In that market there are two products from competitors based in one of the two existing active principles. In the relevant market for adhesive spreaders for coffee and tomatoes the products are not protected by patents either. There are two products provided by competitors based on one of the three existing active principles of the parties' products. There are also two products based on one of the four active principles available in the market. Horizontal concentration was not observed in the relevant market for growth regulators either. In the relevant market for sanitary insecticides and rat poison, Novartis did not have a significant participation and it was not listed as a participant that detains more than 5% of market share in 2000. Zeneca only transferred to Syngenta one product in each of the markets for ectoparasiticides and larvicides. There was not a significant concentration of patent protected products in the relevant markets. Instead, there was a high level of competition in the markets due to the large number of competitors offering products that use free access technologies. There are not significant barriers to the entry for similar or equivalent products in the relevant markets, which makes the entry of new competitors likely. Although the direct imports of pesticides do not interfere with the prices in domestic markets due to the institutional barrier created the official registry, it is easy to import the products' active ingredients, which represents a low cost access to supplies for a producer that wishes to enter the market. Concerning new products, the competition pattern is mainly determined by long term investments in technological research by the companies, and not by price competition. Regarding those products, the important players are big international conglomerates of the chemical industry, capable of attenuating the research costs through economies of scope, and were already active in Brazilian markets.

The presence of any patrimonial links or agreements over share control power between the groups involved in the transaction and other companies active in the relevant markets were not identified. There is no data that proves the development of vertical links by the existence of practices that offer credit lines and technical assistance by the suppliers through resale, not characterizing a sufficient set of evidences to justify an administrative investigation. The effects in domestic markets caused by restrictions imposed to the transaction by other

jurisdictions' antitrust agencies were already taken into account when of the analysis of the transaction.

Untimely notification, given that the transaction did not introduce capital risks that were high enough to generate opposition by the parties' shareholders. Various important aspects to define Syngenta's power and control were already defined by the time the agreement was signed and the approval by the assemblies became even more predictable, due to the compensation fee determined in case of non-approval. Even though the suspensory conditions to approve the act were necessary to conclude the act, their fulfilment was already predictable by the time of its signing. The transaction was concluded in 2 December 1999, whereas it was notified in 25 July 2000, was signed. As the notification was untimely, approximately 7 months late, and due to the parties' revenue in 1999 and to the non-existence of aggravating factors such as bad faith, a fine of R\$180,000.00 was imposed, in accordance with article 27 and paragraph 5 of article 45 of Law no. 8.884/1994. Unrestricted approval, given that there are no significant risks to competition.

Summary

Agreement between AstraZeneca and Novartis AG that resulted in the constitution of Syngenta AG, to which the parties' agrochemical businesses and Novartis' seed business were transferred.

Result

Unrestricted unanimous approval. Fine of R\$180.000,00 due to untimeliness.

The Importance of IP to CADE

CADE considered the possible damages that the merger could cause to competition without directly referring to intellectual property rights.

Relevant Market

In this case, the relevant product markets, all of which defined as national, are:

- a) Specific insecticides

- b) Specific herbicides
- c) Specific fungicides for cultures
- d) Specific fungicides for seeds
- e) Adhesive spreaders
- f) Growth regulators
- g) Ectoparasiticides for cows
- h) Sanitary insecticides
- i) Biological larvicides
- j) Rat poison

36. Gillette Company and Newell Rubbermaid Inc. – *Asset Acquisition* – case no. 08012.003973/2000-81

Parties

Gillette Company and Newell Rubbermaid Inc.

Case Type

Asset Acquisition

Syllabus

Merger. Acquisition of Gillette Company's writing materials division in a worldwide basis by Newell Rubbermaid Inc (Newell). In Brazil, Newell's Brazilian subsidiary acquired the assets that compose Gillette's Brazilian subsidiary's writing materials, including intellectual property rights, inventory, machinery and equipment. There is horizontal concentration in the writing materials segment, more specifically those related to mechanical pencils, ball pens, porous-tipped pens and erasers. Relevant market: domestic market for writing materials. Small increase in market participation. Competitive markets. Presence of strong competitors. Low barriers to entry. Absence of vertical integration. Timely presentation. Unrestricted approval.

Summary

Acquisition of Gillette Company's writing material division in a worldwide basis by Newell Rubbermaid Inc (Newell), including intellectual property rights, inventory, machinery and equipment.

Result

Approved without restrictions.

The Importance of IP to CADE

CADE considered the possible damages that the merger could cause to competition without directly referring to intellectual property rights.

Relevant Market

National market for writing material. SEAE considered four specific markets: mechanical pencils, ball pens, porous-tipped pens and erasers. SEAE highlighted that, despite the considerable presence of imported products on the market, import fees are high, which is why the relevant market was considered as domestic.

**37. Bunge Alimentos S/A and Moinhos de Trigo Indígena S/A (Motrisa)-
Asset Acquisition – case no. 08012.006365/2001-18**

 **Parties**

Bunge Alimentos S/A and Moinhos de Trigo Indígena S/A – Motrisa

 **Case Type**

Asset Acquisition

 **Syllabus**

Notification regarding the acquisition of assets and rights relative to the Veneranda brand belonging to Moinhos de Trigo Indígena S/A (Motrisa) by Bunge Alimentos S/A, and the creation of an agreement to provide industrialization services involving the parties. Relevant market for industrialization, beneficiation of the wheat and its derivative products, geographically delimited to the State of Rio Grande do Sul. It was identified that the transaction resulted in an increased participation of Bunge Alimentos S/A from 16,72% to 21,60%. It was also identified that the relevant market's structure presents itself as competitive and pulverized. The transaction did not result in the elimination of competition, since Motrisa will carry on its activities in the relevant market. CADE understood that the transactions regarding the sale of the Veneranda brand and the concentration of Motrisa's industrialization services do not represent competition risks to the relevant market. In an incidental way the proceedings brought along with it information about an industrialization contract between Bunge Alimentos S/A as a contractor and Indústrias Químicas Indígena Ltda. – Inquil. The rapporteur suggested that such contract should be notified. The Council, by majority, understood that the full set of data about the transaction involving Inquil and Bunge present in the proceedings was not enough to determine the obligation of its notification as a merger and did not indicate an transaction as set by the main section of Article 54 of Law no. 8.884/1994. The plenary session confirmed the understanding that the elements displayed demonstrate the lack of any link between the parties that might denote or incentive the mutual control of assets with the same or coordinated economic goal in the markets. The frail nature of the relationship and the previous setting of prices and conditions for the provision of

services are typical in ordinary commercial contracts. Transaction presented in a timely manner. Approval of the operation without restrictions.

Summary

Asset assignment consisting of the acquisition of assets and rights regarding the Veneranda brand belonging to Moinhos de Trigo Indígena S/A (Motrisa) by Bunge Alimentos S/A, and the creation of an agreement to provide industrialization services involving the applicants. The transaction occurred through two contracts; in the first all rights, titles and interests relatives to the Veneranda brand, up until then property of Motrisa, were transferred to Bunge. In the second contract, Bunge and Motrisa accorded to providing custom services regarding wheat flour and bran resulted from milling wheat, without exclusivity.

Result

Favourable opinions from SDE, SEAE and PROCADE. Approved without restrictions.

The importance of IP to CADE

CADE considered the possible damages that the acquisition could cause to competition without directly referring to intellectual property rights.

Relevant Market

Relevant market involving industrialization, production and processing of wheat-based products, especially wheat flour. Geographically, the market was confined to the state of Rio Grande do Sul.

38.Huffy Corporation and Schwinn Group – *Asset Acquisition* – case no. 08012.004762/2001-47

Parties

Huffy Corporation and Schwinn Group

Case Type

Asset Acquisition

Syllabus

Acquisition of Schwinn Group's assets related to project development, commercialization and distribution of bicycles, parts and accessories, including bicycle inventory, receivables and trademarks by Huffy Corporation. Transaction embodied in article 54, paragraph 3 of the Antitrust Act due to the fact that the parties' global revenue exceeds R\$ 400,000,000.00. Timely notification. The transaction was not concluded. The taxable event of the filing fee is the moment of the filing of the act. The filing fee is non-returnable. The procedure was dismissed due to loss of purpose.

Summary

Acquisition of Schwinn Group's assets related to project development, commercialization and distribution of bicycles, parts and accessories, including the bicycle inventory, receivables and trademarks by Huffy Corporation.

Result

The procedure was dismissed by SEAE, SDE and PROCADE due to the loss of its object, as the transaction was not concluded.

The Importance of IP to CADE

Does not apply.

Relevant Market

The relevant market was not defined nor analysed by CADE due to the fact that the operation had already been frustrated by the time of the analysis.

39.GVT and American Tower do Brasil Ltda - *Agreements* - case no. 08012.003245/2001-51

Parties

GVT and American Tower do Brasil Ltda.

Case Type

Agreement

Syllabus

Agreement that derives from the signing of four distinct and related contracts, which were: (i) Private Instrument of Constitution and Usufruct; (ii) Main Contract of Concession of Right of Use of Space; (iii) Contract of Technology Transfer (know-how); and (iv) Master Contract of Area Use. In the main instrument of this agreement, GVT transfers the use of their sites to “American Tower do Brasil Ltda”. The relevant geographic market is the region where GVT operates, as stipulated by the General Concession Plan of Anatel: the “region II”. The relevant product market of the transaction consists of the one for communication towers sites, which include, apart from the towers, small enclosed areas where they are built and to which the equipment is confined. The number of GVT’s telecommunication towers corresponds to 3.26% of the total of towers located in region II, and its coverage area, which is about 30% of the domestic territory. The users of these towers, in general, are telephone companies, companies in the Pay TV market and large corporations that require internal and external communication. The transaction does not generate anticompetitive effects nor leads to the domination of the relevant markets, in accordance with article 54 of Law no. 8.884/1994. Transaction notified timely. Approval without restrictions.

Summary

Signing of four distinct and related contracts, which were: (i) Private Instrument of Constitution and Usufruct; (ii) Main Contract of Concession of Right of Use of Space; (iii) Contract of Technology Transfer (know-how); and (iv) Master Contract of Area Use.

In the Private Instrument of Constitution and Usufruct, GVT granted to the ATC usufruct rights on the assets associated with 156 communication towers. The ATC may, at any time after 84 months (7 years), opt for the purchase of the assets associated with the towers.

In the Custom Contract and Site Development, GVT hired ATC to investigate, identify, acquire or rent, develop and construct, the places where the towers are installed. GVT undertook to use each of the ATC sites for improvements and provision of equipment.

In the Contract of Technology Transfer (know-how), the parties agreed that GVT would transfer technology to ATC. The term "technology (know-how)" was defined as "all technology, knowledge and techniques developed and owned by GVT".

In the Master Contract of Area Use, ATC granted to GVT the use of their sites through the payment of fees, and thus the right to install and maintain equipment; install and maintain wires, cables, conduits and public access pipes to the site. The contract will be valid for 15 years and may be automatically extended for another 7 years.

Result

Favourable legal opinions from SEAE, SDE and PROCADÉ. Unrestricted approval.

The Importance of IP to CADE

CADE considered the possible damages that the merger could cause to competition without directly referring to intellectual property rights.

Relevant market

The relevant product market of the transaction consists of communication towers sites, which include; apart from the towers, small enclosed areas where they are built and in which the equipment is confined. The relevant geographic market is the region where GVT operates, "Region II" as defined by the General Concession Plan of Anatel, comprising the states of Santa Catarina, Paraná, Mato Grosso do Sul, Mato Grosso, Tocantins, Goiás, Rondônia, Acre, Rio Grande do Sul and the Brazilian Federal District.

40. Unidas and SAG Group – *Merger* – case no. 08012.003569/2001-99

Parties

Unidas and SAG Group

Case Type

Merger

Syllabus

Merger. Acquisition of “Negócio Unidas”, composed of all necessary operating assets to undertake the activity under the brand “Unidas”, such as human resources, contracts, trademarks, and software system in which the business is settled by the SAG Group, as well as some of the liabilities of “UFS Participações S/A”. Transaction notified timely. No vertical or horizontal concentration in this transaction. The transaction does not generate anticompetitive effects. Transaction approved without restrictions.

Summary

Acquisition by SAG Group of the "Negócio Unidas", which is composed of all operating assets necessary to conduct business under the name "Unidas", such as human resources, contracts, trademarks and software systems in which the business is settled, as well as the transfer to SAG Group of some liabilities of “UFS Participações S/A”.

Result

Favourable legal opinions from SEAE, SDE and PROCADE. Unrestricted approval.

The Importance of IP to CADE

Does not apply.

Relevant market

The relevant market of the product is limited to the transport sector, more specifically the rental car industry and route outsourcing. The geographic scope of this market is the domestic territory.

41. Parmalat Brasil S.A Indústria de Alimentos and Chocoleite Indústria de Alimentos Ltda. – *Asset Acquisition* – case no. 08012.003595/2002-06

Parties

Parmalat Brasil S.A. Indústria de Alimentos and Chocoleite Indústria de Alimentos Ltda.

Case Type

Asset Acquisition

Syllabus

Asset acquisition regarding the sale of Chocoleite brand and assets related to its production, by Parmalat Brasil S.A. Indústria de Alimentos to Chocoleite Indústria de Alimentos Ltda.. Domestic relevant market for the production of flavored milk. The participation of Chocoleite brand was estimated at 0.5% of the relevant market, and the transaction did not cause any increase in the market share of the acquirer, since it did not operate in the considered market. With the transaction, the vertical relationship between Chocoleite and Parmalat companies was maintained, since the latter will hold the supply and packaging of the products to be commercialized by Chocoleite. However, given the low participation on the market of the Chocoleite brand, the potential effects derived from this vertical relationship is unlikely. Transaction presented in a timely manner. Approval of the assignment without restrictions.

Summary

Sale of the Chocoleite brand, and assets related to its production, by Parmalat Brasil S.A. Indústria de Alimentos to the Chocoleite Indústria de Alimentos Ltda company. The submission of the transaction occurred according to the application of turnover criteria, as provided for in paragraph 3 of article 54 of Law no. 8.884/1994 to Parmalat.

Result

Favourable legal opinions from SEAE, SDE and ProCADE. Since the transaction does not limit or harm the competition, the decision was for the approval of the act without restrictions.

The importance of IP to CADE

CADÉ considered the possible damages that the operation could cause to competition without directly referring to intellectual property rights.

Relevant Market

The relevant market, from the product side, is the market of production of flavored milk, which is distinct from the other types of milk only in relation to the demand side. From a geographic perspective, the market was defined as domestic.

42. Procter & Gamble Clairol Inc. (P&G); Procter & Gamble do Brasil & Cia. (P&G Brasil) and Metalúrgica Cabomat S.A – Asset Acquisition – case no. 08012.004563/2002-10

Parties

Procter & Gamble Clairol Inc. (P&G); Procter & Gamble do Brasil & Cia. (P&G Brasil) and Metalúrgica Cabomat S.A.

Case Type

Asset Acquisition

Syllabus

Notification of intent to acquire the assets of Procter & Gamble do Brasil & Cia. (P&G Brasil) and the rights related P&G Brasil brand related to the Phytoervas product line, by Metalúrgica Cabomat S.A. Lack of horizontal concentration and vertical integration. Substitution of agents. Non-correspondence between the and the provisions set out in the main section and paragraph 3 of article 54 of the Antitrust Act. Application dismissed without an analysis on the merits.

Summary

Notification of intent to acquire the assets of Procter & Gamble do Brasil & Cia. (P&G Brasil) and the rights related P&G Brasil brand related to the Phytoervas product line, by Metalúrgica Cabomat S.A. The transaction did not cause any horizontal concentration nor vertical integration, since the applicants operate in completely distinct segments of the market.

Result

The conclusion was that the transaction was merely a substitution of economic agent, whereby the Metalúrgica Cabomat now holds control of Phytoervas line, previously owned by Procter & Gamble Clairol Inc. (P&G). Procedure dismissed without an analysis on the merits.

The importance of IP to CADE

CADE considered the possible damages that the operation could cause to competition without directly referring to intellectual property rights.

Relevant Market

Considering that there was no horizontal overlap between the companies, it was not necessary to define the relevant market.

43. Illbruck and Sonex – *Asset Acquisition* – case no. 08012.005787/2002-49

Parties

Illbruck and Sonex

Case Type

Asset Acquisition

Syllabus

Acquisition of Illbruck's assets and intellectual property rights by Sonex. Mere substitution of economic agents. Transaction analysed under the provisions of paragraph 3 of article 54 of Law no. 8.884/194, as a result of the revenue of the parties. Timely notification. Unrestricted approval.

Summary

Acquisition, at the domestic level, of all assets (machinery and equipment), some trademarks, patents and other trademark licenses intended for the production and marketing of the acoustical absorbent line of the Sonex division of Illbruck Architectural Surfaces International GMBH by "Sonex Industrial Ltda", belonging to Mr. Luciano Marcolino. The value of the transaction was BRL 30,000.00.

Result

Favourable legal opinions from SEAE, SDE and PROCADE. Unrestricted approval.

The Importance of IP to CADE

CADE considered the possible damages that the operation could cause to competition without directly referring to intellectual property rights.

Relevant market

Considering that there was no horizontal relation between the companies, it was not necessary to define the relevant market.

44. Littlejohn and Goodyear Chemicals Europe – *Merger* – case no. 08012.0001400/2002-21

Parties

Littlejohn and Goodyear Chemicals Europe

Case Type

Merger

Syllabus

Acquisition of Goodyear's businesses on special chemicals, which include the French company Goodyear Chemicals Europe, plus operating assets and intellectual property of the Goodyear Tire and Rubber Company by Littlejohn group. Application of paragraph 3 of article 54 of Law no. 8.884/1994. The parties' turnover exceeds BRL 400 million. Timely notification. Lack of impact of horizontal concentration and vertical integration. The transaction does not generate anticompetitive effects. Unrestricted approval.

Summary

Acquisition of the special chemicals businesses of Goodyear group, which include the French company Goodyear Chemicals Europe, plus operating assets located at Akron, Ohio and intellectual property rights by Littlejohn group.

Result

Favourable legal opinions from SEAE, SDE and PROCADÉ. Unrestricted approval.

The Importance of IP to CADE

CADE considered the possible damages that the merger could cause to competition without directly referring to intellectual property rights.

Relevant market

In Brazil, no relevant market was affected by this transaction. All definitions of the relevant market (mainly in Brazil) are based on the requirement of a horizontal concentration or vertical integration from the product or geographical point of view. In this case, there is no horizontal concentration or vertical integration between the parties, due to the fact that both are active in totally different markets. Therefore, it can be stated that there is no relevant market affected by this transaction.

45. The Kingsford Products Company, Aventis CropScience AS and Aventis Environmental Science AS – Asset Acquisition – case no. 08012.001212/2002-57

 **Parties**

The Kingsford Products Company, Aventis CropScience AS and Aventis Environmental Science AS

 **Case Type**

Asset Acquisition

 **Syllabus**

Acquisition of Kingsford Products Company's assets and its affiliates that are used, primary or exclusively in the professional pest control business in Kingsford, including rights over MaxForce® products and related intellectual property rights by Aventis. Hypothesis set out in article 54, paragraph 3 of Law no. 8.884/1994. Timely notification. Domestic market for household cleaning insecticides. Horizontal concentration. Existence of substitute products. Favourable legal opinions from SEAE, SDE and PROCADE. Unrestricted approval.

 **Summary**

Asset Purchase Agreement signed between The Kingsford Products Company, Aventis CropScience AS and Aventis Environmental Science AS. The acquisition of the assets of Kingsford and its affiliates includes the rights over MaxForce products and related intellectual property rights. This product was already distributed in Brazil by Aventis CropScience Brazil Ltda.

 **Result**

Favourable legal opinions from SEAE, SDE and PROCADE. Unrestricted approval.

 **The Importance of IP to CADE**

CADÉ considered the possible damages that the operation could cause to competition without directly referring to intellectual property rights.

Relevant market

This merger only involves products within the domestic sanitary insecticides market, in particular those aimed at the professional segment. While there are many products within the household insecticides product line, it is important to note that the production process and the active ingredients used in the manufacture of these products are basically the same, including i to those used in the production of pesticides. The flexibility of the production process, therefore, requires the definition of the relevant market in the product dimension as the one for household insecticides.

Regarding the geographical dimension, the household insecticides market is domestic. The import of products for environmental health, including household insecticides, are controlled by the Ministry of Agriculture, so each product must be registered and meet the requirements set out by the Ministry of Agriculture, the Ministry of Health and The Brazilian Institute for the Environment (IBAMA).

46. Nestlé Brasil Ltda. and Chocolates Garoto S/A – *Merger* – case no. 08012.001697/2002-89

 **Parties**

Nestlé Brasil Ltda. and Chocolates Garoto S/A.

 **Case Type**

Merger.

 **Syllabus**

Acquisition of Chocolates Garoto S/A by Nestlé Brasil Ltda. Hypothesis set out in paragraph 3, article 54 of Law no. 8884/1994. Request for reconsideration. Merger. Timely notification. Absence of new facts or documents. Opinion for the dismissal of the case without acknowledgement of the reconsideration request. Opinion for the dismissal of the request, on its merits.

 **Summary**

It is a merger submitted by the companies Chocolates Garoto S/A. and Nestlé Brasil Ltda., whereby they notify, in attention to article 54 of Law no. 8884/1994, the acquisition of Chocolates Garoto S/A. by Nestlé Brasil Ltda. 2. It is also a request for reconsideration filed on 15 March 2004, by Chocolates Garoto S/A. and Nestlé Brasil Ltda. which figured as parties to the merger no. 08012.001697/2002-89.

 **Result**

Favourable opinion from SDE and unfavourable opinion from SEAE. Unfavourable report from ProCADE. Request dismissed.

 **The importance of IP to CADE**

The intellectual property rights involved in the case were irrelevant to the decision.

 **Relevant Market**

The relevant markets are (i) the domestic market for cocoa liquor, cocoa butter and cocoa cake; and (ii) the domestic market for chocolate powder.

47. Rohm and Haas Company and Kureha Chemical Industry Co. Ltd. – Asset Acquisition – case no. 08012.008595/2002-94

 **Parties**

Rohm and Haas Company and Kureha Chemical Industry Co. Ltd.

 **Case Type**

Asset Acquisition

 **Syllabus**

Asset acquisition. Partial acquisition of the plastics additives business of Kureha Chemical Industry Co. Ltd by Rohm and Haas Company, through the purchase of shares of certain subsidiaries of the RandH Group. Transaction comprised within the meaning of article 54, paragraph 3, of Law no. 8884/1994 - turnover. Compliance with the legal requirement set out in Law no. 10.149/2000. Timeliness. No damage to competition. Converging reports from SEAE, SDE, ProCADE and the Public Prosecutor's Office. Analysis in the manner prescribed by article 50 of Law no. 9784/99 and article 16 of CADE Regulation no. 12/1998. Unrestricted approval.

 **Summary**

Partial acquisition of the plastic additives business of Kureha Chemical Industry Co. Ltd. by Rohm and Haas Company, through the purchase of shares of some RandH group subsidiaries. Regarding the possibility of the abuse market power, it is observed that KCS owns only a 10% market share on the domestic market of impact modifiers. Thus, SEAE ascertains for an absence of causal link between the transaction and the possible exercise of market power. Any possibility of unilateral exercise of market power was present before the transaction, as RandH was an integrant of KCS and, after the transaction, will own it completely. Thus, the SEAE recommended the approval of the transaction without restrictions, given that it will not generate anticompetitive effects.

 **Result**

Unanimously unrestricted approval.

The Importance of IP to CADE

CADE considered the possible damages that the operation could cause to competition without directly referring to intellectual property rights.

Relevant market

SEAE defined the relevant market, on the product side, as the market for impact modifiers, which are a type of plastic additive, and also noted the existence of horizontal concentration in the production of these modifiers. Regarding the geographical delimitation of market, SEAE considered it as domestic.

48.Siol Alimentos Ltda and Unilever Bestfoods Brasil Ltda. – Asset Acquisition – case no. 08012.009459/2003-01

 **Parties**

Siol Alimentos Ltda. and Unilever Bestfoods Brasil Ltda.

 **Case Type**

Asset Acquisition

 **Syllabus**

Acquisition by Siol Alimentos Ltda. of certain tangible and intangible assets, such as equipment, manufacturing processes and formulas that are used by Unilever Bestfoods Brasil Ltda. in the production of vegetable oil, as well as all intellectual property rights related to the trademark "Saúde". Transaction comprised within the meaning of article 54, paragraph 3 of Law no. 8884/1994 - turnover. Compliance with the legal requirements set out Law no. 10.149/2000. Timeliness. No damage to competition. Converging reports from SEAE, SDE, ProCADE and the Public Prosecutor's Office. Analysis in the form of article 50 of Law no. 9784/1999 in conjunction with article 16 of CADE' Regulation 12/1998. Unrestricted approval.

 **Summary**

Acquisition by Siol Alimentos Ltda. of certain tangible and intangible assets, such as equipment, manufacturing processes and formulas that are used by Unilever Bestfoods Brasil Ltda. in the production of vegetable oil, as well as all intellectual property rights relating to the trademark "Saúde". By means of this transaction, Unilever will stop producing hydrogenated vegetable fat and transfer all assets related to the manufacture and marketing of this product, including the trademark "Saúde" to Siol. According to information provided by the parties, Siol previously only operated in the production of vegetable oils and mayonnaise, which revealed the inexistence of horizontal concentration.

 **Result**

Unanimous unrestricted approval.

The Importance of IP to CADE

CADE considered the possible damages that the merger could cause to competition without directly referring to intellectual property rights.

Relevant market

SEAE highlighted that the relevant product market includes two products: hydrogenated vegetable oil and refined soy oil. Regarding the geographical scope, SEAE considered the market as domestic for the two relevant products. For SEAE, the transaction does not produce horizontal concentration, given that prior to the transaction Siol did not operate in the production of vegetable oil. Thus, the transaction under study did not alter the market structure.

**49. Joint Venture (JVCO), 3COM and Huawei – *Joint Venture Agreement* -
case no. 08012.009457/2003-11**

 **Parties**

3COM and Huawei

 **Case Type**

Agreement – Joint Venture

 **Syllabus**

Worldwide transaction. Constitution of a joint venture ("JVCO") by Huawei and 3Com, which licensed intellectual property rights to JVCO without exclusivity. JVCO will develop and produce LAN switches and WAN routers. Hypothesis provided for in article 54, paragraph 3 of Law no. 8.884/1994. Timely presentation. Absence of opinions against the transaction. Absence of harm to competition. Approved without restrictions.

 **Summary**

Constitution of a Joint Venture (JVCO) between 3Com and Huawei, which licensed, without exclusivity, intellectual property to JVCO. JVCO will develop and produce LAN switches and WAN routers and distribute such products in China and Japan. In the rest of the world, including Brazil and Mercosur, distribution of JVCO products will be the responsibility of 3Com. The transaction is also being notified in the following jurisdictions: China, Japan and Germany. The joint venture was formed by the acquisition, by 3Com Technologies, of a 19% stake in Huawei-3Com Co. Ltd. Concurrently, the parties and JVCO entered into a Shareholders Agreement governing the control of the joint venture.

 **Result**

Unanimous unrestricted approval. SEAE, SDE and ProCADE: recommended the approval without restrictions, as they considered that there is no horizontal concentration or vertical integration in the product lines and/or services offered by the parties, given that 3Com Group manufactures and markets services of

infrastructure for business communications network services, IP telephony products, cabling and security.

The Importance of IP to CADE

CADE considered the possible damages that the joint venture could cause to competition without directly referring to intellectual property rights.

Relevant market

As informed by the parties, JVCO acts exclusively in the market for active components for data networks. According to the parties, the three categories of LAN switches are not be interchanged due to their different processing capabilities. Each product has a clearly defined market depending on its processing capacity. Obviously, smaller companies may choose to purchase products with higher capacity with an objective of future expansion. However, that is not what usually happens, which is why the products of 3Com and Huawei are not seen as competitors. The parties further stated that LAN Switches and WAN Routers, as a rule, cannot be considered as substitutes, because of their different functions and applications. The competitor Avaya commented that the joint venture between 3Com and Huawei will not change, at least in the medium term, the current participation on the Brazilian market for the other companies in operation. The formation of JVCO does not generate, in the domestic market, horizontal concentration or vertical integration amongst the products in question.

50. Kaleidoscope Enterprises Inc and The Clorox International Company – *Asset Acquisition – case no. 08012004224/2003-14*

Parties

Kaleidoscope Enterprises Inc and The Clorox International Company

Case Type

Asset Acquisition

Syllabus

Acquisition, by Kaleidoscope Enterprises Inc., a company of the Reckitt group, of the rights to use the trademarks "X-14" and "M-14" in Brazil, previously owned by The Clorox International Company. There was an increase in the participation of Reckitt Company on the relevant domestic market for cleaning products of 2.7%, (percentage unable to significantly change the market structure). Unrestricted approval.

Summary

Acquisition, by Kaleidoscope Enterprises Inc., a company of the Reckitt group, of the rights to use the trademarks "X-14" and "M-14" in Brazil, previously owned by The Clorox International Company.

Result

Favourable legal opinions from SEAE, SDE and ProCADE. Unrestricted approval.

The Importance of IP to CADE

The considerations and analysis concerning the acquisition of intellectual property did not influence the decision.

Relevant market

The relevant market was defined as the domestic one for the household cleaning products.

51. Invista Inc and Koch Industries – Merger – case no. 08012.009500/2003-31

Parties

Invista Inc. and Koch Industries.

Case Type

Merger.

Syllabus

Acquisition of Invista Inc by subsidiaries of Koch Industries. Timely transaction, comprised within the meaning of the criteria established in article 54, paragraph 3 of Law no. 8.884/1994.

Summary

It is the acquisition of Invista, a company belonging to the Grupo DuPont, by Koch subsidiaries. The transaction, executed globally, covers the acquisition of all business developed by Invista, its portfolio of consumers and industrial trademarks, patents and intellectual property rights. In Brazil, the transaction will result in the sale of the DTI Nylon Sul Americana S.A., DuPont Polímeros Ltda. and DuPont Textile and Interiors do Brasil Ltda. companies.

Result

Favourable reports from ProCADE, SDE and SEAE. Transaction approved with restrictions.

The importance of IP to CADE

The Intellectual Property assets involved were irrelevant to the decision.

Relevant market

The relevant markets are the domestic markets for polyester, polyamide 6 (PA 6), polyamide 66 (PA 66), engineering plastics (PE) of PA 6, PE and PA 66.

52. Jauense and Bunge – *Lease Agreement* – case no. 08012.007052/2003-31

Parties

Jauense and Bunge

Case Type

Agreement

Syllabus

Lease, by Bunge, of an industrial complex for the processing of Jauense's wheat. Furthermore, Jauense will license all trademarks related to the industrial complex. Rental and the licensing fees of the trademarks shall be paid monthly. Timely notification. Market for wheat flour and wheat bran. Absence of horizontal and vertical concentration. Transaction analysed due to the fact that Bunge's turnover is above BRL 400 million. Unrestricted approval.

Summary

Leasing contract signed between Jauense and Bunge, in which Jauense leases Bunge's the industrial complex and for processing wheat intellectual property rights thereto.

Result

Unrestricted approval.

The Importance of IP to CADE

CADE considered the possible damages that the merger could cause to competition without directly referring to intellectual property rights.

Relevant market

Market of wheat bran and wheat flour. Geographically, the relevant market is domestic: Distrito Federal and the state of Goiás for wheat bran, and the states of Tocantins, São Paulo, Bahia and Goiás for wheat flour.

53. Molecular Probes, Inc and Mallard Acquisition Corporation – *Merger* – case no. 08012.005446/2003-54

Parties

Molecular Probes, Inc. and Mallard Acquisition Corporation

Case Type

Merger

Syllabus

Merger. Economic Law. Merger of Molecular Probes, Inc. (MP) and Mallard Acquisition Corporation (Mallard), integral subsidiary company of Invitrogen Corporation (Invitrogen), the first being the surviving company. Relevant market for ultra-pure products for genome biotechnology research. International geographic market. Transaction falls within the scope of paragraph 3 of article 54 of Law no. 8.884/1994. Payment of filing fee. Timeliness. No harm to competition. Unrestricted approval.

Summary

Notification of the Agreement and Plan of Merger executed by Invitrogen Corporation (Invitrogen), Molecular Probes, Inc. (MP) and Mallard Acquisition Corporation (Mallard), wholly owned subsidiary of Invitrogen.

Result

Favourable legal opinions, without restrictions, from SEAE, SDE, the Public Prosecutor's Office and PROCADÉ.

The Importance of IP to CADE

CADE considered the possible damages that the merger could cause to competition without directly referring to intellectual property rights.

Relevant market

On the product side, SEAE defined the relevant market as the one for ultra-pure products for genome biotechnology research. The ultra-pure products are obtained through domestic companies, multinational companies installed in Brazil, direct imports, independent distributors, exclusive distributors and/or research laboratory distributors. Although unusual, it is also possible to directly import through a catalog. Thus, under the geographical perspective, the relevant market is international.

54. BASF Corporation and Honeywell International Inc. – *Asset Acquisition*
– case no. 08012.000615/2003-60

 **Parties**

BASF Corporation and Honeywell International Inc.

 **Case Type**

Asset Acquisition

 **Syllabus**

Notification of the global transaction involving the acquisition, by BASF Corporation, of assets located in the United States, Germany and Korea linked to the production of polyamide compounds, as well as patents relating to the production of polymers for engineering plastics, belonging to Honeywell International Inc. (Honeywell). Relevant domestic and world market for polyamide compound, also called engineering plastic. The case led to the findings that the horizontal concentration resulting from the transaction did not generate a sufficiently large market share to allow the unilateral exercise of market power. As for vertical integration, it was concluded that it does not cause any significant modification in the structure of the polyamide domestic market, since Honeywell did not offer such product in that market. Thus, it was concluded that the transaction would not generate anticompetitive effects. Transaction presented in a timely manner. Approval without restrictions.

 **Summary**

Global transaction involving the acquisition, by BASF Corporation, of assets located in the USA, Germany and Korea for the production of polyamide, and patents for the production of polymers for engineering plastics, owned by Honeywell International Inc. In Brazil, the transaction involved the acquisition of a 50.5% share of the Honeywell Plastics SA joint venture.

 **Result**

Unanimous unrestricted approval.

The Importance of IP to CADE

CADE considered the possible damages that the operation could cause to competition without directly referring to intellectual property rights.

Relevant market

Polyamide compound (engineering plastic) market, both domestic and global.

55.Siemens and Alstom Inc – Asset Acquisition - case no. 08012.003574/2003-63

Parties

Siemens and Alstom Inc.

Case Type

Asset Acquisition

Syllabus

Asset Acquisition. Worldwide acquisition, by Siemens, of small gas turbines (Small Gas Turbines - SGT), medium gas turbines (Medium Gas Turbines - MGT) and industrial steam turbines (Industrial Steam Turbines - IST) businesses. Siemens will acquire the production facilities from ALSTOM for the mentioned turbines, as well as assets, employees, intellectual property rights and know-how associated with the businesses. Relevant global market of industrial steam turbines ranging from 1 to 100 MW (IST). Horizontal concentration will not allow for an abusive exercise of market power, either unilateral or coordinated. Hypothesis contemplated by paragraph 3, article 54 of Law no. 8.884/1994. Submitted due to the groups' turnovers and the market concentration. The transaction does not generate any harm to competition in the relevant markets. Timely presentation. Unrestricted approval.

Summary

Acquisition by Siemens of the small gas turbines (Small Gas Turbines - SGT), medium gas turbines (Medium Gas Turbines - MGT) and industrial steam turbines (Industrial Steam Turbines - IST) businesses of ALSTOM Inc. By the means of this transaction, Siemens acquired production facilities for the turbines, as well as assets, employees, intellectual property rights and know-how associated with the businesses.

Result

Unrestricted approval.

The Importance of IP to CADE

CADE considered the possible damages that the merger could cause to competition without directly referring to intellectual property rights.

Relevant market

Worldwide industrial steam turbines in the range of 1 to 100 MW. The transaction was also subject to the antitrust authorities from Argentina, Hungary, Czech Republic, South Africa, United States and European Union.

56.Reckitt Beckinser (Brasil) Ltda. And Clorox do Brasil Ltda – Asset Acquisition – case no. 08012.002877/2003-69

Parties

Reckitt Benckiser (Brasil) Ltda. and Clorox do Brasil Ltda.

Case Type

Asset Acquisition

Syllabus

Asset Acquisition. Acquisition of assets and rights over the “SBP” brand from Clorox do Brasil Ltda’s domestic insecticides business by Reckitt Benckiser (Brasil) Ltda. Hypothesis comprised within the meaning of article 54, paragraph 3 of Law no. 8.884/1994. Transaction timely notified. Domestic insecticide market for aerosols, electric devices and baits. Favourable opinions from SEAE, SDE, PROCADE and the Public Prosecutor’s Office. Approved without restrictions.

Summary

It is an acquisition, by Reckitt Benckiser Ltda., of the “SBP” brand’s assets and rights from Clorox do Brasil Ltda.’s domestic insecticides business.

Result

Even though the transaction resulted in significant horizontal concentration in the insecticides segment, possible anticompetitive effects arising from the transaction were considered improbable. Favourable opinions from the PROCADE, SDE, SEAE and the Public Prosecutor’s Office. Approved without restrictions.

The importance of IP to CADE

CADE considered the possible damages that the operation could cause to competition without directly referring to intellectual property rights.

Relevant Market

Domestic market for insecticides.

**57. Pfizer Animal Health and Bayer AG – Asset Acquisition– case no.
08012.008115/2003-76**

 **Parties**

Pfizer Animal Health and Bayer AG

 **Case Type**

Asset Acquisition

 **Syllabus**

Asset Acquisition. Acquisition, by Pfizer Animal Health, of Bayer AG's assets and intellectual property rights related to certain vaccines and an immunomodulators for animal health. Transaction involving at least one group with turnover, in Brazil, exceeding BRL 400 million. Timely notification. Relevant domestic market for 01B subclass vaccines and 01A10 subclass immunomodulators. Absence of horizontal concentration and vertical integration. Substitution of economic agent. No substantial change in the relevant markets. Transaction approved without restrictions.

 **Summary**

Acquisition, by Pfizer Animal Health, of Bayer AG's assets and intellectual property rights related to certain vaccines and an immunomodulatora for animal health. The rapporteur stated in his vote that no horizontal concentration or vertical integration arises from the transaction. The transaction results in a mere substitution of economic agents and will not be able to create anticompetitive effects. Thus, there is no characterization of the potential hypothesis of unilateral and/or coordinated exercise of market power by Pfizer. The competitive structure of the relevant markets did no undergo any significant change resulting from the transaction.

 **Result**

Unanimously unrestricted approval.

The Importance of IP to CADE

CADE considered the possible damages that the merger could cause to competition without directly referring to intellectual property rights.

Relevant market

Relevant domestic markets for 01B subclass vaccines and 01A10 subclass immunomodulators.

58. Atlas Copco AB and Ingersoll Rand Company Limited - *Asset Acquisition*
- case no. 08012.001907/2004-09

 **Parties**

Atlas Copco AB and Ingersoll Rand Company Limited

 **Case Type**

Asset Acquisition

 **Syllabus**

Asset Acquisition. Global transaction. Transaction not comprised within the meaning of article 54 of the Antitrust Act, since the parties revenues in Brazil did not exceed BRL 400 million in the previous year and the market share arising from the transaction is below the threshold of 20%. Dismissal of the case without analysis of the merits. Non-refund of the administrative fee.

 **Summary**

It is a global transaction by the means of which Atlas Copco AB will acquire Ingersoll Rand Company Limited's assets, properties, rights, privileges of the "Drilling Solutions Business" (DSB). Upon the closing of the transaction, a new division of Atlas Copco will be created with the name Atlas Copco Drilling Solutions. The share capital of Atlas Copco is highly fragmented and only Investo Group, owner of 21.4% of its shares, will hold more than 5% of its capital.

 **Result**

Case dismissed without analysis of the merits.

 **The Importance of IP to CADE**

CADE considered the possible damages that the merger could cause to competition without directly referring to intellectual property rights.

 **Relevant market**

Not applicable.

**59.Ksin Holdings, Ltd and Grupo Singer – Merger – case no.
08012.005228/2004-09**

 **Parties**

Ksin Holdings, Ltd and Grupo Singer

 **Case Type**

Merger

 **Syllabus**

Merger. Acquisition of Singer N.V. by Ksin Holdings, Ltd. Summary Procedure. Relevant Market: sewing machines and related accessories. Transaction within the meaning of article 54, paragraph 3 of Law no. 8.884/1994 - turnover. Timeliness. Payment of procedural fee. Absence of damages to competition. Convergence of opinions from SEAE, SDE, ProCADE and the Public Prosecutor's Office. Analysis of article 50 of Law no. nº 9.784/1999 in conjunction with article 16 of the CADE Regulation no. 12/q998. Unrestricted approval.

 **Summary**

Transaction of acquisition, by the Ksin Holdings, Ltd. of shares, assets and liabilities from the companies belonging to the Singer Group, in order to lead its global business of sewing machines, as well as the property of the Singer brand. According to the applicants, the transaction will generate the transfer of corporate control from the companies belonging to Singer Group, which lead the global market of sewing machines, to Ksin, whose economic group will only act in this market after the closing and the implementation of the acquisition. This group does not currently have any activities in Brazil.

The decisive reason to the execution of the contract would be, according to Singer, the opportunity to solve its financial problems and improve its liquidity position and, thereby, help finance Singer Asia's growth and explore new business opportunities. For Kohlberg Group, the acquisition means a good investment, due to the global prestige of the brand to be purchased and the potential growth of the sewing machines' market. The transaction was submitted to CADE because the

revenue of the groups involved, in the year of 2003, has exceeded the amount of BRL 400 million, as set out in article 54 of Law no. 8.884/1994.

Result

Unrestricted approval.

The Importance of IP to CADE

CADE considered the possible damages that the merger could cause to competition without directly referring to intellectual property rights.

Relevant Market

Relevant market of sewing and related accessories. Geographically, the relevant market was defined as global.

60. Gillette and Den Mat – *Asset Acquisition* – case no. 08012.002856/2004-24

Parties

Gillette and Den-Mat

Case Type

Asset Acquisition

Syllabus

Asset Acquisition. Acquisition, by The Gillette Company, of assets from Den-Mat Corporation, corresponding to the businesses of oral hygiene consumer products and oral hygiene bleaching and whitening products for personal as well as for professional use, including the Rembrandt brand, as well as the intellectual property rights over some trademarks. Domestic market of toothpastes. Horizontal concentration unable to generate anticompetitive effects, due to the parties' insignificant amount of sales in the Brazilian toothpaste market in 2003. Unrestricted approval.

Summary

Transaction abroad with repercussions in Brazil. Gillette or its designated subsidiary will acquire the assets from Den-Mat, related to the businesses of oral hygiene consumer products and oral hygiene bleaching and whitening products for personal as well as for professional use, including the Rembrandt brand, as well as the intellectual property rights over some trademarks. In Brazil, Gillette will acquire the following products from Den-Mat: (i) toothpastes and (ii) oral hygiene for professional use. Furthermore, Den-Mat also sells other oral hygiene products for professional use which are not being transferred by the present transaction. In Brazil, both Gillette and Den-Mat offer toothpaste. Since the amount of sales of the Applicants was insignificant in the toothpaste market, it can be concluded that the present transaction will not bring any injury to the free competition.

Result

Unrestricted unanimous approval.

The Importance of IP to CADE

CADE considered the possible damages that the merger could cause to competition without directly referring to intellectual property rights.

Relevant Market

Domestic market for toothpastes.

61.Dystar, Hochwaldhäuser Vermögensverwaltungsgesellschaft mbH (NewCo) and Rotta GmbH I.I. – Asset Acquisition – case no. 08012.010295/2004-37

 **Parties**

Dystar, Hochwaldhäuser Vermögensverwaltungsgesellschaft mbH (NewCo) and Rotta GmbH I.I.

 **Case Type**

Asset Acquisition

 **Syllabus**

Acquisition, by Dystar, through Hochwaldhäuser Vermögensverwaltungsgesellschaft mbH (NewCo), of factories, machines, equipment, clients, as well as intellectual property rights, licenses and other intangible assets and the shares of the subsidiaries of Rotta GmbH I.I. in Turkey, France, Italy, China and Brazil. Activity sector: textile industry. Transaction not comprised within the meaning of article 54, paragraphs 2 and 3 and of Law no. 8.884/1994 – Case dismissed without analysis of the merits. Non-refund of the administrative fee – Proposal of docket editing.

 **Summary**

Acquisition of factories, machines, equipment, clients, as well as of the goodwill, intellectual property rights, licenses and other intangible assets and the shares of Rotta's subsidiaries in Turkey, France, Italy, China and Brazil by Dystar.

 **Result**

Case dismissed without judgment on the merits..

 **The importância of IP to the CADE**

CADE considered the possible damages that the operation could cause to competition without directly referring to intellectual property rights.

 **Relevant Market**

Does not apply.

62. Otto Kaiser GmbH and Fielder International GmbH – *Asset Acquisition* – case no. 08012.008128/2004-26

Parties

Otto Kaiser GmbH and Fielder International GmbH

Case Type

Asset Acquisition

Syllabus

Acquisition of Otto Kaiser GmbH's main assets (including machines, equipment, raw materials, auxiliary and labour materials, inventory, goodwill, know-how, technical documents, drawings and, also, most of the employees) by Fielder International GmbH. Hypothesis set forth in paragraph 3, article 54 of Law no. 8.884/1994. Timely submission. Absence of affected relevant market. Favourable opinions from SEAE, SDE, ProCADE and the Public Prosecutor's Office. Unrestricted approval.

Summary

According to the "Purchase Agreement", Andritz will assume, through Fielder, the main assets of Kaiser, including machines and equipment, raw materials, auxiliary and labour materials, inventory, goodwill, know-how, technical documents and drawings, as well as most of its employees (approximately 165 employees of the total 250). However, Andritz will not acquire real state belonging to Kaiser. Fielder will change its company name to Andritz Kaiser GmbH.

Result

Favourable legal opinions from SEAE, SDE, Pro CADE and the Public Prosecutor's Office. Unrestricted approval.

The Importance of IP to CADE

CADÉ considered the possible damages that the operation could cause to competition without directly referring to intellectual property rights.

 **Relevant Market**

Does not apply.

63.Resolution Speciality Materials (Grupo Apollo) and Exxon Mobil Company – *Asset Acquisition* – case no. 08012. 009380/2004-52

Parties

Resolution Speciality Materials (Grupo Apollo) and Exxon Mobil Company

Case Type

Asset Acquisition

Syllabus

Acquisition, by Resolution Speciality Materials from Grupo Apollo, of the division of Glycidyl ester Glydexx, which is a chemical product manufactured by Exxon Mobil Chemical Company. Market of chemical products of epoxy resins and related chemical products. Absence of damage to competition. Timely submission. Unrestricted approval.

Summary

Acquisition, by Resolution Speciality Materials from Grupo Apollo, of the division of Glycidyl ester Glydexx, which is a chemical product belonging to the market of chemical products of epoxy resins and related chemical products, manufactured by the Exxon Mobil Chemical Company. By the means of the referred contract, RSM will acquire the customer portfolio of Glydexx, the signed contracts and the related intellectual property rights. It is a global transaction. It is noteworthy that the Glydexx division of glycidyl ester has no assets located in Brazil.

Result

Favorable opinions from SEAE, SDE and PROCADE. Unrestricted approval.

The Importance of IP to CADE

CADE considered the possible damages that the operation could cause to competition without directly referring to intellectual property rights.

Relevant Market

Market for epoxy resins and related chemical products, used, mainly, in the manufacture of coating, adhesives, boards and printed circuits, fiber plastics, among others. As for the geographical aspect, it was defined as domestic.

64.União Química Farmacêutica Nacional S.A. and Wyath – Asset Acquisition, Trademark – case no. 08102.006622/2004-56

 **Parties**

União Química Farmacêutica Nacional S.A. and Wyath

 **Case Type**

Asset Acquisition

 **Syllabus**

Transaction executed in Brazil. Acquisition, by União Química Farmacêutica Nacional S.A. of protected trademarks and inventories of Diamox (250mg) COM CT FR VD AMB x25 and Diamox (250mg) COM CT FR VD AMB x60 from Wyath. Hypothesis set forth in article 54, paragraph 3 of Law no. 8.884/1994. Timely submission. Absence of opinions against the transaction. Lack of damages to competition. Approved without restrictions, with reservations in regards to article 55 from Law no. 8.884/1994.

 **Summary**

Purchase agreement executed between the pharmaceutical companies Wyeth, based in Madison – EUA, and União Química Farmacêutica Nacional, based in São Paulo – Brazil, by the means of which the latter would acquire from the former protected trademarks and inventories of Diamox (250mg) COM CT FR VD AMB x25 and Diamox (250mg) COM CT FR VD AMB x60 by the approximate amount of BRL 2.182.500,00.

 **Result**

Approved without restrictions according to the legal opinions from SEAE, SDE and PROCADE, with reservations related to the timeliness (there was a reference to another contract, which the parties affirmed to be the same that was presented, signed a few days later from what would be the expected date).

 **The Importance of IP to CADE**

CADE considered the possible damages that the merger could cause to competition without directly referring to intellectual property rights.

Relevant Market

The pharmaceutical market can be divided:

1. Into ethical market (products subjected to sale under medical prescription) and popular market (over-the-counter [OTC] medicine);
2. According to the ATC classification (Anatomical Therapeutic Classification), which groups medications in accordance to their chemical composition and therapeutic properties.

The second classification is more commonly used in the Brazilian market and it was employed in the case: the product in question is sold by medical prescription and finds is located in the market of ophthalmic antiglaucoma and miotic preparations –ATC level III S01E classification. The geographic relevant market was defined as domestic.

65.Syngenta CP, Fox Paine and Advanta – *Asset Acquisition* – case no. 08012.004341/2004-69

 **Parties**

Syngenta CP, Fox Paine and Advanta

 **Case Type**

Asset Acquisition

 **Syllabus**

Asset Acquisition. Transaction comprised within the meaning of article 54, paragraph 3 of Law no. 8.884/1994, due to the parties' turnover. Timely submission. Domestic relevant market of sorghum, sunflower and rapeseed seeds. Absence of horizontal concentration. Transaction unable to generate anticompetitive effects. Unrestricted approval.

 **Summary**

Triangular transaction performed by Syngenta CP, Fox Paine and Advanta, whereby the first two acquired determined assets owned by Advanta. All the other businesses developed by Advanta will be sold. (i) Syngenta AG has acquired and maintained the businesses of corn, soy and cereal seeds located in North America, including a company that operates in the EU, Advanta Technology Limited. (ii) Purchase and Sale between Grup Syngenta and Grup Fox Paine (EUR 164,200,000).

 **Result**

Approved without restrictions.

 **The Importance of IP to CADE**

CADE considered the possible damages that the operation could cause to competition without directly referring to intellectual property rights.

 **Relevant Market**

The products defined as relevant to the present transaction were the seeds of sorghum, sunflower and rapeseed, which corresponded to the products previously commercialized by Advanta in the Brazilian market. The horizontal concentration observed between the activities developed by Advanta, in this market, ceased to exist with the transfer of part of the businesses previously acquired by Syngenta to Fox Paine. On the other hand, the prior operation of Group Fox Paine in Brazil does not overlap with the activities developed by Advanta in the Brazilian market of seeds. Therefore, the effects of the present Merger over the Brazilian market are not significant.

66. Phillips Van Heusen Corporation, Cluett American Corp, Consumer Direct Corporation and Cluett Peabody Holding Corp. *Asset Acquisition, Trademark* – case no. 08012.010523/2004-79

 **Parties**

Phillips Van Heusen Corporation, Cluett American Corp, Consumer Direct Corporation and Cluett Peabody Holding Corp.

 **Case Type**

Asset Acquisition

 **Syllabus**

Summary Procedure. Acquisition of the Arrow brand of the Cluett company by Phillips Van Heusen Corporation – PVH. The transaction does not generate significant effects on the Brazilian market of menswear. Turnover in the country inferior to BRL 400 million. Hypothesis not comprised within the meaning of paragraph 3 of Article 54 of Law no. 8.884/1994. Favourable opinions from SEAE, SDE, ProCADE and the Public Prosecutor's Office for approval of the transaction without restrictions. Case dismissed.

 **Summary**

The acquisition, by PVH, of the global business of Cluett related to the design, manufacturing, commercialization and distribution of clothing under the "Arrow" brand name, as well as the licenses granted to third parties to perform these activities.

 **Result**

It was concluded that the revenues in Brazil of the companies involved did not fit the criteria set out in paragraph 3 of article 54 of Law no. 8.884/1994. Thus, the case was dismissed without an analysis of its merits.

 **The importance of IP to CADE**

CADÉ considered the possible damages that the merger could cause to competition without directly referring to intellectual property rights.

Relevant Market

International menswear market.

67.União Química Farmacêutica Nacional Ltda. and Laboratories Wyeth-Whitehall. – Asset Acquisition, Trademark – case no. 08012.004956/2004-95

 **Parties**

União Química Farmacêutica Nacional Ltda. and Laboratories Wyeth-Whitehall.

 **Case Type**

Asset Acquisition

 **Syllabus**

Acquisition, by União Química Farmacêutica Nacional Ltda., of the registered trademarks and the inventory of over-the-counter (OTC) products Mucofan Adulto Xarope (100ml), Mucofan Pediátrico Xarope (100ml) and Mucofan Gotas (20ml) owned by Laboratories Wyeth-Whitehall Ltda. Hypothesis comprised within the meaning of article 54, paragraph 3 of Law no. 8.884/1994. Timely submission. Absence of opinions against the transaction. Lack of damages to competition. Unrestricted approval.

 **Summary**

Acquisition, by União Química Farmacêutica Nacional Ltda ("União"), of the registered trademarks and the inventory of over-the-counter (OTC) products Mucofan Adulto Xarope (100ml), Mucofan Pediátrico Xarope (100ml) and Mucofan Gotas (20ml) owned by Laboratories Wyeth-Whitehall Ltda ("Wyeth").

 **Result**

Favourable opinions from the Public Prosecutor's Office, SEAE, SDE and ProCADE. Unrestricted approval.

 **The Importance of IP to CADE**

CADE considered the possible damages that the operation could cause to competition without directly referring to intellectual property rights.

Relevant Market

The relevant market is the pharmaceutical industry. Geographically, the groups act both in Brazil and Mercosur.

68. Fortune Brands, Inc and Pernod Ricard S.A. – Asset Acquisition, Trademark – case no. 08012.004044/2005-02

 **Parties**

Fotune Brands, Inc and Pernod Ricard S.A.

 **Case Type**

Asset Acquisition

 **Syllabus**

Acquisition, by Fortune Brands, of various brands and assets of Pernod Ricard. Market share of more than 20%. Hypothesis provided for in paragraph 3 of article 54 of Law no. 8.884/1994. Prior Notice. National market of tequila. Lack of horizontal concentration or vertical integration. Favourable opinions of the SEAE, SDE and ProCADE. Approval without restrictions.

 **Summary**

Acquisition, by Fortune Brands, of various brands and assets of Pernod Ricard through a "Structure Contract".

 **Result**

It was concluded that the transaction did not result in horizontal concentration, since there was only a substitution of agents in the market. Favourable opinions from ProCADE, SDE and SEAE. Approval without restrictions.

 **The importance of IP to CADE**

CADE considered the possible damages that the operation could cause to competition without directly referring to intellectual property rights.

 **Relevant Market**

The domestic tequila market was defined as the relevant market, because it is the only market in which Fortune Brands has a market share of more than 20%.

**69.Submarino S.A. and Ingresso.com S.A. – Merger – case no.
08012.010683/2005-07**

 **Parties**

Submarino S.A. and Ingresso.com S.A.

 **Case Type**

Merger

 **Syllabus**

Acquisition, by Submarino S.A., of the totality of the capital stock of Ingresso.com. Hypothesis comprised within the meaning of article 54, paragraph 3 of Law no. 8.884/1994. Summary procedure. Timely submission. Absence of opinions against the transaction. Lack of damages to competition. Convergence of the reports from the –SEAE, SDE and ProCADE. Unrestricted approval.

 **Summary**

Acquisition of the totality of the capital stock of Ingresso.com S.A. The acquisition would allow Submarino to expand its products portfolio, becoming a full service e-commerce portal. There is no overlapping of markets between the two companies: transaction is a mere substitution of economic agents.

 **Result**

Approved without restrictions.

 **The Importance of IP to CADE**

CADE considered the possible damages that the merger could cause to competition without directly referring to intellectual property rights.

 **Relevant Market**

Since the applicants act in distinct markets, there is no common relevant market that might be considered affected by the Merger.

70.Devintex Cosméticos Ltda and Armkel Brasil Cosméticos Ltda. – Asset Acquisition, Intellectual Property Rights – case no. 08012.005322/2005-31

 **Parties**

Devintex Cosméticos Ltda and Armkel Brasil Cosméticos Ltda.

 **Case Type**

Asset Acquisition

 **Syllabus**

Acquisition of all intellectual property rights related to the DepiRoll brand, such as trademarks, patents, designs, know-how, among others, previously belonging to Devintex Cosméticos Ltda. by Armkel Brasil Cosméticos Ltda. Brazilian Market of hair removal products. Turnovers not exceeding R\$ 400 million in Brazil. Market share under 20%. Favourable report from the SEAE. Recommendation for dismissal from SDE and ProCADE. Transaction not comprised within the meaning of the main section and paragraph 3 of article 54 of Law no. 8.884/1994. Case closed without judgment on the merits.

 **Summary**

Acquisition of intellectual property rights related to the DepiRoll brand by Armkel Brasil Cosméticos Ltda. The acquisition constitutes the entrance of Grupo Armkel in the Brazilian market. Mere substitution of economic agents, and absence of horizontal or vertical relations between the applicants. The DepiRoll brand would correspond to, at the most, 4% of relevant market, so there is no possibility of damage to competition.

 **Result**

Non-characterization of the hypotheses set out in article 54, paragraph 3 of the Antitrust Act. Case dismissed without judgment on the merits.

 **The Importance of IP to CADE**

CADÉ considered the possible damages that the operation could cause to competition without directly referring to intellectual property rights.

Relevant Market

Brazilian market of hair removal products.

**71.DM and Laboratórios Wyeth – Asset Acquisition, Trademark, Know-how
– case no. 08012.002931/2005-38**

 **Parties**

DM and Laboratórios Wyeth

 **Case Type**

Asset Acquisition

 **Syllabus**

Asset Acquisition – Transaction executed in Brazil – Acquisition, by DM, of assets (protected trademark and Know-How) and inventory related to the Epocler drug, belonging to Laboratórios Wyeth – Acquirer with turnover, in 2004, superior to R\$ 400 million in domestic territory – Hypothesis set forth in article 54, paragraph 3 of Law no. 8.884/1994 – Timely submission – Absence of opinions against the transaction – Lack of damages to competition – Unrestricted approval.

 **Summary**

Acquisition, by DM, of assets (protected trademark and Know-How) and inventory related to the Epocler drug, belonging to Laboratórios Wyeth. The transaction, executed in Brazil, was notified only to the Brazilian Antitrust Agency.

 **Result**

Favourable report from SEAE, SDE and ProCADE. Approved without restrictions.

 **The Importance of IP to CADE**

CADE considered the possible damages that the operation could cause to competition without directly referring to intellectual property rights.

 **Relevant Market**

Does not apply.

72. DuPont Deutschland GmbH and Pedex & Co. GmbH – *Asset Acquisition* – case no. 08012.010910/2005-96

Parties

DuPont Deutschland GmbH and Pedex & Co. GmbH

Case Type

Asset Acquisition

Syllabus

Merger executed abroad – Acquisition, by DuPont Deutschland GmbH, of the monofilament business from Pedex & Co. GmbH – Company belonging to a Group with turnover in the domestic territory exceeding BRL 400 million – Business Sectors: Chemical and Petrochemical Industries, Artificial and Synthetic Fibers – Hypothesis set forth in article 54, paragraph 3 of Law no. 8.884.

Summary

Acquisition, by DuPont Deutschland GmbH, of the monofilament business from Pedex & Co. GmbH. Among the acquired assets are client lists, intellectual property rights, and physical and personnel assets, all located in Germany. The transaction will allow DuPont to integrate its current line of industrial monofilament with varied and complementary products of the acquired business. The transaction will also provide DuPont with the possibility of offering the products of the acquired business in the USA, Asia and Latin America markets, through its local channels of sale and distribution.

Result

Favourable reports from the SEAE, SDE and ProCADE for the unrestricted approval of the transaction in analysis.

The Importance of IP to CADE

CADÉ considered the possible damages that the merger could cause to competition without directly referring to intellectual property rights.

Relevant Market

The relevant product market was defined as the one for industrial filaments, in particular the one of monofilaments and, under the geographical dimension, the market of industrial monofilaments is the domestic territory or even international, given that it is homogeneous product market and the imports of these products are significant, representing almost the entire domestic consumption. DuPont Brasil acts, in the relevant market, through imports of industrial monofilaments, with sales to the hygiene products industries (toothbrushes), abrasive products (industrial brushes) and cosmetics (enamel, blush and mascara brushes). In Brazil, Pedex has little activity in the relevant market, having performed minimum exports to a single client from the segment of hygiene products (toothbrushes). The present transaction was concluded abroad and has no effect in Brazil, due to the parties' very small market shares in Brazil, with minimum sales, through exports, in 2004.

**73.DuPont and Syngenta – Asset Acquisition – case no.
08012.001576/2006-61**

 **Parties**

DuPont and Syngenta

 **Case Type**

Asset Acquisition

 **Syllabus**

Asset Acquisition. Summary procedure. Acquisition. Hypothesis set forth in article 54, paragraph 3 of Law no. 8.884/1994 – turnover. Acknowledgment of the transaction. Timely submission. Procedural fee collected. Absence of horizontal overlap or vertical relation in domestic territory. Lack of damages to competition. Approval without restrictions.

 **Summary**

Acquisition, by DuPont, of the intangible assets related to the fungicide Picoxystrobin, owned by Syngenta. The payment for the transaction, either partly or in its integrality, will consist of the granting of a license, by DuPont to Syngenta, for the development of combinations of an insecticide denominated "E2Y", already in experimental stage, with other insecticides from Syngenta itself. Although the fungicide Picoxystrobin is not yet sold in Brazil, Syngenta has required its registration with the Ministry of Agriculture, and, as a result, such registration will be transferred to DuPont. All rights related to intellectual property, product records, information of product records, commercial information, licenses, efficacy data, inventory and transferred contracts related to the business are involved in the transaction.

 **Result**

Unrestricted approval from SEAE, SDE and ProCADE.

 **The Importance of IP to CADE**

CADE considered the possible damages that the merger could cause to competition without directly referring to intellectual property rights.

Relevant Market

According to CADE's and the European Commission's history of decisions, the different types of agricultural pesticides (insecticides, herbicides, fungicides, etc.) constitute relevant markets distinct from each other, as a consequence of their different uses and applications. The relevant market of the transaction is restricted to the fungicide market.

74.Grupo Asahi Kasei and Grupo Lanxess – *Asset Acquisition* – case no. 08012.000206/2006-14

 **Parties**

Grupo Asahi Kasei and Grupo Lanxess

 **Case Type**

Asset Acquisition

 **Syllabus**

Asset Acquisition. Acquisition, by Grupo Asahi Kasei, of the "Dorlastan Fibers Business" division from Grupo Lanxess. Global transaction with limited effects in Brazil. Hypothesis set forth in article 54, paragraph 3, of Law no. 8.884/1994. Timely submission. Brazilian market of elastic fibers. Insignificant horizontal concentration. Favourable reports the SEAE, SDE and ProCADE. Approval without restrictions.

 **Summary**

Global acquisition, by AKF, of the elastic fibers businesses from Grupo Lanxess. The assets involved in the present transaction comprise factories, know-how, intellectual property rights, including the Dorlastan trademark, as well as 100% of the capital stock of Dorlastan Fibers LLC.

 **Result**

Favourable reports from the SEAE, SDE and ProCADE. Unrestricted approval.

 **The Importance of IP to CADE**

CADE considered the possible damages that the merger could cause to competition without directly referring to intellectual property rights.

 **Relevant Market**

The relevant market for the purposes of the antitrust analysis is the Brazilian market of elastic fibers.

75.Cleanese Corporation and Acetate Products Ltda – *Asset Acquisition* – case no. 08012.008877/2006-15

 **Parties**

Cleanese Corporation and Acetate Products Ltda.

 **Case Type**

Asset Acquisition

 **Syllabus**

Asset Acquisition. Summary procedure. Acquisition. Hypothesis set forth in article 54, paragraph 3 of Law no. 8.884/1994 – turnover.

 **Summary**

Global transaction by the means of which Celanese will acquire the APL's Corsadi business of manufacturing, distribution and commercialization of flakes, acetate cables and films, including its unconstrained and leased properties, equipment, inventory and intellectual property rights.

 **Result**

Favourable reports by ProCADE, SDE and SEAE. Approved without restrictions.

 **The importance of IP to CADE**

Intellectual Property was irrelevant to the decision. The main concerns analyzed in the decision were the revenues of the companies involved and the impact of the transaction on competition.

 **Relevant market**

The relevant market is the manufacturing, distribution and commercialization of acetate cables in Brazil.

76. Performance Fibers Inc. and Invista Resins & Fibers GMBH. – Asset Acquisition – case no. 08012.006221/2006-68

 **Parties**

Performance Fibers Inc. and Invista Resins & Fibers GMBH.

 **Case Type**

Asset Acquisition

 **Syllabus**

Asset Acquisition. Summary procedure. Acquisition. Hypothesis provided for in article 54, paragraph 3 of Law no. 8.884/1994 – turnover.

 **Summary**

Global transaction with effects in Brazil whereby Performance Fibers Inc. (“PFI”) will acquire the Invista’s European production of LDI and HDI polyester fiber.

 **Result**

Favourable report from ProCADE, SDE and SEAE. Approved without restrictions.

 **The importance of IP to CADE**

Intellectual Property was irrelevant to the decision. The main concerns analyzed in the decision were the revenues of the companies involved and the impact of the transaction on competition.

 **Relevant market**

The relevant market was defined by the parties as the market of HDI polyester fibers for rustic fabrics. However, SEAE concluded that the operation would not impact competition negatively, in any scenario chosen to define the relevant market, no matter how broad or narrow, either in the product or in the geographical aspects. Therefore, the relevant market was not defined by CADE.

77.Lucent Technologies, Inc. and Riverstone Networks, Inc. – Asset Acquisition – case no. 08012.001214/2006-70

 **Parties**

Lucent Technologies, Inc. and Riverstone Networks, Inc.

 **Case Type**

Asset Acquisition

 **Syllabus**

Asset Acquisition. Acquisition, by Lucent Technologies, Inc., of certain assets and liabilities from Riverstone Networks, Inc. Hypothesis provided for in article 54, paragraph 3, of Law no. 8.884/1994. Timely submission. Absence of affected relevant market. Favourable reports from SEAE, SDE and ProCADE. Approval without restrictions.

 **Summary**

Acquisition of certain assets and liabilities from Riverstone by Lucent, with the exclusion of money and other specific assets. The assets and liabilities to be acquired include products from Riverstone, intellectual property rights, certain contracts and receivables, tangible acts (notably production and distribution assets), payables and other accumulated liabilities.

 **Result**

Favourable reports from SEAE, SDE and ProCADE. Approval without restrictions.

 **The Importance of IP to CADE**

CADE considered the possible damages that the operation could cause to competition without directly referring to intellectual property rights.

 **Relevant Market**

Absence of affected relevant market.

**78.Bausch & Lomb and Surgin - Asset Acquisition - case no.
08012.000876/2006-22**

 **Parties**

Bausch & Lomb and Surgin

 **Case Type**

Asset Acquisition

 **Syllabus**

Asset Acquisition. Acquisition, by Bausch & Lomb, of certain intangible assets related to a portion of Surgin operations. Hypothesis set forth in article 54, paragraph 3 of Law no. 8.884/1994. Timely notification. National market for microkeratome and equipment used in cataract and vitreoretinal surgery. Insignificant increase in the degree of market concentration Favourable reports from SEAE, SDE and ProCADE. Unrestricted approval.

 **Summary**

Acquisition, by Bausch & Lomb, of certain intangible assets related to a portion of Surgin transactions, including intellectual property rights, certain lists of buyers, governmental licenses and approvals related to the deal described in the agreement.

 **Result**

Favourable reports from SEAE, SDE and ProCADE. Unrestricted approval.

 **The Importance of IP to CADE**

CADE considered the possible damages that the operation could cause to competition without directly referring to intellectual property rights.

 **Relevant Market**

The relevant market was defined as the one for microkeratome and equipment used in cataract and vitreoretinal surgery in Brazil, which is characterized by a large number of competitors. Companies like Schwind, Becton Dickinson, Gebauer, and Refractive Technologies, operating in the global market, could easily start to offer its products in the Brazilian market.

79.Degussa AG and The Dow Chemical Company – *Asset Acquisition* - case no. 08012.001253/2006-77

 **Parties**

Degussa AG and The Dow Chemical Company

 **Case Type**

Asset Acquisition

 **Syllabus**

Asset Acquisition. International transaction. Joint investigation rite. Acquisition by Degussa AG of the superabsorbent polymers (SAP) unit of The Dow Chemical Company. Timely notification. Absence of opinions against the transaction. Absence of harm to competition. Convergence of opinions –from SEAE, SDE and ProCADE. Transaction approved without restrictions.

 **Summary**

Acquisition, by Degussa AG, of the superabsorbent polymers (SAP) unit of The Dow Chemical Company. The transaction will take place outside Brazil and includes a production plant located in the European Union, many global contracts with customers and intellectual property rights.

 **Result**

Favourable reports from SEAE, SDE and ProCADE. Approval without restrictions. The transaction has also been submitted to the antitrust agencies of the European Union, Turkey and the USA. The transaction not yet been approved in the E.U., but it has been approved without restrictions in the U.S. and Turkey .

 **The Importance of IP to CADE**

CADE considered the possible damages that the operation could cause to competition without directly referring to intellectual property rights.

 **Relevant Market**

As Degussa will acquire the plant produced by Dow, located in the European Union, this transaction will result in market power concentration in relation to the production and sale of superabsorbent polymers (SAP) worldwide. As the Brazilian market for superabsorbent polymers is entirely fuelled by foreign producers and, in view of the lack of production plants in Brazil, the parties argued that the geographic relevant market is international. The probability of the exercise of market power by Degussa is low, since the market has significant competitors, such as BASF, Nippon Shokubai-and others, who are able to supply the entirety of the global market.

80. Panseg and The Client - Asset Acquisition - case no. 08012.002412/2006-51

Parties

Panseg and The Client

Case Type

Asset Acquisition

Syllabus

Asset Acquisition. Domestic transaction. Acquisition, by Panseg, a company belonging to the Silvio Santos Group, of all operating assets of The Client. The key operating assets that will be acquired by Panseg comprise the products "Discount Voucher" and "Health Voucher", the management software database, intellectual property rights and the database of customers and partners. Hypothesis provided for in article 54, paragraph 3 of Law no. 8.884/1994. Summary procedure. Timely notification. Absence of opinions against the transaction. Absence of harm to competition. Convergence of opinions by , SDE and ProCADE. Transaction approved without restrictions.

Summary

Acquisition, by Panseg, of all the operating assets of The Client. The key operating assets that will be acquired by Panseg comprise the products "Discount Voucher" and "Health Voucher", the management software database, intellectual property rights and the database of customers and partners. The acquisition of these assets will provide Silvio Santos Group with the opportunity to offer their financial products in the accredited discount network from The Client.

Result

Unrestricted approval. ProCADE paid attention to a non-compete clause existing in the transaction documents.

The Importance of IP to CADE

CADÉ considered the possible damages that the merger could cause to competition without directly referring to intellectual property rights.

Relevant Market

The parties argued that the relevant market of the transaction is the discount network market, and as it is an innovative and unexplored market, there are no barriers to entry.

81.Lanxess Deutschland and Kemira OYJ - Acquisition - case no. 08012.000164/2006-11

Parties

Lanxess Deutschland and Kemira OYJ

Case Type

Acquisition

Syllabus

Acquisition. Acquisition of Lanxess Deutschland by Kemira OYJ. Hypothesis set forth in article 54, paragraph 3 of Law no. 8.884/1994. Timely notification. Global market. Horizontal concentration. Favourable reports from SEAE, SDE and ProCADE. Unrestricted approval.

Summary

Acquisition of Lanxess Deutschland by Kemira OYJ. Kemira aims to acquire all assets (excluding real state) involved in the operations and activities of Lanxess' Division of Chemicals Products for Paper, encompassing all tangible and intangible assets, intellectual property rights, know-how, raw materials, accounts receivable and other rights in an exclusive relationship and predominantly related to the chemicals for paper business.

Result

Favourable reports from SEAE, SDE and ProCADE. Unrestricted approval.

The Importance of IP to CADE

CADE considered the possible damages that the merger could cause to competition without directly referring to intellectual property rights.

Relevant Market

Domestic market for chemicals for pulp and paper categories: synthetic glues, adhesives surface, wet strength agents, dry strength agents, retention agents, fluorescent whitening agents (optical bleaching), and coloring.

82. Hypermarcas Industrial Ltda and Boehringer Ingelheim of Brazil Chemicals and Pharmaceuticals Ltd - Asset Acquisition - 08012.000793/2007-14

Parties

Hypermarcas Industrial Ltda and Boehringer Ingelheim of Brazil Chemicals and Pharmaceuticals Ltd

Case Type

Asset Acquisition

Syllabus

Asset Acquisition. Summary procedure. Application of article 16 of CADE Regulation no. 12/1998. Hypothesis set forth in article 54, paragraph 3 of Law no. 8.884/1994 due to the parties' turnover. Timely notification. Acquisition, by Hypermarcas Industrial Ltda., of assets and rights, including intellectual property rights and commercial information, equipment and contracts, inherent to Boehringer Ingelheim of Brazil Chemicals & Pharmaceuticals Ltd's Sweeteners Division, comprising all products produced and commercialized as FINN. Non-compete clause with the duration of five years. Lack of vertical integration and horizontal concentration. Unrestricted approval.

Summary

Acquisition of assets and rights, including intellectual property rights and business information, equipment and contracts of Boehringer's sweeteners division. Establishment of a specific corporation for this end.

Result

Approved without restrictions. Substitution of economic agents ensures that transaction does not produce any anticompetitive effect. SEAE notes that there is no vertical or horizontal relations between the activities of the two companies.

The Importance of IP to CADE

The acquisition by Hypermarchas of the assets and rights - including intellectual property rights and business information - equipment and contracts of CADE considered the possible damages that the merger could cause to competition without directly referring to intellectual property rights.

Relevant Market

Domestic tabletop sweeteners, especially non-caloric artificial.

**83. Bunge Alimentos S.A. and Unilever Brasil Ltd. – Asset Acquisition,
Trademarks – case no. 08012.000174/2008-19**

 **Parties**

Bunge Alimentos S.A. and Unilever Brasil Ltd.

 **Case Type**

Asset Acquisition

 **Syllabus**

Asset Acquisition. Acquisition by Bunge Alimentos SA, of productive assets, formulas and trademarks related to margarines, pre-mixes and flour improvers of Unilever's Brazil Ltd "Gradina" line. Hypothesis provided for in article 54, paragraph 3 of Law no. 8.884/1994 - revenue. Timely notification. Procedural fee collected. Relevant domestic markets of margarine, pre-mixes and flour improvers. Horizontal overlap and vertical integration unable to generate harm to competition. Non-competition clause in line with the CADE's previous decisions. Unrestricted approval.

 **Summary**

Transaction executed in Brazil, by the means of which Unilever transferred productive assets, formulas and trademarks related to margarine, pre-mixes and flour improvers of "Gradina" line to Bunge. To perform the transaction, Unilever has committed to transfer all related assets to PLM - Industry and Commerce of Food Products Ltd, a consenting intervenient company, and PLM shares were later acquired by Bunge.

 **Result**

Favourable reports by SEAE, SDE and ProCADE, without restrictions.

 **The Importance of IP to CADE**

CADÉ considered the possible damages that the operation could cause to competition without directly referring to intellectual property rights.

Relevant Market

Relevant domestic markets for margarine, premixes and flour improvers.

84. Bombril and Milana Trade / Milana Industrial – *Asset Acquisition* – case no 08012.008021/2008-10

Parties

Bombril and Milana Trade / Milana Industrial

Case Type

Asset Acquisition

Syllabus

Asset Acquisition . Summary procedure. Transaction analysed under the provision set forth in article 54, paragraph 3 of Law no. 8.884/98, due to one of the parties' turnover in excess of BRL 400 million in Brazil. Procedure fee collected. Timely notification. Acquisition, by Bombril, of cleaning products, machinery and equipment, trademarks, formulas, patents and templates of the negotiated brands from Milana Trade and Milana Industry. Absence of opinions against the transaction. No harm to competition. Transaction approved without restrictions.

Summary

Acquisition by Bombril of cleaning products trademarks as well as machinery and equipment, formulas, patents and product templates of these brands, currently operated by Milana Trade and Milana Industry.

Result

Unanimous unrestricted approval.

The Importance of IP to CADE

CADE considered the possible damages that the merger could cause to competition without directly referring to intellectual property rights.

Relevant Market

CADÉ has already accepted the criteria of adding cleaning products in liquid form to the same relevant market. The functions are different, making the products non-substitutable from the demand side, but more substitutable on the supply side. Disinfectants, concentrated cleaners and deodorants relevant markets, can be analysed separately or conjointly. Domestic market.

85. Margarita and Dow – Asset Acquisition, Assignment of Intellectual Property Rights, Fungicides – case no. 08012.008718/2008-82

 **Parties**

Margarita and Dow

 **Case Type**

Asset Acquisition

 **Syllabus**

Asset Acquisition . Transaction analysed under the provision set forth in article 54, paragraph 3 of Law no. 8.884/98, due to one of the parties' turnover in excess of BRL 400 million in Brazil, in 2007. Procedural fee collected. Timely notification. Acquisition, by Margarita, of the zoxamide business owned by Dow, which includes the manufacture, formulation, marketing, distribution and registries of fungicides made with zoxamide, besides trademarks, records, patents and know-how relating to that product. Absence of opinions against the transaction. No harm to competition. Transaction approved without restrictions.

 **Summary**

Acquisition, by Margarita, of Dow's zoxamide business, which includes the manufacture, formulation, marketing, distribution and registries of the fungicides made with zoxamide, besides trademarks, records, patents and know-how relating to that product - "Contract of Purchase and Sale of Zoxamide Assets" concluded on 14 July 14 2008.

 **Result**

Unanimous unrestricted approval.

 **The Importance of IP to CADE**

CADE considered the possible damages that the operation could cause to competition without directly referring to intellectual property rights.

Relevant Market

SEAE noted the horizontal overlap between the applicants in the agrochemicals industry, stressing, however, that the transaction in question relates only to the fungicide zoxamide business. It also noted that the determination of the relevant market must take into account, in addition to the active ingredient of the product object of the deal, its particular characteristics, given the demand-side substitutability between different fungicides depending on the pest to be exterminated in a particular culture. The zoxamide is a long and deep, curative property fungicide used to control oomycetes and recommended for spraying of the aerial parts of the crops of potatoes, tomatoes and grapes. Dow has the registry in Brazil of three fungicides with zoxamide in their composition, but only sells one. Margarita does not sell in the country any fungicide with the product in its composition. The products sold by the applicant have different applications and are not substitutes for each other. Thus, there is no harm to competition in the transaction. International market.

**86.Ideiasnet S.A. and Canopus Comércio Eletrônico Ltda. – Acquisition,
Assignment of Trademarks – case no. 08012.008903/2008-77**

 **Parties**

Ideiasnet S.A. and Canopus Comércio Eletrônico Ltda.

 **Case Type**

Acquisition

 **Syllabus**

Asset Acquisition . Summary procedure. Company acquisition in Brazil. Hypothesis set forth in article 54, paragraph 3 of Law no. 8.884/1994 - revenue. Timely notification. Horizontal concentration in the Brazilian market for virtual advertising. Vertical integration of the markets of solutions for brands and services over the internet. No harm to competition. Unrestricted approval.

 **Summary**

Acquisition of the entire share capital of Canopus Electronic Commerce Ltda., by Ideiasnet SA as well as its websites, domains, and trademarks, upon completion of the transaction. Payment made through the issuance of 700.00 new shares from the buyer company to be subscribed by the shareholders of the acquired company.

 **Result**

Unrestricted approval.

 **The Importance of IP to CADE**

CADE considered the possible damages that the operation could cause to competition without directly referring to intellectual property rights.

 **Relevant Market**

Brazilian market of virtual advertising in websites. It is a fragmented market with a relevant market share belonging to the applicants' competitors, whilst the applicants shares are not expressive.

87.Pernod Ricard and Dramd, Miolo and Lovara – *Asset Acquisition, Assignment of Trademarks* – case no. 08012.008546/2009-28

 **Parties**

Pernod Ricard and Dramd, Miolo and Lovara.

 **Case Type**

Asset Acquisition

 **Syllabus**

Asset Acquisition . Summary procedure. Acquisition by Peeled and Lovara of Pernod Ricard Dramd, as well as the rights to the production of six wine brands. Hypothesis set forth in article 54, paragraph 3 of Law no. 8.884/1994 – turnover. Timely notification. Sector of activity: Manufacturing of Beverages: Wine. Ordinary wine / table and fine wine / wine grapes. Low market share. Imports. Unrestricted approval.

 **Summary**

Transaction of purchase and sale in which Dramd, Miolo and Lovara companies acquired from Pernod Ricard a factory and winery located in Livramento - RS. Included in the transaction are the rights of use of the production of the wine brands "Almaden", "Palomas", "Campanha Gaúcha", "Paralelo 31", "Cordilheira" and "Sunny Days" in Brazil.

 **Result**

Unrestricted approval.

 **The Importance of IP to CADE**

CADE considered the possible damages that the operation could cause to competition without directly referring to intellectual property rights.

 **Relevant Market**

No relevant market was formally determined. The Rapporteur stated that a precise definition of the relevant market would require deeper analyses, and given that the operation did not cause any concern to competition, there was no need to define the relevant market in detail. The Rapporteur considered two scenarios: one that considers the wine market as a whole (view adopted in the opinion of the SEAE) and another that focuses on the market of fine wines, in which the applicants act specifically. Given that the data regarding the Brazilian market of wines revealed a highly fragmented market, with the presence of numerous agents and high volume of imports, the competitive concerns are resolved in any relevant market definition that could be adopted.

88.Aspen Global Incorporated and Glaxo Group Limited – Asset Acquisition, Assignment of Intellectual Property Rights, Trademarks, Patents – case no. 08012.004168/2009-11

 **Parties**

Aspen Global Incorporated and Glaxo Group Limited

 **Case Type**

Asset Acquisition

 **Syllabus**

Asset Acquisition . Acquisition of all trademarks, patents and packaging related to certain medicines owned by Glaxo Group Limited. Hypothesis set forth in article 54, paragraph 3 of Law no. 8.884/1994 – revenue. Timeliness. Procedural fee collected. Pharmaceutical sector. Relevant markets: therapeutic subclasses ATC4 J01D2, J01C2, J01D1, A02B1, B01B2, D06A0 and J01C1. Low horizontal concentration. Favourable opinions from SEAE and SDE. Approval without restrictions.

 **Summary**

Acquisition, by Aspen Global Incorporated, of all trademarks, patents and packaging related to certain medicines owned by Glaxo Group Limited, which consists of implications in the Brazilian market of a global transaction.

 **Result**

Unanimous unrestricted approval.

 **The Importance of IP to CADE**

CADE considered the possible damages that the operation could cause to competition without directly referring to intellectual property rights.

 **Relevant Market**

Claimants operate in the pharmaceutical market of drugs for human health, subdivided by the WHO according on the Anatomical Therapeutic Indication (ATC), of which the SBDC has been adopting level 4, the most specific level. In this classification, the overlap of some medicaments of the Claimants' companies has been observed. Based on this, the relevant market was defined as the therapeutic subclasses ATC4 J01D2, J01C2, J01D1, A02B1, B01B2, D06A0 and J01C1. Geographically, it is the domestic market.

89.E.I Du Pont de Nemours and Company e Merial Limited – *Agreement, Patent Licensing* – case no. 08012.005179/2009-19

 **Parties**

E.I Du Pont de Nemours and Company e Merial Limited.

 **Case Type**

Agreement

 **Syllabus**

Agreement. Summary procedure. Licensing of patents and intellectual property rights by DuPont to Merial. Hypothesis provided for in article 54, paragraph 3 of Law no. 8.884/1994 – turnover. Timely notification.

 **Summary**

Agreement covering the licensing of patents and other intellectual property rights from E.I DuPont de Nemours and Company (“DuPont”) to Merial Limited (“Merial”), related to a chemical compound for animal health which is still in development (DPX-QKZ73), aiming at the manufacturing and commercialization of products for the prevention or the treatment of ectoparasites in dogs and cats.

 **Result**

Unfavourable reports from SEAE and SDE. Approved without restrictions.

 **The importance of IP to CADE**

CADE considered the possible damages that the merger could cause to competition without directly referring to intellectual property rights.

 **Relevant market**

The relevant market was not defined.

90.Melhoramentos Papéis Ltda. and Companhia Melhoramentos de São Paulo – Asset Acquisition, Trademarks – case no. 08012.004726/2009-31

 **Parties**

Melhoramentos Papéis Ltda. and Companhia Melhoramentos de São Paulo

 **Case Type**

Asset Acquisition

 **Syllabus**

Asset Acquisition. Summary procedure. Transfer, to CMPC Participações Ltda., (“CMPC”) of Melhoramentos Papeis Ltda. (“M. Papeis”) share capital and certain trademarks referring to sanitary papers owned by Companhia Melhoramentos de São Paulo (“CMSP”) but previously licensed to M Papéis, with the requisition of Melhoramentos Florestal S.A. (“M. Florestal”, integral subsidiary of M. Papéis) by CMSP. Business sector involved: paper and pulp (06) industry. Hypothesis provided for in article 54, paragraph 3 of the Law no. 8.884/1994 – turnover. Transaction approved, without restriction.

 **Summary**

Celebration of an Exchange Agreement by the means of which M. Papeis, a company of CMPC group, assigned to Companhia Melhoramentos de São Paulo (CMSP) 100% of the share capital of Melhoramentos Florestal S.A. (M. Florestal) in exchange for the trademarks for sanitary papers up until then held by CMSP.

 **Result**

Positive opinions from SEAE, SDE, and ProCADE. Approval with the recommendation from that the case should be joined to others to which it is related.

 **The Importance of IP to CADE**

CADÉ considered the possible damages that the operation could cause to competition without directly referring to intellectual property rights.

Relevant Market

Domestic market for paper.

91. Bayer CropScience AG and CVR Plant Breeding Ltda – Asset Acquisition, Assignment of Intellectual Property Rights – case no. 08012.000797/2010-06

 **Parties**

Bayer CropScience AG and CVR Plant Breeding Ltda

 **Case Type**

Asset Acquisition

 **Syllabus**

Asset Acquisition. Sale and purchase agreement – genetic material and intellectual property rights. Relevant assets. Hypothesis comprised within the meaning of article 54 of Law no. 8.884/1994 – turnover. Acknowledgement of the transaction. Timely notification. Procedural fee collected. Research and innovation in biotechnology market.

 **Summary**

Acquisition by Bayer CropScience AG (BCS), represented by Bayer S.A. (BSA) – both belonging to Bayer Bayer Group – of specific assets owned by CVR Plant Breeding Ltda (CVR). The assets involved in the transaction are genetic material developed by CVR, as well the corresponding intellectual property rights that may stem thereof in the future. These assets are composed of commercial culture samples and strains that result of their crossing, which will be selected and developed to eliminate transgenic aspects. BCS will conduct researches based on this material in order to develop eventually marketable products. Affected economic activity: research and development of soy seeds. Legal framing: replacement of economic agents. Before the transaction, regarding its object, CVR only acted in research and development. It did not practice any commercial activities. As per the transaction, BCS will conduct the research and development program for genetic material developed by CVR. When the soy seeds are obtained, they can be commercialized in the non-transgenic market. In Brazil, BCS works with the research and development of rice and cotton. However, it does not act on the soy business. Bayer Group does not offer, in Brazil, products that could

compete with soy. Therefore, the transaction does not produce horizontal or vertical market concentration, considering that BCS does not use soy seeds as an input to manufacture its products. Thus, SEAE understands that the transaction does not affect the competition in the market for soy seeds.

Result

Unanimously approved and without restrictions.

The Importance of IP to CADE

CADE considered the possible damages that the operation could cause to competition without directly referring to intellectual property rights.

Relevant Market

Brazilian market for soy seed research and development.

92. Monsanto and Embrapa – *Agreement* – 08012.004808/2000-01

Parties

Monsanto and Embrapa

Case Type

Agreement

Syllabus

Agreement. Commercialization of genetically-modified soy. Relevant market: soy seeds. Geographic market: domestic. Hypothesis provided for in article 54, paragraph 3 of Law no. 8.884/1994. Timely notification. Differences in the legal opinions from SEAE, SDE and PROCADE. Absence of harm to competition. Approval without restrictions.

Summary

Technical cooperation agreement entered into by Monsanto and Embrapa aiming at commercially exploring a genetically-modified variety of soy, developed to tolerate the active principle glyphosate, widely used in the production of herbicides. The transaction allows Embrapa to develop, produce and commercialize, directly or through licensed intermediaries, strains and cultures of genetically-modified soy seeds with imbued with a technology provided by Monsanto that makes them tolerant to glyphosate acid.

Result

Favourable legal opinions, with restrictions, from ProCADE and SDE. Favourable legal opinion, without restrictions, from SEAE. The Public Prosecutor's Office requested clarifications. Transaction approved without restrictions.

The Importance of IP to CADE

CADE considered the possible damages that the operation could cause to competition without directly referring to intellectual property rights.

 **Relevant Market**

National soy seeds for planting.

93.Monsanto Company and Pharmacia Corporation – *Sale of Shares, Change in Company Control* – case no. 08012.005172/2002-12

 **Parties**

Monsanto Company and Pharmacia Corporation

 **Case Type**

Share Sale

 **Syllabus**

Share Sale. Assignment of all of shares of Monsanto Company owned by Pharmacia Corporation, which will then be transferred to both companies' shareholders. Pharmacia will stop controlling Monsanto and it will no longer be a part of the production, development and commercialization of goods for the agricultural market. The transaction has effects on the pesticides, seeds and biotechnology market. No anticompetitive effects arise from the transaction. Timely notification. Unrestricted approval.

 **Summary**

As per Pharmacia's Board of Directors Resolution from 18 June 2002, Pharmacia's shareholders decided to proceed with the assignment of all ordinary shares from Monsanto that belonged to the company, which will be transferred to the remaining shareholders of both companies. Pharmacia will cease its control over Monsanto and it will no longer be a part of the production, development and commercialization of goods for the agricultural market.

 **Result**

Favourable legal opinions for the approval without restrictions from SEAE, SDE and ProCADE.

 **The Importance of IP to CADE**

CADÉ considered the possible damages that the merger could cause to competition without directly referring to intellectual property rights.

Relevant Market

Since there were no horizontal or vertical relations between the activities carried out by the parties, there was no need to define a relevant product market. However, geographically, the pesticides are commercialized in the Brazilian territory, especially in agricultural production areas.

**94.Mitsui Coal Holding and Anglo Coal – Asset Acquisition – case no.
08102.008916/2003-31**

 **Parties**

Mitsui Coal Holding and Anglo Coal

 **Case Type**

Asset Acquisition

 **Syllabus**

Asset Acquisition . Acquisition, concluded abroad, by Mitsui Coal Holding, of 30% of the assets related to the German Ceek mine, which belongs to Anglo Coal. Transaction falls within the scope of article 54, paragraph 3 of Law no. 8.884/1994 – turnover. Untimely notification. Fine. Absence of harm to competition. Similar reports from SEAE, SDE, ProCADE and the Public Prosecutor’s Office. Analysis according to article 50 of Law no. 9.784/1999 and article 16 of CADE Regulation 12/1998. Unrestricted approval.

 **Summary**

Acquisition, concluded abroad, by Mitsui Coal Holding, of 30% of the assets related to the German Ceek mine, which belongs to Anglo Coal, including properties, equipment, machinery, raw materials and products, inventories, contracts and third party related rights, licenses, books, registries, trademarks and licenses related to other intellectual property rights, client lists, etc.

 **Result**

Unrestricted approval.

 **The Importance of IP to CADE**

CADE considered the possible damages that the operation could cause to competition without directly referring to intellectual property rights.

Relevant Market

Metallurgical coking coal market. Geographically, the international market is considered, since 100% of the coking coal in Brazil is imported.

**95. Monsanto do Brasil Ltda. and Agroeste Sementes S.A – Agreement,
Trade Secret and Patent Licensing – case no. 08012.008359/2005-11**

 **Parties**

Monsanto do Brasil Ltda. and Agroeste Sementes S.A

 **Case Type**

Agreement

 **Syllabus**

Agreement. Licensing of some varieties of hybrid corn, as well as technology (covered by trade secrets and patents), relative to the planting and marketing of genetically-modified corn. Transaction in the domestic range. Hypothesis provided for in article 54, paragraph 3 of Law no. 8.884/1994. Summary procedure. Timely notification. Lack of opinions against the transaction. Lack of harm to competition. Convergence of opinions from SEAE, SDE and ProCADE. Approved without restrictions.

 **Summary**

Licensing agreement, entered into by Monsanto and Agroeste, referring to (i) some varieties of hybrid corn, as well as (ii) technology (covered by trade secrets and patents), relative to the planting and selling of genetically-modified corn.

 **Result**

Favourable opinions from ProCADE, SDE and SEAE. Approved without restrictions.

 **The importance of IP to CADE**

CADE considered the possible damages that the merger could cause to competition without directly referring to intellectual property rights.

 **Relevant Market**

On the grounds that there was no horizontal overlap between the companies' activities, CADE decided that there was no need to define a relevant market.

96. Embrapa and Basf SA – Agreement – case no. 08012.010000/2007-75

Parties

Embrapa and Basf SA

Case Type

Agreement

Syllabus

Agreement. Summary procedure. Hypothesis provided for in article 6, X of Joint Ordinance no. 001/2003 from SDE and SEAE. Due to the parties' turnovers, the act was submitted in accordance to article 54, paragraph 3 of Law no. 8.884/1994. Timely notification. Technical cooperation and commercial exploration agreement entered into by Embrapa and Basf S.A. aiming at producing and commercializing soy seeds that are resistant to imidazolinone herbicides. The transaction is incapable of generating anticompetitive effects. Unrestricted approval.

Summary

Transaction regarding a technical cooperation and commercial exploration agreement entered into by Embrapa and companies from Basf Group, in order to develop a new variety of soy seeds that are resistant to imidazolinone herbicides, and commercialization the technology developed for the production of that product.

Result

Favourable reports from SDE, SEAE and ProCADE. Unrestricted approval.

The Importance of IP to CADE

CADE considered the possible damages that the merger could cause to competition without directly referring to intellectual property rights.

Relevant Market

Not applicable.

**97.Monsanto and BasfPlant Science - Agreement - case no.
08012.002933/2007-99**

 **Parties**

Monsanto and BasfPlant Science

 **Case Type**

Agreement

 **Syllabus**

Agreement. Summary procedure. Collaboration agreement. Hypothesis set forth in article 54, paragraph 3 of Law no. 8.884/1994 – turnover. Approved. Timely notification. Procedural fee collected. Relevant market for the development of biotechnology derived products. Absence of harm to competition. Non-competition clause maintained. Unrestricted approval.

 **Summary**

The transaction consists of a long term worldwide partnership entered into by Monsanto and BasfPlant Science to joint develop, research and commercialise of biotechnology derived products. The joint collaboration plan has the purposes of developing technologies to cultivate corn, soy, cotton and cinnamon, in order to make them more productive and resistant to climate adversities. Besides, specifically regarding soy seeds, joint efforts will take place in order to develop methods to control cist nematodes (parasites that can limit productivity and destroy crops).

 **Result**

Unrestricted favourable reports from ProCADE, SDE and SEAE. Unrestricted approval.

 **The Importance of IP to CADE**

CADÉ considered the possible damages that the operation could cause to competition without directly referring to intellectual property rights.

Relevant Market

National market of biotechnology derived products.

98. Monsanto and Syngenta – *Agreement* – case no. 08012.006556/2008-48

Parties

Monsanto and Syngenta

Case Type

Agreement

Syllabus

Agreement. Summary procedure. Technology licensing agreement. Hypothesis set forth in article 54, paragraph 3, of Law no. 8.884/1994 – turnover. Acknowledgment. Timely notification. Procedural fee collected. Research and innovation in the biotechnology market. Non-exclusive licensing. Absence of horizontal or vertical relations in the domestic territory. Absence of harm to competition. Unrestricted approval.

Summary

Transaction concluded abroad, by the means of which Monsanto and Syngenta granted each other mutual and non-exclusive licenses over several different technologies owned by them, aiming at achieving their respective interests, taking into account the several activities developed worldwide. The transaction is the result of a judicial agreement concluded in the United States and regards pending issues discussed in that jurisdiction.

Result

Unrestricted approval.

The Importance of IP to CADE

CADE considered the possible damages that the merger could cause to competition without directly referring to intellectual property rights.

Relevant Market

The Rapporteur indicated that the relevant market is the biotechnology innovation and research market. No geographical limitations were established in the relevant market, however most of CADE's analyses of the potential anticompetitive effects considered the impact of the operation in the Brazilian market.

**99.Monsanto and Aly Participações S.A. – Acquisition – case no.
08012.011210/2008-61**

 **Parties**

Monsanto and Aly Participações S.A.

 **Case Type**

Acquisition

 **Syllabus**

Merger

Acquisition. Acquisition, by Monsanto, of all Aly Participações S.A. shares. The transaction was submitted in accordance to article 54, paragraph 3 of Law no. 8.884/1994, due to the parties' turnovers. Timely notification. Establishment of a new company. Transaction that involves, in Brazil, the market of agricultural biotechnology targeted at sugar cane, citrus and eucalyptus. Absence of horizontal concentration. Vertical integration incapable of generating anticompetitive effects. Unrestricted approval.

 **Summary**

The case is about the acquisition, by Monsanto, of all the shares emitted by its subsidiaries Alellyx and Canavialis that belong to the sellers Votorantin Novos Negócios Ltda. ("VNN"), with 85,7 % participation share, and Votorantin Industrial S.A. ("VID"), with 14,3 % share.

It is important to highlight that, in 2007, a Technology Partnership Agreement was settled between Monsanto and Canavialis and Alellyx, in order to share goods that are related to the research, development, and commercialization of sugar cane that is resistant to insects and/or tolerant to glyphosate herbicide, as well as eventual benefits from commercial results.

In this transaction, Monsanto granted licenses to Canavialis and Alellyx to research, produce, use, sell, import, export and distribute a variety of sugar cane that is or will be produced using technologies developed and patented by

Monsanto, such as the RoundUp Ready (RR) and Bolgard (BT), used in crops that belong to Canavialis.

Result

Unrestricted favourable reports from SEAE, SDE and ProCADE. Unrestricted approval

The Importance of IP to CADE

CADE considered the possible damages that the operation could cause to competition without directly referring to intellectual property rights.

Relevant Market

The relevant product market involves agricultural biotechnology, aimed at sugar cane, citrus and eucalyptus crops. Regarding the relevant geographic market, the international market will be considered. Even though it has not been analysed, the business is being executed in several countries.

100. Monsanto and Nidera – *Agreement, Licensing* – case no. 08012.006198/2008-73

 **Parties**

Monsanto and Nidera

 **Case Type**

Agreement

 **Syllabus**

Agreement. RoundUp Ready technology non-exclusive commercial licensing agreement entered into by Monsanto do Brasil Ltda. and Nidera Sementes Ltda. Business sector: agriculture – research and agricultural development. In Brazil, at least one of the parties' turnover exceeds BRL 400 million. Hypothesis set forth in article 54, paragraph 3 of Law no. 8.884/1994. Timely notification. Favourable opinions from SEAE, SDE and ProCADE. Unrestricted approval.

 **Summary**

RoundUp Ready technology non-exclusive commercial licensing agreement entered into by Monsanto do Brasil Ltda. and Nidera Sementes Ltda. in March 12th, 2008. It establishes rules and conditions for Nidera to commercially explore the RoundUp Ready technology in Brazil. The commercial exploration relates to the production and commercialization of Nidera's seeds that contain the RR technology, owned by Monsanto, directly or through intermediates. Besides, Monsanto has granted Nidera a non-exclusive and non-transferable license to use the technology, having provided the necessary know-how to develop RR cultures and its respective seed production, including eventually developed innovations and refinements.

 **Result**

Favourable opinions from SEAE, SDE and ProCADE. Approved without restrictions.

 **The Importance of IP to CADE**

CADE considered the possible damages that the operation could cause to competition without directly referring to intellectual property rights.

 **Relevant Market**

Brazilian market of agricultural research and development.

101. Vidfarma and Merck – Asset Acquisition – case no. 08012.004909/2010-90

 **Parties**

Vidfarma and Merck

 **Case Type**

Asset Acquisition

 **Syllabus**

Asset Acquisition. Summary procedure. Assignment, to Vidfarma, of the Dinavital and Dinavital C trademarks, previously owned by Merck. Hypothesis set forth in article 54, paragraph 3, of Law no. 8.884/1994 - turnover. Timely notification. Pharmaceutical Industry. Replacement of economic agent. Convergent reports from SEAE, SDE and ProCADE for the approval of the transaction without restrictions. Absence of harm to competition. Unrestricted approval.

 **Summary**

The transaction comprises the assignment of a trademark, assets and property rights related to the DINAVITAL medicament, from Merck to Vidfarma Indústria de Medicamentos Ltda.

 **Result**

Positive reports from SEAE, SDE, ProCADE and the Public Prosecutor's Office. Unrestricted approval.

 **The Importance of IP to CADE**

CADE considered the possible damages that the operation could cause to competition without directly referring to intellectual property rights.

 **Relevant Market**

Pharmaceutical industry in Brazil and Mercosul.

INDEX of topics and companies

(as for companies' names, the numbers refer to the first page of the case)

C

CADE's Decisions

- Approved with Restrictions, 31, 32, 36, 38, 39, 46, 119
- Approved With Restrictions, 48, 49
- Case Dismissed Without Merit Analysis, 132, 137, 147, 155
- Dismissal of the Case, 18, 22, 61
- Intellectual Property
 - Indirect Importance, 35
 - Indirect Influence, 20, 42, 55, 60, 73, 76
 - Irrelevant to the decision, 58
 - Irrelevant to the Decision, 58, 61, 63, 65, 74, 77, 81, 97, 109, 117, 119, 164, 165
 - Relevant for the Decision, 32, 37, 41
 - Relevant to the Decision, 18, 22, 25, 39, 45, 49
- Unrestricted Approval, 34, 44, 45, 47, 50, 52, 54, 63, 67, 69, 70, 72, 74, 75, 77, 79, 81, 83, 87, 89, 92, 95, 96, 97, 99, 103, 105, 107, 111, 113, 115, 117, 121, 123, 125, 127, 129, 130, 133, 134, 135, 136, 139, 141, 143, 145, 147, 149, 151, 153, 157, 158, 160, 162, 164, 165, 166, 168, 170, 172, 174, 176, 178, 180, 182, 184, 186, 188, 190, 191, 194, 195, 197, 199, 201, 203, 205, 207, 209, 210, 211, 213
- Unrestricted Approval, 65

Competition Law

- Abuse of Dominant Position, 59
- Acquisitions, 48, 83, 174, 184, 209
- Agreements, 32, 36, 38, 46, 47, 79, 81, 95, 115, 121, 190, 195, 201, 203, 205, 207, 211
- anticompetitive practices, 57
- Asset Acquisition, 34, 42, 44, 50, 52, 54, 89, 91, 93, 99, 101, 103, 107, 111, 113, 117, 125, 127, 129, 130, 132, 135, 137, 139, 141, 143, 145, 147, 149, 151, 155, 157, 158, 160, 162, 164, 165, 166, 168, 170, 172, 176, 178, 180, 182, 184, 186, 188, 191, 193, 199, 213
- dominant position, 5, 59
- Dominant Position, 26, 71
- Exclusionary Practices, 26, 59, 61
- Hhorizontal Concentration, 105
- Horizontal Concentration, 30, 35, 36, 44, 48, 50, 54, 74, 75, 83, 85, 89, 97, 101, 106, 112, 113, 114, 115, 116, 121, 125, 127, 129, 130, 135, 145, 146, 151, 155, 160, 162, 174, 176, 184, 188, 194, 209
- Horizontal Integration, 63
- Lock In, 22
- Market Division, 22
- Mergers, 30, 40, 42, 63, 65, 67, 69, 71, 72, 73, 74, 75, 77, 81, 85, 89, 97, 105, 109, 119, 123, 133, 146, 153, 154, 158, 197
- predatory pricing, 59
- Predatory Pricing, 59
- Sham Litigation, 17, 26, 28
- Tying Arrangements, 22, 61

Vertical Integration, 36, 71, 72, 74, 75, 89, 97, 101, 105, 106, 115, 116, 121, 125, 130, 151, 155, 160, 176, 178, 209

Competiton Law

Acquisitions, 184

I

Intellectual Property

Goodwill, 137, 139

Industrial Design, 17, 19, 24, 155

Intellectual Property Rights, 19, 20, 22, 39, 50, 52, 54, 67, 69, 75, 89, 103, 105, 107, 113, 119, 127, 130, 137, 141, 158, 162, 164, 166, 168, 170, 172, 174, 176, 177, 190, 193

know-how, 211

Know-how, 95, 96, 127, 139, 155, 157, 162, 174, 182

Licenses, 22, 31, 32, 36, 38, 46, 47, 72, 103, 115, 121, 137, 190, 201, 207, 211

patents, 125

Patents, 28, 30, 31, 32, 37, 38, 42, 44, 45, 72, 73, 79, 83, 85, 86, 103, 119, 125, 155, 180, 182, 188, 190, 201, 209

Software, 22, 52

Licenses, 22

Trade Secrets, 26

trademark, 97

Trademark, 24, 25, 26, 34, 41, 42, 44, 49, 50, 63, 73, 74, 77, 91, 92, 93, 97, 99, 101, 113, 117, 119, 121, 129, 133, 135, 143, 147, 149, 151, 155, 157, 162, 178, 180, 182, 184, 186, 188, 191, 199, 213

trademarks, 97, 191

Trademarks, 17

tTrademark, 103

Intellectual PropertyTrademark, 24