

**12th Session of the
Intergovernmental Group of Experts on Competition Law and Policy
Geneva, 9 to 11 July 2012**

**Round Table on Cross-Border Anti-Competitive Practices: The
challenges for developing countries and economies in
transition**

**Cross-border anticompetitive practices: the Brazilian
experience and challenges**

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Cross-border anticompetitive practices: the Brazilian experience and challenges

Geneva, July 2012

Cross-border anticompetitive practices: the Brazilian experience and challenges

I) Cross-border Cartels

II) Cross-border Mergers

III) International Enforcement and Cooperation

- UNCTAD:
 - “Setting up leniency program and increasing enforcement efforts into domestic cartels in the 1st place”.

- Brazilian experience:
 - Fight against Cartels
 - 2003: 1st search warrant
 - 2003-2006 (4 years): 30 search warrants
 - 2007-2010 (4 years): 343 search warrants
 - Leniency Program
 - 2003-2006 (4 years): 7 leniency letters
 - 2007-2010 (4 years): 15 leniency letters
 - 2011-2012: several leniency letters are being negotiated

Prior challenges for developing countries (and new competition authorities)...

- In 2003, evidences were 'evident'...

Metas

③ Nenhum preço médio Busto FOB de R\$ em 05/2/2000

50 510

Strategy

↓

④ Estratégia → Ordenação do mercado -
→ concubinas -

Goal

↓

③ Meta Preço FOB - Junho/2000
- Dezembro/00

↓

R\$ 85 próximos
anos

Ações:

- Continuação do mercado
- Estabelecimento de cotas
- Suspensão a cartolina
- Definição das regras →
- Definição das regras → papeiras (Bolinas)

- Even ‘PowerPoint’ presentations...

Visão, Missão e Valores

- Visão: construção de um setor equilibrado, com base no trabalho em GRUPO
- Missão: gerenciamento do mercado, com o aumento do Market Share do GRUPO, maximizando o resultado
- Valores: integridade, confiança, respeito e Harmonia

Metas do I Seminário

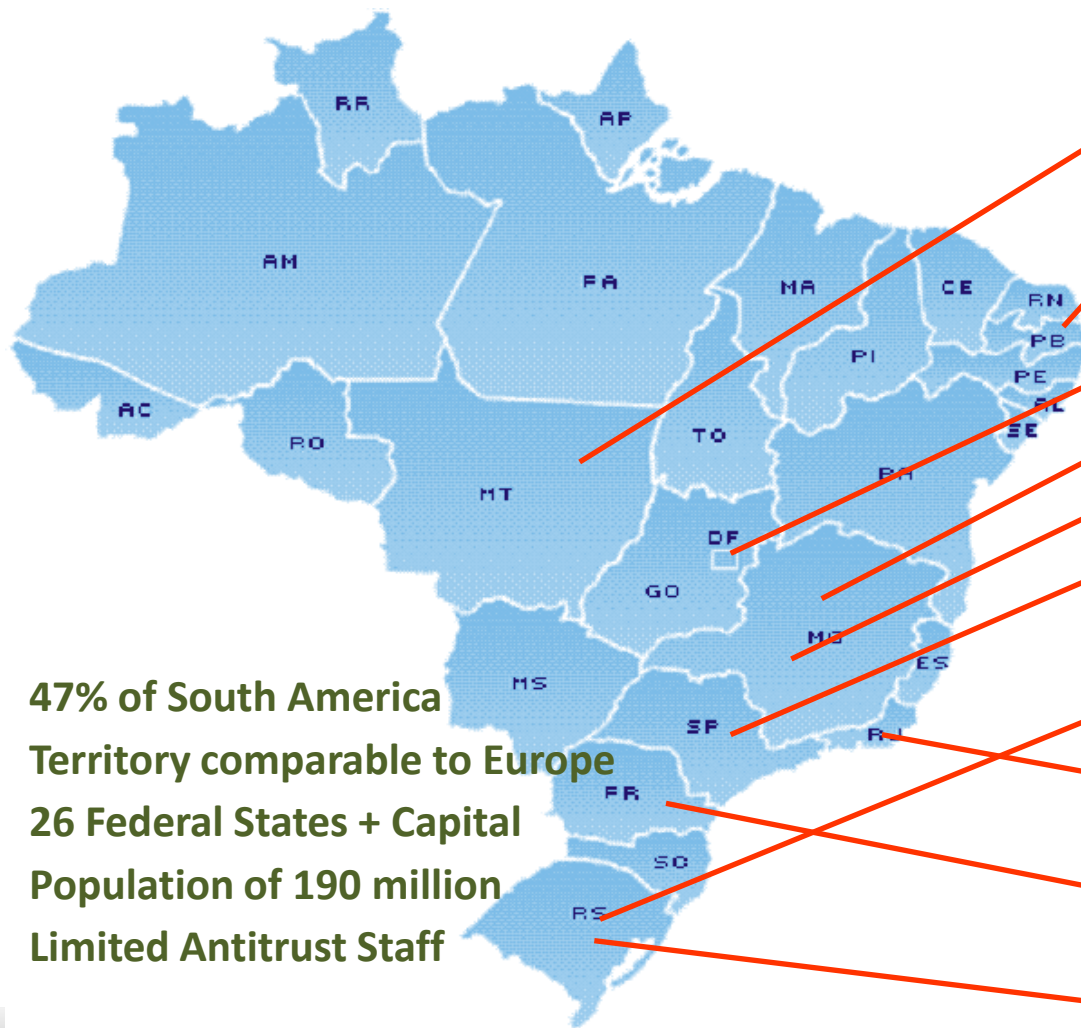
- ✓ Evolução do preço médio : R\$ 12,50 – 30/06/00
R\$ 14,50 – 31/12/00
R\$ 16,00 – 30/06/01
- ✓ Aumentar a participação do GRUPO – 68% → 75%
- ✓ Elaborar até 12/00 – Plano de Revisão de Cotas
- ✓ Eliminar toda informalidade até 12/00
- ✓ Implantar o Sistema de Venda a Preço até 12/00
- ✓ Implantar o PAF até 31/03/00 e o Sisco até 01/05/00

- Sophisticated strategies
 - Informal meetings at the beach, private clubs, overseas...
- Difficulties to collect evidence



Challenge #2: territorial dimension

Joint Investigations with Parquet & Federal Police



Fuel Sector, with MT Parquet

Fuel Sector, with PB Parquet and Federal Police

LP Gas Sector, with PB Parquet and Federal Police

LP Gas Sector, with DF Parquet

Fuel Sector, with MG Parquet

Medical bidding Sector, with MG Parquet

Plastic bags Sector, with SP Parquet

Vigilantes case, with RS Parquet

Bidding on car maintenance, with RJ Parquet

Fuel Sector, with PC/PR

Bidding garbage cleaning, with RS Parquet

Cement Sector, with RS Parquet

- **47% of South America**
- **Territory comparable to Europe**
- **26 Federal States + Capital**
- **Population of 190 million**
- **Limited Antitrust Staff**

Challenge #3: international cartels

- Competition enforcement is national, while business is global
- Refrigeration compressors
 - 2008/2009: leniency letter signed in several jurisdictions
 - Soft cooperation with DoJ and DG-Comp: information exchanges (i.e. names and addresses of investigated companies), common requests and cartel's *modus operandi*
 - Feb 2009: simultaneous dawn raid in Brazil, US and Europe
- Other cases
 - Lysine
 - Vitamins
 - Marine hoses

International cooperation, “surprise effect” and effectiveness to collect evidence

- Law 12,529 from 2011:
 - Adoption of a pre merger control system
 - Pre vs. post merger control system
- Similar procedures and calendars
 - Exchange of information
 - Coordination of remedies
 - More efficient cooperation with foreign agencies
- Latam example (2011):



International enforcement and cooperation

- Techniques to foster international enforcement and cooperation
 - Leniency, public announcements, direct investigations
 - Bilateral notifications
 - “Clipping” of international mergers and cartels

<i>Clipping - International Cartels</i>					
Description	Jurisdiction	Companies	Source	Link	Date
Conduta anticompetitiva praticada pelas operadoras de cartão de crédito Visa e Mastercard.	Canadá	- Visa - Mastercard	- Global Competition Review	http://www.globalcompetitionreview.com/news/article/31761/visa-mastercard-head-court-canada/	08.05.2012

- Brazilian experience
 - Domestic enforcement, then international enforcement
 - Significant cross-border anticompetitive practices enforcement experience
- Challenges
 - Day-to-day challenges: confidentiality issues, different timing and regimes.
 - Identifying the best type and instruments of cooperation
 - Fostering trust relationships

**International cooperation as instrument
to promote deterrence and effective enforcement**



Thank you !

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