

**LAW N° 12.529 OF NOVEMBER 30, 2011**

It structures the Brazilian System for Protection of Competition; sets forth preventive measures and sanctions for violations against the economic order; amends Law No. 8.137, of December 27<sup>th</sup>, 1990, Decree-Law No. 3.689, of October 3<sup>rd</sup>, 1941 – Code of Criminal Procedure, and Law No. 7.347, of July 24<sup>th</sup>, 1985; revokes provisions of Law No. 8.884, of June 11<sup>th</sup>, 1994, and Law No. 9.781, of January 19<sup>th</sup>, 1999; and sets forth other measures.

The President of Republic: I hereby make known that the NATIONAL CONGRESS decrees and I approve the following Law:

**TITLE I**

**GENERAL PROVISIONS**

**CHAPTER I**

**PURPOSE**

Art. 1. This Law structures the Brazilian System for Protection of Competition - SBDC and sets forth preventive measures and sanctions for violations against the economic order, guided by the constitutional principles of free competition, freedom of initiative, social role of property, consumer protection and prevention of the abuse of economic power.

Sole paragraph. The People are the holders of the legal interests protected by this Law.

**CHAPTER II**

**TERRITORIALITY**

Art. 2. This Law applies, without prejudice to the conventions and treaties of which Brazil is a signatory, to practices performed, in full or in part, on the national territory, or that produce or may produce effects thereon.

§ 1 A foreign company that performs transactions or has its branch, agency, subsidiary, office, establishment, agent or representative in Brazil, shall be considered domiciled in national territory.

§ 2 A foreign company shall receive notice and be served with all procedural acts set forth in this Law, regardless of any powers-of-attorney or contractual or statutory provisions, by means of its agent, representative or person responsible for its branch, agency, subsidiary, establishment or office installed in Brazil.

**TITLE II**  
**BRAZILIAN SYSTEM FOR PROTECTION OF COMPETITION**

**CHAPTER I**  
**COMPOSITION**

Art. 3. The SBDC is comprised of the Administrative Council for Economic Defense - Cade and the Secretary for Economic Monitoring of the Ministry of Finance, with the mandates set forth in this Law.

**CHAPTER II**  
**ADMINISTRATIVE COUNCIL OF ECONOMIC DEFENSE – CADE**

Art. 4. Cade is an adjudicatory body with jurisdiction throughout the national territory, constituted under federal authority, and associated with the Ministry of Justice, with head offices and venue in the Federal District, and the jurisdiction set forth in this law.

**Section I**  
**Organizational Structure of Cade**

Art. 5. Cade is comprised of the following bodies:

- I – Administrative Tribunal of Economic Defense;
- II – General Superintendence; and
- III – Department of Economic Studies.

**Section II**  
**Administrative Tribunal of Economic Defense**

Art. 6. The Administrative Tribunal, an adjudicatory body, is comprised of a President and six Commissioners chosen among citizens over thirty (30) years old, who are well reputed for their knowledge of law or economics and who possess a reputation for moral integrity, appointed by the President of the Republic, after being approved by the Federal Senate.

§ 1 The term of office of the President and Commissioners is of four (04) years, and consecutive terms for reappointment are prohibited.

§ 2 The offices of President and Commissioner demand exclusive dedication, and no accumulation is admitted, except for the those constitutionally permitted.

§ 3 In case of waiver, death, impeachment, absence or loss of the President's term of office, the most ancient Commissioner in office or the eldest Commissioner in age, in this order, shall take over, until a new commissioner is appointed, without impairment to his functions.

§ 4 In case of waiver, death or forfeiture of the Commissioner's term of office, a new person shall be appointed to complete the Commissioner's term of office.

§ 5 If, in the cases provided for in § 4 of this article, or upon conclusion of the Commissioners' term of office, the number of members comprising this Tribunal is reduced to less than what is established in § 1 of Art. 9 of this Law, the deadlines set forth in this law, as well as the processing of cases, shall be automatically suspended, and timing deadlines shall immediately resume upon reestablishment of the *quorum*.

Art. 7. The removal office of the President or Commissioners may only occur by

means of a decision by the Federal Senate upon request of the President of the Republic, or in view of an undisputable criminal conviction for intentional crimes, or disciplinary proceeding as determined by Law No. 8.112, of December 11<sup>th</sup>, 1990 and Law No. 8.429, of June 2<sup>nd</sup>, 1992, or due to a violation of any prohibitions set forth in Art. 8 of this Law.

Sole paragraph. The Tribunal member who does not appear in three (03) consecutive ordinary meetings, or twenty (20) interspersed meetings, except for temporary dismissals authorized by the Plenary, shall also automatically be removed from office.

Art. 8. The President and the Commissioner are prohibited from:

I – receiving, at any title, and under any pretext, fees, percentages or costs;

II – engaging in the practice of a professional service;

III – holding interest, as a controller, director, administrator, manager, representative or agent, in partnerships, corporations or companies of any kind;

IV - issuing an opinion on the subject in which they are experts, even if in theory, or acting as a consultant in any type of company;

V - stating, by any means of communication, an opinion on cases pending trial, or stating a depreciative opinion on orders, votes or sentences passed by judicial bodies, except for views expressed in regards to criticism of the records, technical literature or opinions expressed in the practice of teaching; and

VI – exercising political party activities.

§ 1 It is prohibited for the President and Commissioners, for a period of one hundred and twenty (120) days from the date they leave office, to represent any individual or legal entity, or interest before the SBDC, except for the defense of their own rights.

§ 2 During the period mentioned in § 1 of this article, the President and the Commissioners will receive the same remuneration for the position they occupied.

§ 3 The former President or former Commissioner who violates the recusal provisions set forth in §1 of this article is liable for crimes against the public administration, and is subject to the penalty provided for in Article 321 of Decree-Law No.2848, of December 7<sup>th</sup>, 1940 - Penal Code.

§ 4 It is prohibited, at any time, for the President and Commissioners to use confidential information obtained as a result of their position.

### **Subsection I**

#### **Role of the Plenary of the Tribunal**

Art. 9. The Plenary shall, among the other mandates set forth by this Law:

I – ensure the observance of this Law, its rules and internal regulations;

II – decide on the existence of violations to the economic order and apply the penalties set forth by law;

III – render decisions relating to the administrative proceedings filed by the General Superintendence to apply administrative penalties for violations to the economic order;

IV - take the necessary steps to cease violations of the economic order, within the deadlines it may determine;

V - approve the terms of the cease-and-desist commitment and agreements for concentration control, as well as determine that the General Superintendence inspect compliance therewith;

VI - consider, on appeal, the preventive measures adopted by the Reporting Commissioner or the General Superintendence;

VII - summon the parties interested in its decisions;

VIII – demand from federal public administrative bodies and entities and require from the State, Municipal Federal District and Territorial authorities the necessary measures to comply with this Law;

IX – organize testing, inspections and studies, approving, in each case, the respective professional fees and other procedural costs, which shall be paid by the company, in case it is punished in accordance with this Law;

X – assess administrative proceedings regarding acts of economic concentration, as set forth by law, establishing, when deemed convenient and appropriate, economic concentration control agreements;

XI - require that the General Superintendence take the necessary administrative measures for the implementation and faithful fulfilment of its decisions;

XII - request personnel and services from any bodies or entities of the Public Federal Authority;

XIII – make requests to the Attorney General’s Office associated with Cade that administrative and judicial measures be adopted;

XIV – inform the public about violations of the economic order;

XV - prepare and approve Cade’s internal regulations, providing for its operation, forms for deliberation, rules of procedure and organization of its internal services;

XVI - propose the structure of Cade’s staff, as set forth in item II of the *caput* of Article 37 of the Federal Constitution;

XVII – draft the budgetary proposals pursuant to this Law;

XVIII - request information from individuals, agencies, authorities and entities, whether public or private, respecting and maintaining confidentiality, where necessary, as well as determine the necessary steps to exercise its functions; and

XIX - determine compliance with decisions, commitments and agreements.

§ 1 The Tribunal's decisions shall be made by a majority, with the presence of at least four (4) members, provided that the minimum quorum to start deliberations shall be three (3) members.

§ 2 The Tribunal's decisions shall not be reviewed within the Federal Executive Branch and shall be immediately executed, subsequently communicated to the Public Prosecutor, so that other appropriate legal measures within the scope of its duties are taken.

§ 3 The federal authorities, directors of independent entities, foundations, federal public companies and mixed capital companies and regulatory agencies, are required to provide, subject to liability, all assistance and cooperation required by Cade, including developing technical opinions on matters within their competence.

§ 4 The Tribunal may answer queries about ongoing practices, upon the payment of a

fee and the submission of relevant documents.

§ 5 Cade shall define, by resolution, the complementary rules on the query procedure set forth in § 4 of this article.

## **Subsection II**

### **Role of the President of the Tribunal**

Art. 10. The President of the Tribunal shall:

I - legally represent Cade in Brazil or abroad, in and out of Tribunal;

II – preside over, with right to vote, including the casting vote, the meetings held by the Plenary;

III – distribute, by lottery, the cases to the Commissioners;

IV - call meetings and organize the corresponding agenda;

V - request, at his discretion, that the General Superintendence assist the Tribunal in taking extrajudicial measures to comply with the Tribunal's decisions;

VI - oversee the General Superintendence in taking measures to execute decisions and sentences rendered by the Tribunal;

VII - sign commitments and agreements approved by the Plenary;

VIII – submit to the Plenary for approval the budget proposal and ideal placement for Cade's staff;

IX - guide, coordinate and inspect the administrative activities performed by Cade;

X – order the expenses related to Cade, except for the expenses of the General Superintendence's management unit;

XI – enter into contracts and agreements with national bodies or entities, and previously notify the Minister of State for Justice of those that are to be signed with foreign or international bodies; and

XII – determine the Attorney General's Office associated with Cade to execute any legal measures decided by the Tribunal.

## **Subsection III**

### **Roles of the Commissioners of the Tribunal**

Art. 11. The Commissioners of the Tribunal shall:

I – vote on the cases and matters submitted to the Tribunal;

II – reach decisions and draft orders related to the cases to be reported by them;

III – request information and documents from any person, body, authority and entity, whether public or private, maintaining confidentiality, as needed, and determine the investigations deemed necessary;

IV – adopt preventive measures, establishing the value of daily fines for non-compliance therewith;

V – request that the General Superintendence carry out investigations and produce evidence relevant to the administrative proceeding under this Law;

VI – require that the Attorney General's Office, acting together with Cade, issue a

legal opinion on the cases in which they are reporters, when deemed necessary and upon a reasoned order, as set forth in item VII of Art. 15 of this Law;

VII – determine that the Chief Economist, whenever necessary, prepare opinions on the cases to be reported, without prejudice to the regular processing of the case and without implying a suspension of the term for analysis, or prejudice to the regular processing of the case;

VIII – discharge themselves from other duties assigned to them under the regulation;

IX – submit cease-and-desist commitment and agreements for the approval of the Tribunal;

X – provide the Judiciary, whenever required, with information on the progress of the cases, and with copies of the records to be part of the legal case.

### **Section III**

#### **General Superintendence**

Art. 12. Cade shall be comprised of a General Superintendence, with one (1) General Superintendent and two (2) Deputy Superintendents, whose specific duties shall be defined by Resolution.

§ 1 The General Superintendent shall be chosen among citizens over thirty (30) years old, who are well-known for their knowledge of law or economics and who possess a reputation for moral integrity, and appointed by the President of Republic, after being approved by the Federal Senate.

§ 2 The General Superintendent shall hold office for two (2) years, and reappointment for a single subsequent period is allowed.

§ 3 The same rules for impeachment, removal from office, substitution and prohibitions set forth in Art. 8 of this Law shall be applicable to the General Superintendent, including the provisions contained in § 2 of Art. 8 of this Law, applicable to the President and to the Commissioners of the Tribunal.

§ 4 The position of General Superintendent and Deputy Superintendent require exclusive dedication, and no secondary offices are permitted, except for those constitutionally permitted.

§ 5 During the vacancy period before the appointment of a new General Superintendent, one of the deputy superintendents appointed by the President of the Tribunal shall temporarily take over, and shall hold office until a new General Superintendent, chosen in accordance with § 1 of this article, is installed in the office.

§ 6 If, upon a vacancy set forth in § 5 of this article, there is no Deputy Superintendent appointed in the Superintendence of Cade, the President of the Tribunal shall appoint an officer at Cade, who possesses knowledge of competition law or economics and who possesses a reputation for moral integrity, to temporarily assume the vacant position, and this officer shall remain in office until a new General Superintendent, chosen in accordance with § 1 of this article, is installed in the office.

§ 7 The Deputy Superintendents shall be appointed by the General Superintendent.

Art. 13. The General Superintendence shall:

I – ensure compliance with this Law, monitoring and following up on market practices;

II – monitor, permanently, the business activities and practices of individuals and legal entities holding a dominant position in the relevant market of goods or services, in order to prevent violations of the economic order, and for such purposes, request necessary information and documents, while maintaining confidentiality, where necessary.

III - advance, in light of indications of violations of the economic order, preparatory procedures for administrative inquiries to investigate violations of the economic order;

IV – decide when there is a lack of grounds to proceed, dismissing the records of the administrative investigation or its preparatory procedures;

V – prepare and initiate administrative proceedings for the imposition of sanctions due to violations of the economic order, procedures to verify cases of concentration, administrative proceedings to analyze cases of economic concentration, and administrative proceedings to impose procedural sanctions filed for the prevention, verification or repression of violations to the economic order;

VI –in order to obtain information for the proceedings mentioned in this Law:

a) request information and documents from any individual or legal entity, bodies, and authorities, whether public or private, maintaining confidentiality, as the case may be, as well as to determine the inquiries deemed necessary for the exercise of its functions;

b) request oral explanations from any individual or legal entity, body, and authority, whether private or public, under this Law;

c) conduct inspection of the head offices, establishment, office, branch or subsidiary of the investigated company, the inventories, objects, papers of any nature, as well as commercial books, computers and electronic files, being able to make or require copies of any documents or electronic data;

d) being unable to bring the main action, request of the Judiciary, by means of the Attorney-General's Office associated to Cade, a search and seizure warrant for objects, papers of any kind, as well as business books, computers and magnetic files of a company or individual, and in the interests of administrative investigations or administrative proceedings to impose administrative sanctions for violations to the economic order, apply, when appropriate, the provisions of Article 839 and follow Law No. 5869 of January 11<sup>th</sup>, 1973 - Code of Civil Procedure;

e) request the examination and copying of documents and objects obtained in investigations and administrative proceedings opened by Federal agencies or entities;

f) require the examination and copying of documents and objects from police inquiries, lawsuits of any kind, as well as administrative investigations and proceedings established by other federal entities, provided that the Council must observe the same confidentiality restrictions established in the original procedures;

VII - appeal ex officio to the Tribunal upon dismissal of the administrative proceeding in order to impose administrative sanctions for violations of the economic order;

VIII – upon verifying violations of the economic order, submit to the Tribunal, for trial, the administrative proceedings it established;

IX - propose terms for a cease-and-desist commitment for violations to the economic order, submitting them the approval of the Tribunal, and inspecting compliance therewith;

X - suggest to the Tribunal conditions for the execution of an agreement for concentration control and monitor compliance therewith;

XI - adopt preventive measures to cease practices that constitute violations of the economic order, establishing a deadlines for compliance and daily fines to be applied in cases of non-compliance;

XII - receive, instruct and approve or contest, before the Tribunal, the administrative proceedings to analyze acts of economic concentration;

XIII - guide the public administrative entities and bodies about adoption of the necessary measures to fulfill this Law;

XIV – develop studies and research in order to guide policies to prevent violations to the economic order;

XV - instruct the public about the various forms of violations to the economic order and ways to prevent and repress it;

XVI - exercise other duties set forth by law;

XVII - provide the Judiciary, upon request, with information on the progress of investigations, being also allowed to provide copies of the records to instruct legal proceedings; and

XVIII - take the necessary administrative measures for the implementation and enforcement of the decisions rendered by the Plenary.

Art. 14. The duties of the General Superintendent are the following:

I – to participate, whenever deemed necessary, without any right to vote, in meetings held by the Tribunal and present testimony, in accordance with internal regulations;

II - to observe and enforce the decisions of the Tribunal as determined by its President;

III – to require from the Attorney General’s Office associated with Cade the judicial measures related to the exercise of the General Superintendence’s judicial powers;

IV – to determine that the Chief Economist prepare studies and opinions;

V – to order expenses related to the General Superintendence’s management unit; and

VI – to exercise other duties set forth by law.

#### **Section IV**

##### **Attorney General’s Office associated with Cade**

Art. 15. A Specialized Attorney General’s Office shall be associated with Cade, which shall be responsible for:

I - providing legal consultancy and assistance to Cade;

II - representing Cade in and out of Tribunal;

III- promoting the judicial enforcement of Cade’s decisions and sentences;

IV - determining the liquidity of Cade's claims, registering them as outstanding debt for the purpose of judicial or administrative collection;

V - the adoption of judicial measures requested by the Tribunal or by the General Superintendence necessary to cease violations of the economic order, or to obtain documents for the finding of facts for administrative proceedings of any nature;

VI - promoting judicial settlements in cases related to violations against the economic



order, upon the Tribunal's authorization;

VII - issuing, whenever expressly required by a Commissioner or by the General Superintendent, an opinion related to the proceedings under Cade's competence, without implying a suspension of the deadline for analysis or prejudice to the regular processing of such proceeding;

VIII - ensuring compliance with this Law, and

IX – being discharged from the other tasks attributed to it by the internal regulations.

Sole paragraph. The General Attorney's Office associated with Cade shall, upon enforcing judicial decisions rendered by the General Superintendence and the Tribunal, keep the President of the Tribunal, the Commissioners and General Superintendent informed about the progress of judicial measures and actions.

Art. 16. – The Chief Prosecutor shall be appointed by the President of the Republic, after approval by the Federal Senate, among Brazilian citizens over 30 (thirty) years old, who are well known for their knowledge of law and possesses a reputation for moral integrity.

§ 1 The Chief Prosecutor shall hold office for two (2) years, and reappointment shall be permitted for a single period.

§ 2 The Chief Prosecutor may participate, without right to vote, in meetings held by the Tribunal, providing assistance and clarification, as required by the Commissioners, pursuant to the Tribunal's Internal Regulations.

§ 3 The same impeachment rules applicable to the Commissioners of the Tribunal shall be applicable to the Chief Prosecutor, except for attendance at the meetings.

§ 4 In case of absences, leave of absence or impeachment of the Chief Prosecutor, the Plenary shall nominate and the President of the Tribunal shall appoint the eventual substitute from amongst the members of the Specialized Attorney General's Office.

## **Section V**

### **Department of Economic Studies**

Article 17. Cade has a Department of Economic Studies, headed by a Chief Economist, which is responsible for the preparation of economic studies and opinions, ex officio or at the request of the Plenary, the President, the Reporting Commissioner or the General Superintendent, updating and ensuring the technical and scientific accuracy of the decisions made by the body.

Article 18. – The Chief Economist will be appointed jointly by the General Superintendent and the President of the Tribunal, among Brazilians who possess a reputation for moral integrity and outstanding knowledge of economics.

§ 1 The Chief Economist may participate in meetings of the Tribunal, without voting rights.

§ 2 The same impeachment rules applicable to Tribunal Commissioners shall be applicable to the Chief Economist, except for attendance at the meetings.

## **CHAPTER III**

### **SECRETARY FOR ECONOMIC MONITORING**

Article 19. The Secretary for Economic Monitoring shall promote competition in

government agencies and before society, being particularly responsible for the following:

I - to opine on aspects relating to the promotion of competition, the proposed changes in acts establishing norms or standards of general interest of economic agents, consumers or users of services subject to public consultation by the regulatory agencies and, when deemed appropriate, on applications for review of rates and drafts;

II - to opine, when deemed appropriate, on drafts of acts establishing norms or standards prepared by any public or private entity subject to public consultation in matters related to the promotion of competition;

III - to opine, when it deems appropriate, on proposals establishing norms or standards pending in Congress, on aspects related to the promotion of competition;

IV - to develop studies evaluating competition in specific sectors of the national economy, ex officio or upon request by Cade, the Board of Foreign Trade, the Department of Consumer Protection of the Ministry of Justice, or any body that may replace it;

V - to prepare industry studies that serve as input for the Ministry of Finance to participate in the creation of sectoral public policies in the forums in which the Ministry has a seat;

VI - to propose the review of laws, regulations and other acts establishing norms or standards of the Federal, state, municipal and Federal District public administration, which affect or may affect competition in the various economic sectors in the country;

VII - to give statements, ex officio or upon request, about the competitive impact of the measures under discussion in negotiation forums related to tariff amendment, market access and trade protection, with exception made to the powers of the agencies involved;

VIII - to submit to the competent body representation so that it can, at its discretion, take the appropriate legal measures, whenever any normative act has an anticompetitive character.

§ 1 In order to comply with its duties, the Secretary for Economic Monitoring may:

I - request information and documents from any individuals, agencies, authorities and entities, public or private, maintaining legal secrecy as appropriate;

II - enter into agreements and contracts with federal, state, municipal, Federal District and Territorial bodies or entities, whether public or private, to assess and/or suggest measures related to the promotion of competition.

§ 2 The Secretary for Economic Monitoring shall annually disclose a report of the measures adopted by it for the promotion of competition.

### **TITLE III**

#### **FEDERAL PROSECUTION**

Art. 20. The Attorney General, after consultation with the Higher Board, shall appoint a member of the Federal Prosecution so that it can, in such capacity, issue opinions on administrative proceedings to impose administrative sanctions for violations to the economic order, ex officio or upon request of the Reporting Commissioner.

**TITLE IV**  
**EQUITY, REVENUE AND ADMINISTRATIVE, FINANCIAL AND BUDGETARY**  
**MANAGEMENT**

Art. 21. The President of the Tribunal shall guide, coordinate and supervise the administrative activities of Cade, subject to the duties of the officers of other bodies set forth in Article 5 of this Law.

§ 1 The General Superintendence will be the managing unit, for administrative and financial purposes, and its General Superintendent shall order the expenses related to the respective budgetary actions.

§ 2 For administrative and financial purposes, the Department of Economic Studies will be associated with the Tribunal.

Art. 22. Annually, the President of the Tribunal, after consultation with the General Superintendent, shall submit Cade's budget proposal and its ideal staffing placements to the Executive.

Art. 23. Procedural fees shall apply to the cases under Cade's jurisdiction, which shall be equivalent to forty-five thousand reais (R\$ 45,000.00) when the case has as a triggering event the presentation of the acts set forth in Article 88 of this Law, and equivalent to fifteen thousand reais (R\$ 15,000.00) for cases having as a triggering event the submission of inquiries set forth in § 4 of Article 9 of this Law.

Sole paragraph. The procedural fee referred to in the *caput* of this article may be updated by an act of the Executive, after authorization of the National Congress.

Art. 24. Any applicant whose case has a triggering event the acts referred to in Article 88 of this Law shall have to pay the filing fee.

Art. 25. The payment of the procedural fee, which has as a triggering event the presentation of acts set forth in Article 88 of this Law, shall be verified upon the filing of the act.

§ 1 The procedural fees not collected at the time established in the *caput* hereof shall be charged the following increases:

I – arrears interest, counted as of the month following maturity, at the rate of 1% (one percent), calculated in accordance with the law applicable to federal taxes;

II - late-payment penalty of 20% (twenty percent).

§ 2 The arrears interest does not affect the value of the late payment penalty.

Art. 26. Vetoed.

Art. 27. The fees referred to in arts. 23 and 26 of this Law shall be collected by the National Treasury as regulated by the Executive.

Art. 28. Cade's own revenues are comprised of:

I – the result of the collection of fees provided for in arts. 23 and 26 of this Law;

II - the remuneration for services rendered to third parties;

III - the amounts allocated to the General Federal Government Budget, special credits, additional credits, transfers and disbursements granted to it;

IV - the proceeds from agreements or contracts with national and international entities or organizations;

V - donations, legacies, grants and other resources assigned to it;

VI - the values arising from the sale or rental of real estate and personal property owned by it;

VII - the proceeds from the sale of publications, technical material, data and information;

VIII - the sums collected from applications from the financial market as established under this article, as defined by the Executive; and

IX - any other income, related to its activities, not specified in items I to VIII of the caput of this article.

§ 1 Vetoed.

§ 2 Vetoed.

§ 3 The sum of fines levied by Cade, whether or not included as outstanding debt, will be allocated to the Fund for the Defense of Diffuse Rights mentioned in Article 13 of Law No. 7347, of July 24<sup>th</sup>, 1985, and Law No. 9008, of March 21<sup>st</sup>, 1995.

§ 4 The fines collected in accordance with this Law will be collected by the National Treasury, as regulated by the Executive.

Art. 29. Cade shall annually submit to the Ministry of Justice its budget proposal, which will be forwarded to the Ministry of Planning, Budget and Management to be included in the annual budget law, as referred to in § 5 of Article 165 of the Federal Constitution.

§ 1 Cade shall monitor the budget proposals in a multiyear planning chart showing revenues and expenditures in order to reach a budgetary and financial balance for the subsequent five (5) fiscal years.

§ 2 The annual budget law shall allocate the provisions for Cade's operating expenses and capital, in relation to the fiscal year to which it refers.

Art. 30. The properties and rights belonging to the Ministry of Justice currently related to the activities of the Department of Economic Protection and Defense of the Secretariat of Economic Law shall be added to Cade's current assets.

## **TITLE V**

### **VIOLATIONS OF THE ECONOMIC ORDER**

#### **CHAPTER I**

##### **GENERAL PROVISIONS**

Art. 31. This Law applies to individuals or legal entities of public or private law, as well as to any associations of entities or individuals, whether de facto or de jure, even temporarily, incorporated or unincorporated, even if engaged in business under the legal monopoly system.

Art. 32. The various types of economic order violations implicate jointly the liability of the company and the individual liability of each of its directors or officers, jointly and severally.

Art. 33. The companies and their entities, de facto or de jure, shall be jointly and severally liable when at least one of them engages in violations of the economic order.

Art. 34. The company responsible for a violation of the economic order may have its

corporate veil pierced, upon abuse of rights, abuse of power, violation of law, illegal act or fact, or violation of the bylaws or articles of association.

Sole paragraph. The corporate veil may also be pierced in case of bankruptcy, insolvency, closure or downtime caused by poor corporate administration.

Art. 35. Any enforcement against violations of the economic order will not preclude the punishment of other illegal acts set forth by law.

## **CHAPTER II VIOLATIONS**

Art. 36. The acts which under any circumstance have as an objective or may have the following effects shall be considered violations to the economic order, regardless of fault, even if not achieved:

I - to limit, restrain or in any way injure free competition or free initiative;

II - to control the relevant market of goods or services;

III – to arbitrarily increase profits; and

IV - to exercise a dominant position abusively.

§ 1 Achieving dominance in a market by natural process and by being the most efficient economic agent in relation to competitors does not characterize the tort set forth in item II of the *caput* of this article.

§ 2 A dominant position is assumed when a company or group of companies is able to unilaterally or jointly change market conditions or when it controls 20% (twenty percent) or more of the relevant market, provided that such percentage may be modified by Cade for specific sectors of the economy.

§ 3 The following acts, among others, to the extent to which they conform to the principles set forth in the *caput* of this article and its clauses, shall characterize violations of the economic order:

I – to agree, join, manipulate or adjust with competitors, in any way:

a) the prices of goods or services individually offered;

b) the production or sale of a restricted or limited amount of goods or the provision of a limited or restricted number, volume or frequency of services;

c) the division of parts or segments of a potential or current market of goods or services by means of, among others, the distribution of customers, suppliers, regions or time periods;

d) prices, conditions, privileges or refusal to participate in public bidding;

II - to promote, obtain or influence the adoption of uniform or agreed business practices among competitors;

III - to limit or prevent the access of new companies to the market;

IV – to create difficulties for the establishment, operation or development of a competitor company or supplier, acquirer or financier of goods or services;

V – to prevent the access of competitors to sources of input, raw material, equipment or technology, and distribution channels;

VI - to require or grant exclusivity for the dissemination of advertisement in mass

media;

VII – to use deceitful means to cause oscillation of prices for third parties;

VIII - to regulate markets of goods or services by establishing agreements to limit or control the research and technological development, the production of goods or services, or to impair investments for the production of goods or services or their distribution;

IX - to impose on the trade of goods or services to distributors, retailers and representatives, any resale prices, discounts, payment terms, minimum or maximum quantities, profit margin or any other market conditions related to their business with third parties;

X - to discriminate against purchasers or suppliers of goods or services by establishing price differentials or other operating conditions for the sale or provision of services;

XI – to refuse the sale of goods or provision of services for payment terms within normal business practice and custom;

XII – to hinder or disrupt the continuity or development of business relationships of undetermined term, because the other party refuses to abide by unjustifiable or anticompetitive terms and conditions;

XIII - to destroy, render useless or monopolize the raw materials, intermediate or finished products, as well as to destroy, disable or impair the operation of equipment to produce, distribute or transport them;

XIV - to monopolize or prevent the exploitation of industrial or intellectual property rights or technology;

XV - to sell goods or services unreasonably below the cost price;

XVI – to retain goods for production or consumption, except to ensure recovery of production costs;

XVII - to partially or totally cease the activities of the company without proven just cause;

XVIII - to condition the sale of goods on the acquisition or use of another good or service, or to condition the provision of a service on the acquisition or use of another good or service; and

XIX - to abusively exercise or exploit intellectual or industrial property rights, technology or trademark.

### **CHAPTER III**

#### **PENALTIES**

Art. 37. A violation of the economic order subjects the ones responsible to the following penalties:

I - in the case of a company, a fine of one tenth percent (0.1%) to twenty percent (20%) of the gross sales of the company, group or conglomerate, in the last fiscal year before the establishment of the administrative proceeding, in the field of the business activity in which the violation occurred, which will never be less than the advantage obtained, when possible the estimation thereof;

II - in the case of other individuals or public or private legal entities, as well as any association of persons or de facto or de jure legal entities, even if temporary, incorporated or

unincorporated, which do not perform business activity, not being possible to use the gross sales criteria, the fine will be between fifty thousand reais (R\$ 50,000.00) to two billion reais (R\$ 2,000,000,000.00);

III – if the administrator is directly or indirectly responsible for the violation, when negligence or willful misconduct is proven, a fine of one percent (1%) to twenty percent (20%) of that applied to the company, in the case set forth in Item I of the *caput* of this article, or to legal entities, in the cases set forth in item II of the *caput* of this article.

§ 1 In case of recurrence, the fines shall be doubled.

§ 2 In the calculation of the value of the fine referred to in item I of the *caput* of this article, Cade may consider the total turnover of the company or group of companies, when the value of sales in the field of business activity in which the violation occurred is not available, defined by Cade, or when it is incompletely presented and/or not clearly and credibly demonstrated.

Art. 38. Without prejudice to the penalties set forth in Article 37 of this Law, when so required according to the seriousness of the facts or public interest, one or more of the following penalties may be imposed:

I - the publication, in half a page and at the expenses of the perpetrator, in a newspaper indicated by the judgment, of the extract from the conviction, for a period of two (2) consecutive days for one (1) to three (3) consecutive weeks;

II - ineligibility for official financing and for participation in biddings when the objective is acquisitions, divestitures, performance of works and services, provision of public services, in the federal, state, municipal and Federal District public administration, as well as in indirect administration entities, for a term of not less than 5 (five) years;

III - the registration of the wrongdoer with the National Registry for Consumer Protection;

IV - recommendation to the respective public agencies so that:

a) a compulsory license over the intellectual property rights held by the wrongdoer be granted, when the violation is related to the use of that right;

b) the violator be denied installment payment of federal taxes owed by him, or that tax incentives or public subsidies be cancelled, in full or in part;

V - the company divestiture, transfer of corporate control, sale of assets or partial interruption of activity;

VI - the wrongdoer be prohibited from carrying on trade on its own behalf or as representative of a legal entity for a period of five (5) years; and

VII - any other act or measure required to eliminate harmful effects to the economic order.

Art. 39. If any acts or situations that represent violations of the economic order continue to be practiced, after the Tribunal has determined their termination, and if the obligations imposed are not complied with, or if the preventive measures or commitment to cease such acts provided for in this Law are not complied with, the person responsible shall be subject to a daily fine set at five thousand reais (R\$ 5,000.00), which can be increased by up to fifty (50) times, if so recommended according to the economic status of the transgressor and the severity of the infraction.

Art. 40. The refusal and failure or unwarranted delay to supply information or

documents requested by Cade or the Secretary for Economic Monitoring constitutes a violation punishable by daily fines of five thousand reais (R\$ 5,000.00), which can be increased by up to twenty (20) times, if necessary, to ensure the effectiveness thereof, depending on the economic situation of the transgressor.

§ 1 The amount fixed for the daily fine referred to in the *caput* of this article shall appear in the document containing the request of the competent authority.

§ 2 The requesting authority shall be responsible for applying the fine set forth in the *caput* of this article.

§ 3 In the case of a foreign company, its subsidiary, branch, affiliated company or office located in Country, it shall be jointly liable for the payment of the fine referred to in the *caput* of this article.

Art. 41. Unjustified absence of the defendant or third parties, when subpoenaed to provide clarification in the course of the investigation or administrative proceeding, shall subject it to a fine of five hundred reais (R\$ 500.00) to fifteen thousand reais (R\$ 15,000.00) for each absence, depending on the defendant's economic situation.

Sole paragraph. The fine referred to in the *caput* of this Article shall apply upon notice of violation by the competent authority.

Art. 42. Preventing, obstructing or otherwise hindering the performance of inspections authorized by the Plenary of the Tribunal, the Reporting Commissioner or the General Superintendence during preparatory proceeding, administrative investigation, administrative proceeding or any other proceeding, shall subject the inspected party to a fine of twenty thousand reais (R\$ 20,000.00) to four hundred thousand reais (R\$ 400,000.00), depending on the economic status of the transgressor, upon the issuance of the notice of violation by the competent body.

Art. 43. The deceitfulness or falsity of information, documents or statements made by any person to Cade or to the Secretary for Economic Monitoring shall be punishable with a fine of five thousand reais (R\$ 5,000.00) to five million reais (R\$ 5,000,000.00), depending on the seriousness of the facts and the economic status of the transgressor, without prejudice to other applicable legal sanctions.

Art. 44. One who provides services to Cade or Seae, in any way, and causes, even if recklessly, the improper dissemination of confidential information about the company, shall be punished with a fine of one thousand reais (R\$ 1,000.00) to twenty thousand reais (R\$ 20,000.00), without prejudice to the opening of other applicable procedures.

§ 1 If the author of the improper dissemination serves Cade in an official capacity, or as a Federal Prosecutor or Chief Economist, the fine shall be doubled.

§ 2 Internal Regulation defines the procedure by which Cade and Seae will regard information as confidential.

Art. 45. In the application of the penalties set forth in this Law, the following shall be taken into consideration:

- I - the seriousness of the violation;
- II - the good faith of the transgressor;
- III - the advantage obtained or envisaged by the violator;
- IV – whether the violation was consummated or not;



V - the degree of injury or threatened injury to free competition, the national economy, consumers, or third parties;

VI - the negative economic effects produced in the market;

VII - the economic status of the transgressor; and

VIII – any recurrence.

## **CHAPTER IV STATUTE OF LIMITATIONS**

Art. 46. Punitive measures by the Federal Government, whether direct or indirect, to establish violations to the economic order, will occur within 5 (five) years as of the date the illegal act is committed -or, in the case of a permanent or continuing violation, as of the day such unlawful practice has ceased.

§ 1 Any administrative or judicial act with the purpose of determining a violation against the economic order mentioned in the *caput* of this article, as well as giving notice or the serving of subpoenas upon an investigated person, shall interrupt the statute of limitations period.

§ 2 The limitation period is suspended during the effective term of the cease-and-desist commitment or agreement on antitrust control.

§ 3 The statute of limitations shall be applicable to an administrative procedure halted for more than three (3) years, pending trial or judgment, the record for which shall be filed ex officio or upon request of the interested party, without prejudice to the determination of responsibility resulting from the interruption.

§ 4 When the fact object of the punitive action also constitutes a crime, the prescription shall be governed by the term set forth in the criminal law.

## **CHAPTER V RIGHT OF ACTION**

Art. 47. The aggrieved parties, on their own accord or by someone legally entitled and referred to in Article 82 of Law No. 8078, of September 11<sup>th</sup>, 1990, may take legal action in defense of their individual interests or shared common interests, so that the practices constituting violations to the economic order cease, and compensation for the losses and damages suffered be received, regardless of the investigation or administrative proceeding, which will not be suspended due to Tribunal action.

## **TITLE VI DIFFERENT TYPES OF ADMINISTRATIVE PROCEEDINGS**

### **CHAPTER I GENERAL PROVISIONS**

Art. 48. This Law regulates the following administrative proceedings established to prevent, investigate and suppress violations of the economic order:

I - preparatory procedure for an administrative probe to investigate violations of the economic order;

II - administrative probe to investigate violations of the economic order;

III - administrative proceeding to impose administrative sanctions for violations of the

economic order;

IV - administrative proceeding for the analysis of acts of economic concentration;

V - administrative procedure to investigate acts of economic concentration; and

VI - administrative proceeding to impose incidental procedural sanctions.

Art. 49. The Tribunal and the General Superintendence shall ensure, in regard to the procedures provided in items II, III, IV and VI of Article 48 of this Law, the confidential treatment of documents, information and procedural acts necessary for the elucidation of the facts or required in the interests of society.

Sole paragraph. The parties may request confidential treatment of documents or information, in a time and manner defined in internal regulations.

Art. 50. The General Superintendence or Reporting Commissioner may permit the intervention in administrative proceeding by:

I – third-parties who are holders of rights or interests which may be affected by the decision to be adopted; or

II – those legitimized to bring civil action under items III and IV of Article 82 of Law No. 8078, of September 11<sup>th</sup>, 1990.

Art. 51. In the processing of proceedings before Cade, the following provisions shall be observed, in addition to those set forth in the internal regulations:

I - matters involving concentration acts shall have priority over the judgment of other matters;

II - the trial session of the Tribunal is public, except in cases in which confidential treatment is given to the case, in which case sessions will be restricted;

III - in the trial sessions of the Tribunal, the General Superintendent, Chief Economist, Chief Prosecutor and parties to the case may require oral testimony, which shall be granted to them, in that order, and under the conditions and terms defined by the internal regulations, in order to verbally support their reasoning before the Tribunal;

IV - the agenda of the trial sessions will be set by the President, who will require its publication, at least 120 (one hundred twenty) hours in advance, and

V - the actions and terms to be used in the records of the proceedings listed in Article 48 of this Law may be submitted electronically or submitted on magnetic media or equivalent in accordance with the rules of Cade.

Art. 52. Compliance with the decisions of the Tribunal and commitments and agreements made under this Law may, at the discretion of the Tribunal, be supervised by the General Superintendent, by means of submitting the records thereto, after the Tribunal's final decision.

§ 1 In the monitoring phase of the implementation of decisions of the Tribunal, as well as the fulfillment of commitments and agreements set forth under this Law, the General Superintendence may avail itself of all investigatory powers attributed to it under this Law.

§ 2 Upon full compliance with the Tribunal's decision or agreements on concentration control and cease-and-desist commitments, the General Superintendence, ex officio or upon request of the Interested Party, shall declare compliance therewith.

**CHAPTER II**  
**ADMINISTRATIVE PROCEEDING FOR CONTROL OF ACTS OF ECONOMIC**  
**CONCENTRATION**

**Section I**

**Administrative Proceeding in the General Superintendence**

Art. 53. The request for approval of the acts of economic concentration referred to in Art. 88 of this Law must be addressed to Cade and must contain the information and documents indispensable to the filing of the administrative proceeding, defined in the resolution passed by Cade, in addition to the receipt of payment of the respective fee.

§ 1 Upon verification that the petition does not satisfy the requirements established in the *caput* of this article or presents defects and irregularities capable of making it difficult to judge the merit, the General Superintendence shall allow only one opportunity for applicants to amend it, under penalty of dismissal.

§ 2 After the protocol for submission of the concentration act, or amendment thereto, the General Superintendence shall publish the notice, indicating the name of the applicants, the nature of the transaction and the economic sectors involved.

Art. 54. After the measures indicated in Art. 53 are complied with, the General Superintendence shall:

I – directly acknowledge the request, rendering a final decision when the proceeding dismisses new measures or in cases when there is less potential harm to competition, as defined by Cade’s resolution; or

II – determine that complementary fact-finding be performed, specifying the measures to be taken.

Art. 55. After the conclusion of the complementary fact-finding, determined in item II of the *caput* of Art. 54 of this law, the General Superintendence shall determine satisfactory compliance therewith, considering it proper to the analysis of the merits, or determine that it be redone, due to being incomplete.

Art. 56. The General Superintendence may, by means of a reasoned decision, declare the operation as complex and require new complementary fact-finding, specifying the measures to be taken.

Sole paragraph. Once the operation is declared as complex, the General Superintendence may require that the Tribunal extends the term referred to in § 2 of Art. 88 of this Law.

Art. 57. After the conclusion of the complementary fact-finding referred to in item II of Art. 54 and Art. 56 of this Law, the General Superintendence shall:

I – render a decision approving the act without restrictions;

II – present an objection to the Tribunal, if it understands that the act must be rejected, be approved with restrictions, or if there is no conclusive elements in regards to its effects in the market.

Sole paragraph. The objection to the act presented to the Tribunal must provide context and show the potential of the act to cause harm to competition and the reasons why it must be rejected or not be fully approved.

## **Section II**

### **Administrative Proceeding in the Tribunal**

Art. 58. The applicant may offer a written petition, directed to the President of the Tribunal, within thirty (30) days of the objection date of the General Superintendence, exposing the findings of fact and matters of law against the objection to the concentration act by the General Superintendence, attaching all evidence, studies and opinions supporting its requests.

Sole paragraph. Within forty-eight (48) hours after the decision related to the objection presented by the General Superintendence, set forth in item II of the *caput* of Art. 57 of this Law and under the terms of item I of Art. 65 of this Law, the case shall be assigned, randomly, to a Reporting Commissioner.

Art. 59. After receiving the petition of the applicant, the Reporting Commissioner shall:

I – render a decision determining that the case be submitted to trial, if he understands that the fact finding has been sufficient;

II – require the performance of complementary fact finding, if necessary, being able, at his criteria, to require that it be performed by the General Superintendence, stating the issues in controversy and specifying the measures to be taken.

§ 1 The Reporting Commissioner may authorize preliminarily, as the case may be, the performance of the act of economic concentration, imposing conditions aiming at preserving the reversibility of the transaction, when so supported by the conditions of the case.

§ 2 The Reporting Commissioner may follow up with the performance of the measures referred to in item II of the *caput* of this article

Art. 60. After the fact-finding is concluded, the Reporting Commissioner shall determine the submission of the case to trial.

Art. 61. During the judgment of the petition for the approval of the act of economic concentration, the Tribunal may fully approve it, reject it or partially approve it, in which case it will determine the restrictions to be observed as conditions to validate the act.

§ 1 The Tribunal shall determine the applicable restrictions in order to mitigate occasional negative effects of the act of economic concentration over the affected relevant markets.

§ 2 The restrictions mentioned in § 1 of this article include:

I – the sale of assets or a group of assets that constitutes a business activity;

II – the spinoff of the company;

III – transfer of corporate control;

IV – accounting or legal division of activities;

V – compulsory licensing of intellectual property rights; and

VI – any other act or measure necessary to eliminate the harmful effects to the economic order.

§ 3 Once the merits are judged, the act may not be submitted again nor reviewed

within the scope of the Executive.

Art. 62. In case of refusal, omission, deceitfulness, falsity or unjustified delay, by the applicants, with regards to the submission of information or documents required by Cade, without prejudice to the other applicable sanctions, the petition for approval of the act of economic concentration may be rejected due to lack of evidence, in which case the applicant may only perform the act upon submission of a new petition, under the terms of Art. 53 of this Law.

Art. 63. The terms set forth in this Chapter shall not be suspended or interrupted for any reason, except as set forth in § 5 of Art. 6 of this Law, as the case may be.

Art. 64. Vetoed.

### **Section III**

#### **Appeal of the General Superintendence against the Decision to Approve the Act**

Art. 65. Within fifteen (15) days as of the publication of the decision by the General Superintendence approving the concentration act, under the terms of item I of the *caput* of Art. 54 and item I of the *caput* of Art. 57 of this Law:

I – an appeal may be submitted to the Tribunal, which may be filed by third parties or, in regards to regulated markets, by the respective regulatory agency;

II – the Tribunal may, upon request of one of its Commissioners and upon a reasoned decision, submit the case to trial, provided that the Commissioner responsible for the request be advised thereof.

§ 1 Within up to five (5) business days as of the receipt of the appeal, the Reporting Commissioner shall:

I – review the appeal and determine its submission to trial;

II – review the appeal and determine the performance of complementary fact-finding, being permitted, at its criteria, to require that the General Superintendence perform such fact-finding, stating the points in controversy and specifying the measures to be taken; or

III – decide to dismiss the appeal.

§ 2 Applicants may state their views about the appeal, within five (5) business days after such appeal is acknowledged by the Tribunal or after the report is received with the conclusion obtained from the complementary fact-finding prepared by the General Superintendence, whichever occurs last.

§ 3 The litigator acting in bad faith shall incur a fine, to benefit the Diffuse Rights Defense Fund, to be arbitrated by the Tribunal, between five thousand reais (R\$ 5,000.00) and five million reais (R\$ 5,000,000.00), taking into account the economic status of the litigator, his acts in the case and unjustified delay created for approval of the act.

§ 4 The filing of an appeal referred to in the *caput* of this article or the decision to make such request shall suspend the execution of the act of economic concentration until the Tribunal renders a final decision.

§ 5 The Reporting Commissioner may undertake additional measures referred to in item II of § 1 of this article.

### **CHAPTER III**

#### **ADMINISTRATIVE INVESTIGATION TO VERIFY VIOLATIONS TO THE ECONOMIC ORDER AND PREPARATORY PROCEDURE**

Art. 66. The administrative investigation, an investigatory procedure of inquisitorial nature, shall be initiated by the General Superintendence to verify violations of the economic order.

§ 1 The administrative investigation shall be initiated ex officio or in view of any reasoned statement by any interested party, or as a result of informative briefs, when the indications of a violation to the economic order are not sufficient to initiate the administrative proceeding.

§ 2 The General Superintendence may initiate administrative investigation preparatory procedure to verify violations to the economic order and determine if the conduct under analysis falls under the jurisdiction of the Brazilian System for Defense to Competition, under the terms of this Law.

§ 3 The measures adopted within the scope of the administrative investigation preparatory procedure to verify violations to the economic order must be performed within a maximum period of thirty (30) days.

§ 4 In response to an order dismissing the preparatory procedure, rejecting the request to open the administrative investigation, or dismissal thereof, an appeal may be submitted by any interested party to the General Superintendent, as determined in the regulation, who will reach the ultimate decision.

§ 5 Vetoed.

§ 6 Petitions presented by the National Congress Commission, or any of its houses, as well as Secretary for Economic Monitoring, regulatory agencies and the Attorney General's Office associated to Cade, do not depend on preparatory procedures, and the administrative investigation or administrative proceeding is immediately established.

§ 7 The representative and respondent may request measures, which will or will not be performed at the discretion of the General Superintendence.

§ 8 The General Superintendence may require the participation of the police authorities or Public Prosecution in the investigations.

§ 9 The administrative investigation must be concluded within a term of one hundred and eighty (180) days, as of its starting date, and it can be extended for sixty (60) more days, by means of a reasoned order, and when the facts are complex and when so justified by the circumstances of the case.

§ 10. The preparatory procedure, as well as administrative investigation, may be treated as confidential, in the interest of the investigations, at the criteria of the General Superintendence.

Art. 67. Within up to ten (10) business days from the closing date of the administrative investigation, the General Superintendence shall decide to initiate or dismiss the administrative proceeding.

§ 1 The Tribunal may, upon demand of a Commissioner and according to a reasoned decision, request the administrative investigation or administrative investigation preparatory procedure filed by the General Superintendence, provided that the

Commissioner who presented such demand be informed.

§ 2 Once the administrative investigation is requested, the Reporting Commissioner shall have thirty (30) business days to:

I – confirm the dismissal decision of the General Superintendence, as well as, if deemed necessary, provide grounds for its decision;

II – transform the administrative investigation into administrative proceedings, determining that a complementary fact-finding be performed, being also possible, at its criteria, to require that the General Superintendence performs it, stating the points in controversy and specifying the measures to be taken.

§ 3 The administrative investigation may be treated as confidential, in the interest of the investigations, and at the discretion of the Plenary of the Tribunal.

Art. 68. Any failure to comply with the terms set forth in this Chapter by the General Superintendence, and its servants, without a duly evidenced reason in the records, may result in the respective administrative, civil and criminal liability.

## **CHAPTER IV**

### **ADMINISTRATIVE PROCEEDING FOR THE IMPOSITION OF ADMINISTRATIVE SANCTIONS TO VIOLATIONS TO THE ECONOMIC ORDER**

Art. 69. The administrative proceeding, an adversarial proceeding, aims to guarantee to the accused party wide defense in regard to the conclusions of the administrative investigation, whose final technical note, approved under the terms of Cade's rules, shall constitute the initial pleading.

Art. 70. In the decision initiating the administrative proceeding, the respondent shall be notified so that, within thirty (30) days, he presents a defense and specifies the evidence to be produced, and presents the complete qualifications of up to three (03) witnesses.

§ 1 The initial notice shall contain the entire contents of the decision approving the initiation of the administrative proceeding and representation, as the case may be.

§ 2 The initial notification of the respondent shall be sent by mail, with return receipt in his own name, or by any other means which will assure the awareness of the interested party or, if the notification sent by mail is not successful, such notification shall be published in the Federal Official Gazette and in a newspaper of wide circulation in the State in which the respondent resides or is headquartered, and the date of notice shall be counted from the date of attachment of the return receipt or the date of publication, as the case may be.

§ 3 Any summons for subsequent proceedings shall be made by publication in the Federal Official Gazette, which shall contain the name of the respondent and of his attorney, if any.

§ 4 The respondent may respond to the administrative proceeding through the holder of title, directors or managers, or by his attorney, guaranteeing to them wide access to the records of the Tribunal.

§ 5 Upon a respondent's request, the term of thirty (30) days mentioned in the *caput* of this article may be extended for up to ten (10) days, which is not further extendable.

Art. 71. The respondent shall be considered in default if, after being notified, the

respondent does not present a defense within the legal term and incurs de facto self-incrimination, provided that the other deadlines shall continue to run against him, regardless of notice.

Sole paragraph. Regardless of the procedural phase, the defaulter may intervene, without the right to repeat any action already taken.

Art. 72. Within up to thirty (30) business days after the expiration of the term set forth in Art. 70 of this Law, the General Superintendence, by means of a reasoned order, shall determine the production of the evidence it considers relevant, provided that it shall be entitled to exercise the fact finding powers set forth in this Law, maintaining confidentiality, as necessary.

Art. 73. Within up to five (5) business days from the conclusion of the fact-finding phase set forth in Art. 72 of this Law, the General Superintendence shall notify the respondent to present new allegations, within five (5) business days.

Art. 74. Within up to fifteen (15) business days from the expiration of the term set forth in Art. 73 of this Law, the General Superintendence shall submit the records to the President of the Tribunal, who shall decide, in a reasoned report, whether to dismiss it or reaffirm the violation.

Art. 75. After the proceeding is received, it shall be assigned by the President of the Tribunal, randomly, to the Reporting Commissioner, who may, if he considers it necessary, require that the Attorney General's Office associated to Cade determine its position within twenty (20) days.

Art. 76. The Reporting Commissioner may determine measures, by means of reasoned orders, and may also, at its criteria, require that the General Superintendence perform them, within the established term.

Sole paragraph. After the conclusion of the measures decided under this article, the Reporting Commissioner shall notify the respondent so that, within fifteen (15) business days, he can present his final arguments.

Art. 77. Within fifteen (15) business days as of the date of receipt of the final arguments, the Reporting Commissioner shall require that the case be submitted to trial.

Art. 78. Upon the President's invitation and indication of the Reporting Commissioner, any person can present clarifications to the Tribunal about the matters under analysis.

Art. 79. The Tribunal's decision, in any event, shall be well grounded, and when deciding on the existence of violation to the economic order, it shall contain:

I – specification of the facts constituting the violation and indicate the measures to be taken by the people responsible for ceasing it;

II – a time frame in which measures referred to in item I of this article should be initiated and concluded;

III – stipulated fine;

IV – daily fine in case the violation is continued; and

V – fine in case of non-compliance with the stipulated measures.

Sole paragraph. The Tribunal's decision shall be published within five (5) business days in the Federal Official Gazette.



Art. 80. The provisions contained in Law No. 8.437, of June 30<sup>th</sup>, 1992 shall be applicable to the decisions rendered by the Tribunal.

Art. 81. A failure to comply with the decision, in full or in part, shall be informed to the President of the Tribunal, which shall determine that the Attorney General's Office associated with Cade arranges for its legal enforcement.

Art. 82. A failure to comply with the terms set forth in this Chapter by the members of Cade, as well as by its respective servants, without duly evidenced justification in the records, may result in the assessment of the respective administrative, civil and criminal liability.

Art. 83. Cade shall take a complementary role in the administrative investigation and proceeding.

## **CHAPTER V PREVENTIVE MEASURE**

Art. 84. In any phase of the administrative investigation to assess violations or administrative proceedings to impose sanctions for violations to the economic order, the Reporting Commissioner or General Superintendent may, at their initiative or upon the request of the Chief Prosecutor of Cade, adopt preventive measures, upon indication or reasoned concern that the defendant directly or indirectly causes or may cause irreparable damage or, or make ineffective the final outcome of the proceedings.

§ 1 In the preventive measures, the immediate cessation of the practice shall be determined, being ordered, when materially possible, the reversal to the previous situation, setting a daily fine pursuant to art. 39 of this Law.

§ 2 The decision to adopt a preventive measure may be voluntary appealed to the Plenary of the Tribunal, within five (5) days, without suspensive effect.

## **CHAPTER VI CEASE-AND-DESIST COMMITMENT**

Art. 85. In the administrative proceedings referred to in items I, II and III of Art. 48 of this Law, Cade may obtain from the defendant a cease-and-desist commitment related to the practice under investigation or its harmful effects, if duly grounded, for convenience and at the proper time, and if it understands that it complies with the interests protected by law.

§ 1 The agreement should contain the following elements:

I - specification of the defendant's obligations not to practice the investigated activity or its harmful effects, as well as obligations deemed applicable;

II – the setting of fines to be paid in case of failure to comply, in full or in part, with the undertaken obligations;

III - the setting of pecuniary contributions to be paid to the Diffuse Rights Defense Fund, when applicable.

§ 2 In regard to the investigation of a violation related to or resulting from the conduct set forth in items I and II of § 3 of Article 36 of this Law, among the obligations referred to in Item I of § 1 of this article it shall be an obligation to pay to the Fund for the Defense of Diffuse Rights a monetary value that cannot be less than the minimum required under Article 37 of this Law.

§ 3 Vetoed.

§ 4 The proposed cease-and-desist commitment may only be submitted once.

§ 5 The proposed cease-and-desist commitment may be confidential.

§ 6 The presentation of the cease-and-desist commitment does not suspend the progress of the administrative proceeding.

§ 7 The cease-and-desist commitment shall be public, and it shall be published at Cade within five (5) days of its execution.

§ 8 The cease-and-desist commitment constitutes an instrument enforceable in Tribunal.

§ 9 The administrative proceeding shall be suspended while the cease-and-desist commitment is being complied with and it shall be filed at the end of the established deadline, if all the conditions set forth therein are satisfied.

§ 10. The suspension of administrative proceedings referred to in § 9 of this Article shall relate only to the defendant who has signed the commitment, and proceedings will follow their regular course in relation to the other defendants.

§ 11. If such cease-and-desist commitment is not complied with, Cade shall apply the sanctions provided for therein and determine the continuation of the administrative proceeding and other administrative and legal measures for the enforcement thereof.

§ 12. The conditions of the cease-and-desist commitment may be changed by Cade if proved to be excessively burdensome for the defendant, provided that the change does not cause damages to third parties or to the public.

§ 13. The proposal of executing a cease-and-desist commitment shall be rejected when the authority does not reach an agreement with defendants regarding its terms.

§ 14. Cade shall define, by resolution, the additional rules applicable to the cease-and-desist commitment.

§ 15. The provisions contained in Article 50 of this Law shall apply to the cease-and-desist commitment.

## **CHAPTER VII**

### **LENIENCY PROGRAM**

Art. 86. Cade, by means of the General Superintendence, may enter into leniency agreements, and may terminate any punitive action of the public administration or reduce one (1) to two thirds (2/3) of the applicable penalty, under the terms of this article, with individuals or legal entities that cause violations of the economic order, provided that they effectively cooperate with the investigations and administrative proceedings resulting from such cooperation, including:

I – the identification of other persons involved in the violation; and

II – the obtaining of information and documents proving the reported or investigated violation.

§ 1 The agreement referred to in the *caput* of this article may only be executed if the following requirements are cumulatively fulfilled:

I – the company is the first to be qualified in relation to the reported or investigated violation;

II – the company completely ceases its involvement in the reported or investigated

violation, as of the date the agreement is proposed;

III - the General Superintendence does not have sufficient evidence to guarantee the conviction of the company or individual at the time the agreement is proposed; and

IV – the company confesses to having participated in the tort and fully and permanently cooperates with the investigations and administrative proceeding, appearing, at its own expense, whenever required, at all procedural acts, until the conclusion thereof.

§ 2 In relation to individuals, they may enter into leniency agreements provided that requirements II, III and IV of § 1 hereof are complied with.

§ 3 The leniency agreement entered into with Cade, by means of the General Superintendence, shall set forth the conditions necessary to guarantee effective cooperation and a useful result from the proceeding.

§ 4 The Tribunal shall, upon the judgment of the administrative proceeding, once compliance with the agreement is verified:

I – terminate the punitive action of the public administration in favor of the transgressor, if the settlement proposal has been submitted to the General Superintendence without prior knowledge of the notified violation; or

II – in the other cases, reduce the applicable penalties from one (1) to two-thirds (2/3), observing what is set forth in Art. 45 of this Law, also considering the classification of the penalty with the effective cooperation provided and the transgressor's good faith in the complying with the leniency agreement.

§ 5 In the case described in item II of § 4 of this article, the reduced penalty incurred shall not be higher than the lowest penalty applicable to the other transgressors, in relation to the percentage established for the application of the fines referred to in item I of Art. 37 of this Law.

§ 6 The effects of the leniency agreement shall be extended to companies of the same group, *de facto* or *de jure*, and to their directors, administrators or employees involved in the violation, provided they enter into it jointly, respecting the imposed conditions.

§ 7 The company or individual that does not obtain, during the investigation or administrative proceeding, qualification to enter into the agreement referred to in this article may, with the General Superintendence, enter into a leniency agreement related to another violation of which Cade does not have prior knowledge, until the case is submitted to trial.

§ 8 Under the terms of § 7 of this article, the transgressor shall benefit from a reduction of one third (1/3) of the penalty applicable to him in that case, without prejudice to obtaining the benefits mentioned in item I of § 4 this article for a new reported violation.

§ 9 The agreement proposal referred to in this Article is considered confidential, except in the interest of the investigations and the administrative proceeding.

§ 10. The rejection of the proposed leniency agreement, of which no disclosure shall be made, shall not be considered a confession as to the facts or recognition of the wrongfulness of the conduct under analysis.

§ 11. The application of this Article shall observe the rules to be issued by the Tribunal.

§ 12. In case of failure to comply with the leniency agreement, the beneficiary will be unable to enter into a new leniency agreement for a period of three (3) years as of the trial date.

Art. 87. For crimes against the economic order, as defined by Law No. 8137, of December 27<sup>th</sup>, 1990, and other crimes directly related to cartel conduct, such as defined by Law No. 8666, of June 21<sup>st</sup>, 1993, and the ones defined in article 288 of Decree-Law No. 2,848, of December 7<sup>th</sup>, 1940 - Penal Code, the execution of a leniency agreement under this Law requires the suspension of the statute of limitations and prevents denunciation from being offered in relation to the leniency beneficiary.

Sole paragraph. Once the leniency agreement has been complied with by the agent, the punishments for the crimes set forth in the *caput* of this article shall automatically cease.

## **TITLE VII**

### **CONCENTRATION CONTROL**

#### **CHAPTER I**

#### **CONCENTRATION ACTS**

Art. 88. The following shall be submitted to Cade by the parties involved in the operation of acts of economic concentration in which, cumulatively:

I - at least one of the groups involved in the transaction has registered, in the last balance sheet, annual gross sales or total turnover in the country, in the year preceding the transaction, equivalent or superior to four hundred million reais (R\$ 400,000,000.00); and

II - at least one other group involved in the transaction has registered, in the last balance sheet, gross annual sales or total turnover in the country, in the year preceding the transaction, equivalent to or greater than thirty million reais (R\$ 30,000,000.00).

§ 1 The values mentioned in item I and II of the *caput* of this article may be adequate, simultaneously or independently, on indication of Cade, by inter-ministerial decree of the Ministries of Finance and Justice.

§ 2 The control of the concentration acts referred to in the *caput* of this Article will occur prior to the transaction and shall be performed within, at the latest, two hundred and forty (240) days, as of the application protocol or amendment thereto.

§ 3 The acts found under the provisions set forth in the *caput* of this article shall not be consummated before being reviewed, under this article and the procedure set forth in Chapter II of Title VI of this Law, under penalty of nullity, a pecuniary fine also being imposed, of a value not less than sixty thousand reais (R\$ 60,000.00) nor more than sixty million reais (R\$ 60,000,000.00) to be applied under the regulations, without prejudice to the opening of an administrative proceeding, under Article 69 of this Law.

§ 4 Until the final decision on the transaction, the conditions of competition shall be preserved between the companies involved, under penalty of incurring the sanctions provided for in § 3 of this article.

§ 5 The concentration acts involving elimination of competition in a substantial portion of the relevant market, which could create or strengthen a dominant position or that can result in the domination of the relevant market of goods or services shall be prohibited, except as set forth in § 6 of this Article.

§ 6 The acts referred to in § 5 of this Article may be permitted, provided they are within the limits strictly necessary to achieve the following objectives:

I - cumulatively or alternatively:

- a) increase productivity or competitiveness;

- b) improve the quality of goods or services; or
  - c) encourage efficiency and technological or economic development;
- and

II - a relevant part of the resulting benefits are transferred to consumers.

§ 7 Cade may, within one (1) year as of the respective date of consummation, require the submission of the concentration acts that do not fall within the provisions of this article.

§ 8 Changes in equity control of publicly-held companies and records of merger, without prejudice to the obligation of the parties involved, must be reported to Cade by the Securities and Exchange Commission - CVM and by the National Registry of Commerce of the Ministry of Development, Industry and Foreign Trade, respectively, within five (5) business days, if necessary, to be examined.

§ 9 The term mentioned in § 2 of this article may only be extended:

I - for up to 60 (sixty) days, not further extendable, upon request of the parties involved in the transaction, or

II - up to 90 (ninety) days, upon a reasoned decision rendered by the Tribunal, specifying the reasons for the extension, the period of extension, which may not be further renewed, and the measures which are necessary for the submission of the case to trial.

Art. 89. In order to analyze the concentration act submitted, the procedures set forth in Chapter II of Title VI of this Law shall be observed.

Sole paragraph. Cade shall regulate, by means of Resolution, the previous analysis of the concentration acts undertaken with the specific purpose of participating in auctions, bids and acquisitions of shares through public offering.

Art. 90. For the purposes of Article 88 of this Law, a concentration act shall be carried out when:

I - two (2) or more previously independent companies merge;

II - one (1) or more companies acquire, directly or indirectly, by purchase or exchange of stocks, shares, bonds or securities convertible into stocks or assets, whether tangible or intangible, by contract or by any other means or way, the control or parts of one or more companies;

III – one (1) or more companies incorporate one or more companies, or

IV - two (2) or more companies enter into an associative contract, consortium or joint venture.

Sole paragraph. What is described in item IV of the *caput*, when used for bids promoted by direct and indirect public administration and for contracts arising there from, shall not be considered concentration acts, for the purposes of Article 88 of this Law.

Art. 91. The approval referred to in article 88 of this Law may be reviewed by the Tribunal, ex officio or upon request of the General Superintendence, if the decision is based on false or misleading information provided by the interested party, in case of non-compliance with any of its obligations, or if the intended benefits are not achieved.

Sole paragraph. In case of the event described in the *caput* of this article, falsity or deceitfulness shall be punished with a pecuniary fine, equivalent to not less than sixty thousand reais (R\$ 60,000.00) nor more than six million reais (R\$ 6,000,000.00), to be applied according to the rules of Cade, without prejudice to the opening of administrative

proceedings, pursuant to article 67 of this Law, and the adoption of any other appropriate measures.

**CHAPTER II**  
**AGREEMENT ON CONCENTRATION CONTROL**

Art. 92. Vetoed.

**TITLE VIII**  
**JUDICIAL ENFORCEMENT OF CADE'S DECISIONS**  
**CHAPTER I PROCEEDING**

Art. 93. The decision of the Plenary of the Tribunal, resulting in a fine or imposing obligations, constitutes an extrajudicial executive title.

Art. 94. Enforcements with the exclusive purpose of collecting pecuniary fines shall be made in accordance with the provisions of Law No. 6830, of September 22<sup>nd</sup>, 1980.

Art. 95. For enforcements with the purpose, in addition to the collecting of fines, of complying with obligations, the Judge shall grant specific performance of the obligation, or determine other measures to ensure the practical result equivalent to compliance.

§ 1 The conversion of specific obligations to compensation for losses or damages shall only be admissible if specific performance or obtainment of the corresponding desired result is impossible.

§ 2 The compensation for losses and damages shall be made without prejudice to fines.

Art. 96. Enforcement will be performed by all means, including by means of intervention in the company, if necessary.

Art. 97. The enforcement of Cade's decisions will occur in the Federal Tribunal of the Federal District or headquarters or domicile of the judgment debtor, at Cade's choice.

Art. 98. The establishment of embargoes or the filing of any other action seeking cancelation of the executive title shall not suspend enforcement, if a bond on the value of the Tribunal fines is not posted, in order to ensure compliance with the final decision on the case, including with respect to daily fines.

§ 1 To ensure compliance with specific performance obligations, the judge must set adequate bail.

§ 2 Once the injunction is revoked, the value of the corresponding fine shall be converted into income for the Diffuse Rights Defense Fund.

§ 3 The cash deposit shall not suspend the collection of interest and monetary correction, and Cade may, in the case described in § 2 of this article, enforce the collection of the difference between the value reverted to the Fund for the Defense of Diffused Rights and the updated value of the fine, with the legal increases, as if the enforcement of the credit had never been suspended.

§ 4 In the action that has Cade's decision as an object, the plaintiff must deduce all questions *de facto* and *de jure*, under penalty of estoppel, all claims that could be deduced being considered deduced so that the petition is granted, provided that such petition cannot be deduced under different causes of action in different actions, except with regard to subsequent events.

Art. 99. Due to the severity of the violation of the economic order, and upon well-grounded fear of irreparable or serious damage, and in spite of the deposit of fines and adoption of security provisions, the judge may determine the immediate adoption, in full or in part, of the provisions contained in the executive title.

Art 100. In order to calculate the daily fine for continued violation, the final date set by Cade for the voluntary adoption of the measures contained in its decision shall be considered as the initial term, and the day it is actually complied with shall be considered as the final term.

Art 101. The process to enforce in Tribunal the decisions rendered by Cade shall take precedence over other kinds of action, except *habeas corpus* and writ of mandamus.

## CHAPTER II

### JUDICIAL INTERVENTION

Art 102. The Judge shall order intervention in the company when required to ensure specific performance by appointing an intervener.

Sole paragraph. The decision determining an intervention shall be substantiated and shall indicate, clearly and precisely, the steps to be taken by the appointed intervener.

Art 103. If, within forty-eight (48) hours, the debtor challenges the intervener due to incapacity or lack of good standing, and if such claim is proved within three (3) days, the judge will rule on the challenge within the same period.

Art 104. If the challenge is upheld, the judge shall appoint a new intervener within five (5) days.

Art 105. The intervention may be withdrawn before the deadline, provided that full compliance with the required obligations is demonstrated.

Art 106. The judicial intervention should be restricted to those actions necessary to comply with the underlying legal decision and shall have the maximum duration of one hundred and eighty (180) days, leaving the intervener responsible for its actions and omissions, especially in cases of abuse of power and misuse of purpose.

§ The provisions of arts. 153-159 of Law No. 6404, of December 15<sup>th</sup>, 1976, shall be applicable to the intervener, as appropriate.

§ 2 The intervener's compensation will be arbitrated by the judge, who may replace him at any time, with replacement obligatory in instances of the intervener's civil insolvency, or when he is considered as the passive or active subject in any form of corruption or malfeasance, or otherwise violates any of his duties.

Art. 107. The judge may dismiss from their duties the administrators of the company who are proven to hinder the performance of acts incumbent on the intervener, provided that any possible replacement shall be chosen as set forth in the company's bylaws.

§ 1 If, despite the measures set forth in the *caput* of this article, one or more persons in charge of the administration of the company continues to impede the actions of the intervener, the judge shall proceed in the manner set forth in § 2 of this article.

§ 2 If the majority of the persons in charge of the administration of the company refuse to cooperate with the intervener, the judge shall order for the intervener to take over the full administration of the company.

Art 108. The intervener shall have the following obligations:

I – conduct or order the performance of all acts necessary for enforcement;

II - advise the Judge of any irregularities committed by the company, of which he becomes aware;

III - submit to the Judge a monthly report of his activities.

Art 109. The expenses resulting from the intervention shall be borne by the debtor against whom it has been decreed.

Art 110. After the period of intervention, the intervener shall submit a detailed report to the judge about its management, proposing the closing and archiving of the case, or asking for an extension of the term, in the event it was not possible to fully comply with the ordered decision.

Art. 111. Whoever opposes or prevents any intervention or, after the end thereof, performs any acts that directly or indirectly annuls its effects, in full or in part, or disobeys legal orders given by the intervener shall, as the case may be, be held criminally liable for resistance, disobedience or coercion during the proceeding, under the terms of articles 329, 330 and 344 of Decree-Law No. 2848, of December 7<sup>th</sup>, 1940 - Penal Code.

## **TITLE IX**

### **FINAL AND TRANSITIONAL PROVISIONS**

Art 112. Vetoed.

Art 113. In order to implement the transition to the system of non-coinciding terms of office, the appointment of Commissioners shall meet the following criteria in regards to the terms of office, in the following order:

I - two (2) years for the first two (2) vacant seats; and

II - three (3) years for the third and fourth vacant seats.

§ 1 The current terms of office of the commissioners of Cade and the Attorney General as of the enactment date of this Law shall be maintained and shall run the full length of the original terms, and the subsequent appointments following the end of such terms of office shall observe what is set forth in this article.

§ 2 In the case of § 1 of this article, the Commissioner who exercises his first term of office at Cade, after the end of his original term of office, may be reappointed for the same position, as set forth in items I and II of the *caput* of this article.

§ 3 The Commissioner who is exercising his second term at Cade, after the end of his original term of office, may not be appointed again for the subsequent period.

§ 4 There will be no reappointment for the Chief Prosecutor exercising his term of office at Cade, and after the end of his original term of office, and he may be designated to remain in office, as set forth by art. 16 of this Law.

Art 114. Vetoed.

Art 115. The provisions of Law No. 5869, as of January 11<sup>th</sup>, 1973 - Code of Civil Procedure, 7347, of July 24<sup>th</sup>, 1985, 8078, of September 11<sup>th</sup>, 1990 and 9784, of January 29<sup>th</sup>, 1999 shall be applicable to the administrative and judicial proceedings set forth in this Law.

Art 116. Article 4 of Law No. 8137, as of December 27<sup>th</sup>, 1990, shall be in force and read as follows:



"Article 4 .....

I - abuse of economic power, dominating the market or eliminating, in full or in part, competition by means of any business arrangement or agreement;

- a) (revoked);
- b) (revoked);
- c) (revoked);
- d) (revoked);
- e) (revoked);
- f) (revoked);

II – sign contracts, agreement, alliance or adjustment between issuers, in order to:

- a) artificially fix prices or quantities sold or produced;
- b) achieve regional market control by a company or group of companies;
- c) control, in detriment of competition, distribution networks and suppliers.

Penalty - imprisonment from two (2) to five (5) years and fine.

III - (revoked);

IV - (revoked);

V - (revoked);

VI - (revoked);

VII - (revoked). "(NR)

Art 117. The *caput* and item V of article 1 of Law No. 7347, as of July 24<sup>th</sup>, 1985, shall henceforth read as follows:

"Art. 1 Actions for material damages and pain and suffering caused by the following reasons shall be governed by the provisions of this Law, without prejudice to class actions:

..... ..

V - violation of the economic order;

..... "(NR)

Art. 118. In the legal proceedings discussing the application of this Law, Cade shall be summoned to, if it desires to do so, intervene in the case, as an assistant.

Art 119. What is set forth in this Law shall not apply to cases of dumping and subsidies referred to in the Agreements Regarding the Implementation of Article VI of the General Agreement on Custom Fees and Trade, duly enacted by Decrees No. 93941 and 93962, of January 16<sup>th</sup> and 22<sup>nd</sup>, 1987, respectively.

Art 120. Vetoed.

Art 121. 200 (two hundred) jobs for Specialists in Public Policy and Government Management shall be created under the Secretary for Economic Monitoring and, primarily in Cade, observing the guidelines established by the Supervising Board of Career, integrating the Career of Specialist in Public Policy and Government Management, for the exercise of the attributions specified in Art. 1 of Law No. 7834, of October 6<sup>th</sup>, 1989, to be gradually provided, within the legal limits and specific authorization of the budgetary

guideline law, pursuant to item II of § 1 of Article 169 of the Federal Constitution.

Sole paragraph. The positions belonging to the Ministry of Justice currently allocated at the Department of Economic Protection and Defense of the Secretariat of Economic Law, shall be transferred to Cade, as well as the DAS-6 of the Secretary of Economic Law.

Art 122. The SBDC agencies may request officers from direct federal public administration, autonomous government entities or foundations, regardless of holding a position under commission or position of trust.

Sole paragraph. The server required under this Article shall be ensured all rights and benefits that are entitled to the origin agency or entity, considering the period of requisition for all purposes of the functional life, as an effective exercise of the position he occupies in the original body or entity.

Art 123. An act by the State Ministry for Planning, Budget and Management shall determine the ideal number of effective positions occupied, to be maintained, by means of allotment, requisition or exercise, within the scope of Cade and Secretary for Economic Monitoring, and shall establish a schedule so that their numbers are achieved, subject to the Union Budgets.

Art. 124. The following positions under commission of the Senior Commissionery and Management Group shall be created, within scope of the Federal Executive Branch, for allocation to Cade - DAS: two (2) positions of NES special nature of President and General Superintendent of Cade, seven (7) DAS-6, sixteen (16) DAS-4, eight (8) DAS-3, eleven (11) DAS-2 and twenty-one (21) DAS-1.

Art. 125. The Executive shall provide for the regimental structure of Cade, as well as the responsibilities and duties, denomination of units and specification of offices, allocating, in the internal units of the autonomous government entity, commissioned positions and rewarded functions.

Art. 126. The following commissioned positions of the Senior Commissionery and Management Group - DAS and accompanying functions shall be terminated, within the scope of the Federal Executive - FG: three (3) DAS-5, two (2) FG-1 and sixteen (16) FG-3.

Art. 127. Law No. 9781, of January 19<sup>th</sup>, 1999, arts. 5 and 6 of Law No. 8137, of December 27<sup>th</sup>, 1990, and the arts. 1 to 85 and 88-93 of Law No. 8884, of June 11<sup>th</sup>, 1994 are hereby revoked.

Art. 128. This Law becomes effective one hundred and eighty (180) days after its official publication.

Brasília, November 30<sup>th</sup>, 2011

DILMA ROUSSEFF

President of the Republic