

**Challenges facing young
antitrust authorities:
Lessons Brazil has learned**

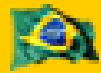
*Ana Paula Martinez
Director of the Antitrust Division,
Brazil*

Columbia Law School, NY, March 2010

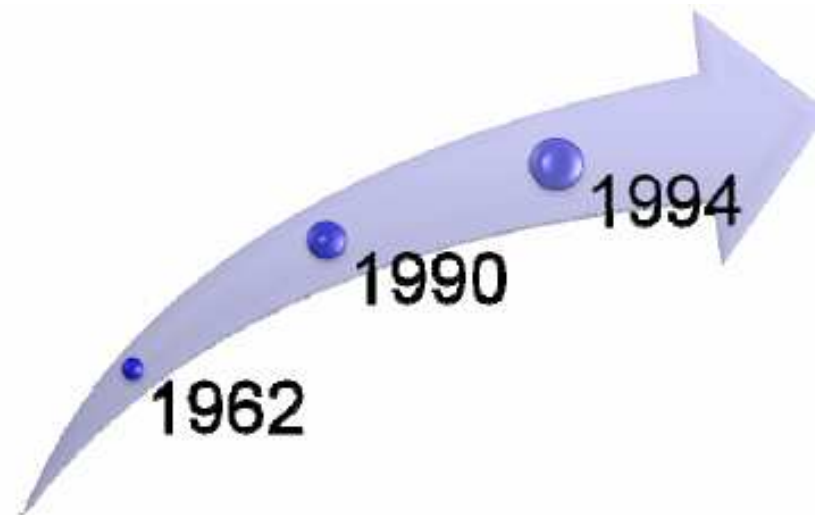


1. The 90's “Antitrust Boom”

- **One of the most notable changes in law and legal thinking in the past few decades has been the dissemination of antitrust legislation among developing economies**
- **A workable competitive market can take place with or without an antitrust law in place**
- **If the decision is to have an antitrust law, how should you implement it?**



2. Antitrust Laws in Brazil



- **1962: First Brazil's Antitrust Law; price regulation, no competition**
- **1990: Current Criminal Antitrust Law**
- **1994: Current Administrative Antitrust Law; introduction of open economy**

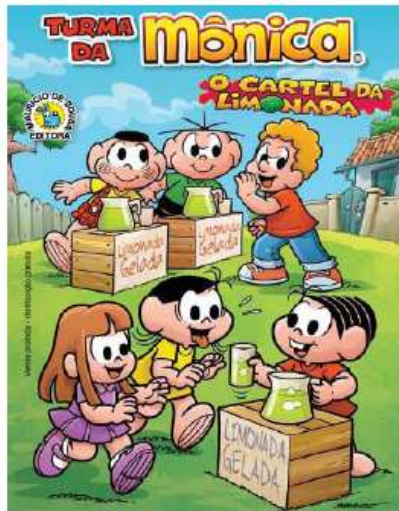
3. From Merger Review to Cracking Cartels

- During the first 8 years of enforcement of the 1994 law, substantial resources were devoted to the review of competitively innocuous mergers
- Since 2003, Brazil promoted a hierarchy of antitrust enforcement that places hard-core cartel prosecution as a top priority

	2003	2004	2005	2006	2007	2008	2009*
Hard-core cartel cases opened	N/A	N/A	5	4	5	3	14
Dawn raids	7	4	0	19	84	93	29
Sanctions imposed	5	8	10	5	8	6	3
Fines assessed (USD millions)	418	1,833	0	1	24,288	11,054	2,792



Competition Advocacy in Cartels



Fuel Retail



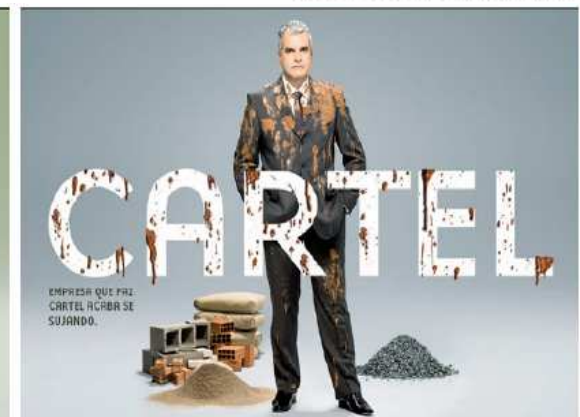
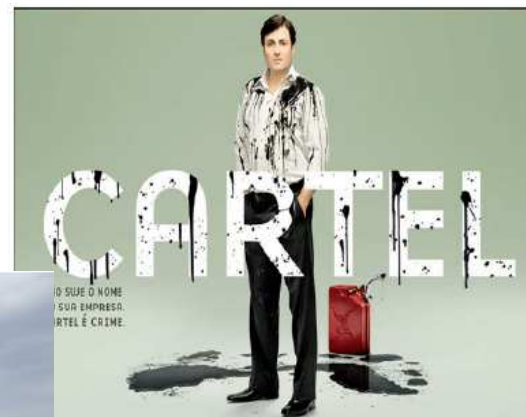
Bid-rigging

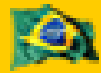


Leniency



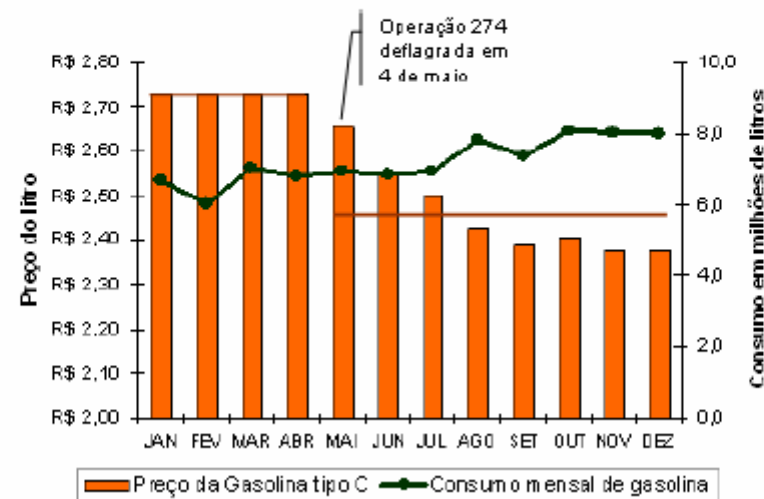
Trade associations





Competition Advocacy in Cartels

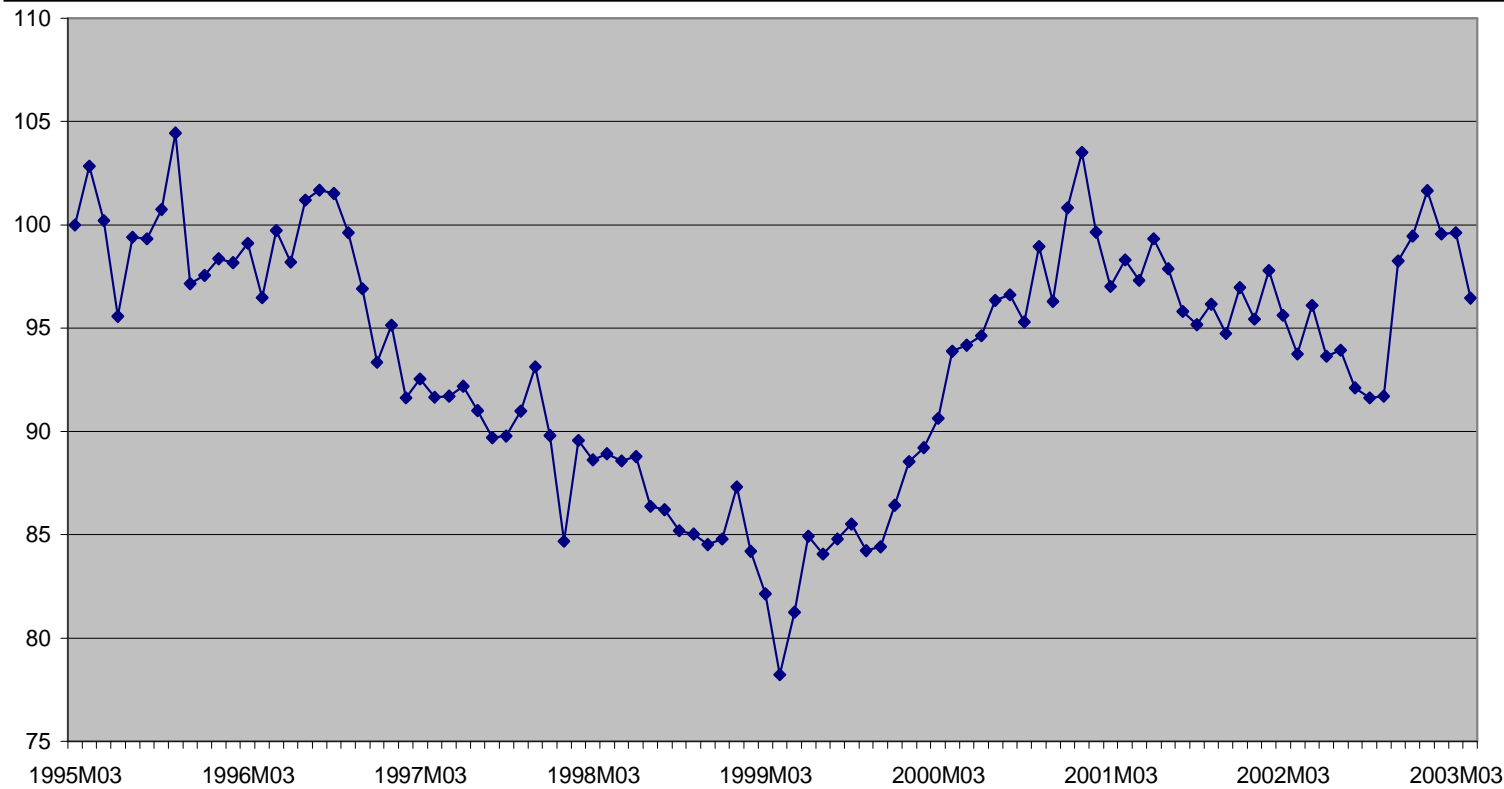
“Pact 274”: savings of R\$ 32 million just in 2007
Fuel retail market





Competition Advocacy in Cartels

Crushed Rock Cartel Case:
Price dynamics before and after the cartel



Meta

③ Alinhar preço médio Busto top de At
em 052/2000



Estratégia

④ Estratégia → Otimização do mercado —
→ correções —

⑤ Meta

Preço FOB — Junho/2000
— Dezembro/2000

Ações

Ações:

- Colocamento do mercado
- Estabilizamento de cotas
- Resposta a carência
- Definição das regras →
- Definição das regras → prazos (Coluna)

Metas do I Seminário

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

Widely recognized program



- *“Brazil has the fastest-growing cartel enforcers in the world”. (Global Competition Review, 2008 Rating Enforcement Report)*
- *“Brazil is the jurisdiction with the most recent achievements in the fight against cartels. Companies involved in cartel practices should apply to Brazil’s Leniency Program at the same time they apply to the US Program” (Scott Hammond, USDoJ, 03.2009)*
- *“Brazil’s anti-cartel programme is now widely respected in Brazil and abroad” (OECD, Feb. 2010)*

6. Merger Review

	2004	2005	2006	2007	2008	2009*
Mergers notified	516	386	411	591	616	306
Approved	574	345	352	490	550	364
Cleared with restraints	43	37	20	37	58	19
Denied	1	0	0	0	1	1
Settled	0	3	1	4	8	3
% of total requiring remedies	7.2%	9.7	5.4	7.0	9.7	5.2
Non-timely notification cases opened	18	8	13	24	20	13

	2007	2008	Total
Behavioural	8	10	18
Structural	4	8	12

7. Unilateral conduct / Vertical Agreements

	2005	2006	2007	2008	2009*
Cases opened**	18	13	11	15	22
Violations found	19	3	17	11	7
Fines imposed (USD millions)	0	0	0	0	205.6***

7.1 Pharmaceutical Sector Inquiry

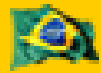
- **Inquiry sent in January 2010 to 37 originator companies**
- **Requests before the Judiciary regarding extensions of patent rights (more than 37 cases pending before the Superior Court, including blockbusters as Viagra and Lipitor)**
- **“Pay for delay” settlements between originators and generic companies**
- **Five on-going investigations at SDE (sham litigation claims)**
- **Close cooperation with INPI (Brazil’s Intellectual Property Agency)**



8. Reducing backlog with scarce resources

	2006	2007	2008	2009
Matters sent by SDE to CADE	21	90	134	134
Backlog	396	341	300	233

	2004	2005	2006	2007	2008	2009
Complaints Received	163	154	172	120	181	163
Complaints Concluded	60	128	131	126	186	507

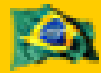


9. The Pending Legislation

- **Single antitrust agency: CADE**
- **Adoption of a pre-merger review system**
- **Provides for a permanent staff**
- **Approval pending before Senate**

10. Lessons Learned

- **Develop an enforcement agenda tied to the economy's issues**
- **Set priorities carefully before pursuing cases**
- **Develop a broader culture of competition**
- **Recognise your natural allies and build effective partnerships with them**
- **Ensure that the agency has adequate investigatory tools and that sanctions available are sufficient to deter violations of the law**
- **If still not happy, go to Congress!**



Thank you

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