

**Regulation as cultural transformation: the
"educational role" of Brazilian competition policy**

*Regulação como transformação cultural: o "papel educacional" da
política concorrencial brasileira*

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Abstract

Based on a genealogical research of the development of Brazilian competition policy and of the governmental agency that implements it – the Brazilian Antitrust Authority *CADE* (the Administrative Council for Economic Defense) – this article describes and reflects on the aspirations for cultural transformation that emerged in the state bureaucracy in the 1990s. Using, as empirical material, annual reports produced by the Brazilian antitrust agency and articles by experts in the field the so-called "educational role" of the antitrust policy in Brazil is analyzed (i.e., its mission of "disseminating a culture of competition"), demonstrating how this narrative, far from being a mere detail, highlights the way in which public policies of corporate regulation have sought to justify their activities and to produce transformations in the relationship between the state and the economy. The use and the notion of "culture" and its implications in this context are also analyzed.

Keywords: Competition culture; educational role; antitrust policy.

Resumo

Este artigo, baseado em uma pesquisa genealógica sobre o desenvolvimento da política de defesa da concorrência brasileira e do órgão governamental que a implementa – o CADE (Conselho Administrativo de Defesa Econômica) –, descreve e reflete sobre as aspirações de transformação cultural que emergiram na burocracia estatal nos anos 1990. Utilizando como material empírico relatórios anuais produzidos pelo órgão antitruste brasileiro e artigos produzidos por especialistas do campo, problematiza-se o chamado “papel educativo” da política de defesa da concorrência no Brasil – isto é, sua missão de “disseminação da cultura da concorrência” – demonstrando como esta narrativa, longe de ser um mero detalhe, evidencia a forma com que políticas públicas de regulação corporativa tem buscado justificar suas atividades e produzir transformações na relação entre o Estado e a economia. Analisa-se também o uso e da noção de “cultura” e suas implicações nesse contexto.

Palavras-Chave: cultura da concorrência; papel educativo; política antitruste

Introduction

“Owing to the long history of protectionism, which characterized the economic strategy of the region, promoting competition in these countries [Latin America] is a far more complicated task than simply implementing an antitrust law. It is a wider struggle to wrest market control from entrenched government-protected monopolists. An educational effort designed to change behavior, attitudes and culture has to be made: Consumers have to be persuaded that price liberalization is better than price controls, and producers have to be convinced that competition is the new name of the game regardless of how painful it is for them. The competition policy must also oppose government attempts to reverse the policies implemented” (Jatar, 1993:80)

From April 17 to 20, 2012, I participated in the 11th annual ICN (International Competition Network) conference, an organization or "virtual network" that, according to its website, "provides competition agencies with an informal space to maintain regular contact and address practical concerns of competition policy" (ICN, 2009).¹ Coincidentally, this meeting was held in Rio de Janeiro, where I lived and was working towards my doctorate in Brazilian antitrust/competition policy.² I was fortunate that personal contact with former members of the Administrative Council for the Defense of Competition (CADE) – the federal governmental agency responsible for the policy in Brazil – enabled me to have access to this relatively restricted meeting with the position of a "NGA" (Non-Governmental Advisor), appointed by the Ministry of Finance. This status granted me free access to all the workshops and conferences of the event, whose speakers were officials of antitrust agencies,

¹ Created on October 25, 2001 by antitrust authorities from 14 countries, the network currently has 107 national or multinational (such as the European Commission) antitrust authorities. The ICN does not have a professional staff and operates with the participation of employees of antitrust agencies affiliated to the network. The communication platforms available on the website of the network and the events it promotes are its main features. It operates through virtual workgroups open to employees of different antitrust agencies, who organize regular workshops to discuss antitrust issues over the phone, internet or through electronic platforms. The conclusions that emerge from these working groups are disseminated as best practices that may or may not be implemented by the agencies linked to the network. Many bilateral and multilateral agreements have been promoted from these works.

² In this article I make no distinction between antitrust and broader competition defence policy.

renowned scholars, lawyers and consultants active in the field of antitrust internationally.

Focused on disseminating best practices in antitrust from around the world, the lectures of the annual international network conferences addressed many different topics. There was discussion of sensitive issues pertaining to the challenges facing national legislation ("How to deal with state-owned enterprises?") or practical issues of the antitrust agencies ("How to build an electronic database to follow the decisions, results and problems of the past?"). These discussions ultimately led to legal, theoretical and administrative recommendations, which highlighted the importance of what CADE annual reports called the "educational role" of the antitrust authority. . No less than an entire morning was dedicated to panels on how the world's antitrust agencies could "explain the benefits of competition" to governments, businesses, the press and the "general public". A former CADE advisor, now a lawyer at a leading firm, said in a panel that one of the tasks of an antitrust authority should be to advocate for market competition, causing "economic agents to incorporate competition ethics."

Up to this point in my research, I had believed that this moral discourse – the incorporation of "competition ethics" or the "dissemination of the culture of competition" – was a mere peculiarity of the Brazilian antitrust policy. However, the fundamental importance given to the "educational role" of this public policy at the most important international event in the field caused me to reflect on how this discourse is related to the most recent antitrust regulatory practice, both inside and outside Brazil. In this article, I describe the way this aspect of the policy is drawn up and presented in CADE's annual reports, demonstrating how the government narrative in the 1990s explains changes in the perception of regulators as to how to best govern the economy, resulting in a new conception of the economic reality and of the role of the state. Moreover, this article points out that the use of "culture" by professionals in the field of antitrust in Brazil – in this case the "culture of competition" – contributes to legitimizing and justifying the public policy,

thereby producing a historical and moral interpretation of its need and purpose.

Although presented in the council's reports as one of its main responsibilities, CADE's "educational role" (i.e., the importance of the antitrust agency as a disseminator of competitive values and practices) has not been properly discussed in the analyses of economists, jurists or public policy experts. This is partially due to the fact that, as I will point out in the following sections, experts in the field consider it to be common sense that there is a need to "educate" business people, as well as the companies themselves. Economists and jurists tend to agree with the pedagogical importance of this public policy, linking it to the broader movement of political and economic transformations of the late twentieth century. For example, the economist Lúcia Helena Salgado, one of the leading professionals responsible for the development of antitrust in the country says that "in this new environment [born in the 90s], antitrust policies have had an important role to play, inasmuch as they prevent, on one hand, the barriers removed by the government from being restored by those who hold the economic power and, on the other hand, re-educate the market – namely the producers and consumers – in accordance with the rules of intense competition that currently guide international transactions" (Salgado, 1992, p.30).

It is important to note that public policies have increasingly used this pedagogical and culturalistic language in both official discourse and in practice. What, then, would be the reason for the emergence of such narratives in the more recent period and why do regulatory economic policies use them so often? Social science literature has for some time reflected on these pedagogical and discursive aspects of public policies, including economic policy, which are otherwise generally sidelined in the analyses (Shore and Wright, 1997; Steinmetz, 1999). The study of these aspects reveals the way policy makers and those that implement them explain the effects and the importance of their work, thus enabling an understanding of the public policy from an essentially native perspective.

Historical or ethnographic studies in anthropology or sociology, influenced by the literature of governmentality (Foucault, 2007a), have emphasized that economic policies, especially the so-called "neoliberal" ones, have been strongly dedicated to constructing and constituting norms of conduct that must be internalized by individuals or organizations. These "technologies of subjectification" (Miller and Rose, 2008) have sought to consolidate "forms and spaces of self-responsibility, self-government, and self-regulation" (Rabinow and Rose, 2003:25) in which the direct control of actions of the entities that are governed or administered would be replaced by indirect control. This Foucauldian-inspired interpretation of neoliberal policies has the advantage of calling into question the widely accepted idea that "neoliberalism" implies a reduction of the "State" and an increase of the "market". In reality, these policies can be characterized as new technologies of government (Bockman and Eyal, 2002), in which power is exercised "from a distance" (Miller and Rose, 1990), since part of the regulation would be the responsibility of those that are being regulated. As is shown in the following sections, the educational role of CADE is clearly linked to these new governmental technologies. The reading of the agency's reports clarifies how the culture of competition is, according to the regulators, of necessity related to a new relationship between the State and the economy, which should be achieved by transforming them simultaneously.

The resulting narrative produced on the educational role of CADE also illustrates a conceptual use that has attracted the attention of anthropologists – who are the main parties responsible for the construction of the concept of culture. As is shown below, the activity of government regulation is understood to produce a cultural transformation, from the "culture of negotiation" to the "culture of competition". The use of the notion of culture as an "agent of change" (Strathern, 1995), which produces a rupture between the past and the future of the Brazilian economy, politically and morally legitimizes and justifies the activity of regulation. However, as anthropology has long warned, the notion of culture, which allows for a holistic

understanding of complex phenomena, can, when used without precise definition, also give rise to inconsistencies and mask pre-suppositions about how specific processes of changing values, practices and behaviors of individuals or groups occur. .

The article is divided into three sections, besides this introduction. In the next section, I present the educational role of CADE, reflecting the way it is described in the Annual Reports of the agency. I also describe CADE's actions specifically carried out to this end over the last two decades. In the subsequent section, I examine the manner in which the pedagogical narrative is based on a historical narrative in the relationship between the State and the market or companies in Brazil. Finally, I reflect on the use of the notion of culture in the country's antitrust policy and generally in neoliberal economic policies.

1. Transformational aspirations

The Brazilian antitrust authority CADE is under the auspices of the Brazilian Ministry of Justice. Similarly to its counterparts in other countries, the Brazilian antitrust body analyzes and judges applications for mergers and acquisitions of companies, approving only those that will not substantially modify competition in markets. In addition, CADE investigates and prosecutes anti-competitive business practice, such as cartels. A new raft of legislation in the early 1990s made CADE (established in 1962) the final-instance administrative decision-maker on competition law. With a larger budget and more employees, the antitrust agency began to exercise much more rigid control of acts of market concentration (mergers) in Brazil from that period onwards. The market competition defense policy gradually gained more prominence within the set of the national economic policies, with a view to reinforcing other measures or reforms under way.³

³ From 1992 on, with the election of President Fernando Collor de Mello, a series of transformations in the Brazilian economic policy were implemented. These included: the

This new phase of Brazilian antitrust policy was also the result of a transformation of the management of the antitrust agency. Gradually, a greater number of professionals with an academic background in Economics were appointed to CADE, and they drew on sophisticated economic theories as part of the grounds for the regulator's decisions. According to former commissioner César Mattos (2003: 21), "it became increasingly clear that it was crucial to deepen the role of the economic analysis in the application of the antitrust legislation," resulting in the beginning of the "practice of ring-fencing some seats on the Board for Master-degree or PhD economists with recognized competence in the proper application of economic theory to the important cases of market concentration that were underway and those yet to come" (Mattos, 2003, 22). According to the sociologist Iagê Miola (2014), the economists appointed to commissioned positions from 1996 onwards – whether as directors or as presidents of the agency – had distinct profiles from the Economics graduates that had previously worked at CADE. While the earlier employees were career civil servants holding at most a Master's degree from a Brazilian university, the newly appointed professionals were PhDs from renowned universities in Brazil and abroad, usually linked to the Neo-Institutionalist school of Economics.⁴

In 1996, the year of an important appointment of new commissioners, which included some of these young economists, CADE published its first Annual Report. The new official document sought to "furnish greater transparency to society on the activity of the antitrust agency", providing a summary of the cases judged, the administrative decisions taken and a set of

privatization of the telecommunications and energy sectors; the commercial and capital opening of the national markets; the increase of the decision-making autonomy of the Central Bank; and the creation of sectorial regulatory agencies.

⁴ Two members of the new council of 1996, Gesner Oliveira (former president) and Lucia Helena Salgado (former commissioner) were PhD economists from the University of Berkeley, an important center of studies in Industrial Organization in the United States. According to Miola (2014), the new professionals were also younger and linked to well-known centers of orthodox economic theory, as were other economists who at that time were also appointed to other entities of public administration. Among the 17 economists appointed by CADE from 1996 to 2012, there are PhDs graduated from the University of Chicago, the University of London, the Federal University of Rio de Janeiro, the University of São Paulo and the University of Brasília (idem, 2014).

statistics on the activity of the agency in the year. The index of the first report is divided into three parts that correspond to the three functions of the antitrust entity: (i) the combat of economic infractions, or the "repressive role"; (ii) control of acts of market concentration, or the "preventive role"; and (iii) the promotion of free competition, or the "educational role". An excerpt from the 1996 Report illustrates more clearly the function of the "educational role":

Given the long period of operation of an intervening State, and domestic isolation, competition is still a strange link in economic relations and for their agents. Therefore, it is crucial that CADE become an instrument for the diffusion of a **culture of competition**. To this end, CADE should have three complementary and interdependent roles: educational, preventive and repressive. The educational role represents the diffusion of the competitive culture in the country. It is therefore an obligation on CADE to disclose and analytically demonstrate the importance of defending competition in order to provide a greater degree of intimacy between society and its [CADE's] constituent elements. In exercising its preventive role, the agency basically regulates operations that would entail an excessive increase in market power and, consequently, make the occurrence of abuse more probable. However, the repressor role is the most obvious, being the one through which the public naturally recognizes the role of entities such as CADE. It should be emphasized that both the preventive and, above all, the repressive role are fundamental for fulfilling **the most important role** of CADE, which is the educational one. Indeed, the main effect of repression and prevention is undoubtedly the signal received by the market regarding the type of actions and behaviors that are tolerated or not, according to the criterion of reasonability enshrined in the modern economic law jurisprudence (CADE, Annual Report, 1996, p.25, my emphasis).

In the above extract, it is worth pointing out the way the "educational role" consists mainly of efforts to disseminate forms of competitive "actions and behaviors"; a reconfiguration of the moral behavior of "markets" and their "agents". Although these forms of economic behavior are not defined, it is generally accepted that they would be the forms of conduct that are acceptable under the most recent national legislation. These actions and behaviors constitute a "culture" that, according to the report, was previously

nonexistent in the country. Note that "competition advocacy", as this pedagogical effort is also known in international forums, is considered the essential or even the "most important" goal of the governmental action. Even if social scientists have been drawing attention to the moral role played by the State, such an explicit declaration, expressed in the course of justification for economic policy, is a somewhat unusual and recent development.⁵

CADE's educational role, as defined in the annual reports, shows how the antitrust policy promoted since the 1990s has entailed a new form of governmentality, in which the objects it aims to manage are not considered to be given facts, much less natural. The construction of markets in which competitive behavior prevails is an aspiration of the professionals responsible for the implementation of the policy: jurists and economists who held, from the 1990s onwards, positions as commissioners and presidents of the antitrust authority. As the Foucault-inspired literature has stated, this construction of the subjects and objects of government is typical of the rationality of neoliberal government. For these neoliberal individuals, as for the classic political economists, market competition remains the most appropriate mechanism for generating economic "development," "welfare" or "efficiency." The difference lies in the fact that for these individuals the government must "conduct a policy towards society such that it is possible for a market to exist and function" (Gordon 1991, 41). The challenge for liberalism, in terms of the rationale and technique of government from the middle of the twentieth century onwards, has been how to assist in the construction of "the legal, institutional and cultural conditions that will enable an artificial competitive game of entrepreneurial conduct to be played to best effect" (Burchell, 1996:

⁵ As the sociologist Émile Durkheim (2002: 71) has stated, the State "is a special entity responsible for elaborating certain representations that are valid for the collectivity." Antitrust policy is included in this definition when it seeks to instill the values of competition in society. The 2001 Annual Report explains this culture by stating that CADE is responsible for disseminating what has been called the "culture of competition", so that "it must disseminate information and knowledge on the subject in order to foster citizenship in this regard "(CADE, 2001: 159).

27)⁶. The notion that the economy formed by competing markets and rational individuals is an artificial construction of the State and the law transforms the naturalism of the liberal thinking into a form of constructivism. It is no coincidence that the cultural construction of subjects that incorporate the "values of competition" is now considered the central attribution of the antitrust agency.

In addition, as indicated in the report mentioned above, the educational role of CADE is related to a broader attempt to reformulate the relationship between State and economy, as is also suggested in the aforementioned literature. In the extract shown above, the competition defense policy of the 1990s is contrasted with a certain type of State, the "intervener", in which competition is not a value to be cherished. Therefore, the "new" State does not intervene; it educates and warns the market about the conduct that is adequate for its operation. The 1998/1999 Report, for example, emphasizes the importance of the educational role of CADE, relating it to the simultaneous transformations of the State in the world:

"Such role is of particular importance at a time of reformulating the role of the State in the economy, which has been intensely observed throughout the world in the last quarter of this century, particularly in developing countries. International competition defense agencies have been playing an increasingly prominent role in consolidating the deregulation and liberalization processes of the economy "(CADE, 1998/1999: 137).

And it continues:

⁶ Foucault (2007b, p. 120), explaining the ordo-liberal notion of competition, the German branch of neo-liberalism, says: *"For what in fact is competition? It is absolutely not a given of nature. The game, mechanisms, and effects of competition which we identify and enhance are not at all natural phenomena; competition is not the result of a natural interplay of appetites, instincts, behavior, and so on. In reality, the effects of competition are due only to the essence that characterizes and constitutes it. The beneficial effects of competition are not due to a pre-existing nature, to a natural given that it brings with it. They are due to a formal privilege. Competition is an essence. Competition is an eidos. Competition is a principle of formalization. Competition has an internal logic; it has its own structure. Its effects are only produced if this logic is respected. It is, as it were, a formal game between inequalities; it is not a natural game between individuals and behaviors"*.

"The level of knowledge of the legislation is low and there is limited case law, so that the antitrust authority's activity of clarification has become important... several segments ... are not well aware of the legislation and/or have not yet internalized the values of competition. This phenomenon is understandable after several decades of a prevailing interventionist practice and culture" (CADE, 1998/1999, p. 142).

Moreover, the transformation of the economy by means of the dissemination of the "culture of competition" is closely associated, as an essential factor, with this transformation of the State. The role of the State would change and "reduce" into a role of educating and repressing practices. By constructing a competitive economic world that is essentially self-regulating and self-governing, the role of the State would be consist merely of infrequent inspection of economic practices. . According to the Report from the same year (1998/1999: 137):

"In the modern theory of Law and Economics, it is essential to effective implementation that the entities that are being administered identify with the values that are inherent to the legislation... attaining a high degree of *affinity* between the society and the norm, that so that unlawful acts become exceptional conduct, thereby reducing costs of monitoring and repression, while raising the social standards of demand for compliance with the legislation, especially in terms of impartiality, the application of technical criteria and transparency by the authority. "

The above excerpt illustrates the two interrelated movements: the aspiration of building a new economy, with new values and norms, and the (consequent) desire to build a new transparent, technical and efficient State. The "affinity" between the society and the norm consist of the degree of "diffusion of the culture of competition". The more widespread, the more efficient, the State, the less costly it will be. At the same time, the role of the antitrust agency will be even more relevant, since society will understand its importance. For this reason, the government's narrative of the antitrust policy has, since 1996, been constructed as an effort to disseminate this "culture of competition."

It needs to be borne in mind that the educational role of CADE was also characterized by highly practical policies. Between 1996 and 2008, CADE adopted a series of specific "educational" policies, in line with the measures adopted by the American Federal Trade Commission. CADE's competitive advocacy role encompasses a range of initiatives, ranging from an intensive media campaign to participation in working groups with various government agencies (Considera and Araújo, 2002). The main competition advocacy policies of this period were the creation of a permanent forum for competition policy, the creation of a website, the reissuing of the economic law magazine, and the creation of an interchange program.

2. Inventing a culture

Following the regulators' explanation as to the ultimate goal of the CADE antitrust agency (i.e. the construction of a new economic ethic), as expressly set out in CADE's annual reports several professionals acting in the field of antitrust have sought to describe or interpret the agency's portrayal of reality. According to several economists, the construction of a new "culture" would only be possible by transforming the culture that had prevailed up to that date and which was based on a relationship between the State and economic agents, which seemed outdated to them. The narrative of cultural transformation thus demanded the invention of a predecessor "culture." Such culture, according to economists, was based on the price control policy practiced by the federal government until the 1980s. I describe this policy below.

From 1962 until the late 1980s, both the law and CADE played a very limited role. According to jurist Paula Forgioni (2013, page 117), up until 1975, CADE had judged only 11 cases, of which only one was considered a case of abusive practice. One of the reasons for the agency's modest performance may have been the judiciary, which stayed many of the agency's rulings, in

response to writs of mandamus filed by corporations against which CADE had issued orders. Furthermore, according to a member of CADE Counsel's Office in the 1960s, the agency, operating from the basement of the Presidential Palace in Rio de Janeiro, was unknown to the public and therefore did not receive complaints related to business practices that might have been investigated by the agency (CADE, 2013a).

However, for most analysts, mostly economists, the reason CADE did not play a relevant role during this period was the incompatibility between its legal function and the broader direction economic policy had followed since the 1960s. New state entities, such as the *CIP* (Interministerial Commission on Prices) and the *Sunab* (National Superintendence of Supply and Prices) controlled prices and tariffs in the economy. Furthermore, the activities of government ministries, encouraging mergers and the acquisition of companies seemed, politically at least, at odds with CADE policy, if not in direct legal confrontation. According to Elizabeth Farina (1990, page 472), a former president of the antitrust agency, "the timid performance of CADE was entirely consistent with the more general economic policy that protected our industry from external competition and established various forms of sectorial controls that limited competition, rather than stimulating it".⁷ Furthermore, CADE performed other regulatory tasks that were not necessarily related to its antitrust function and together with other government agencies, directly controlled the activity of companies. Commenting on the role of CADE during this period, a former CADE president Rui Coutinho (CAMARA, 2004, p.6) says: "In fact, CADE was intended to function as a board of directors and audit committee of state-owned companies, or even as an auditing firm".⁸

⁷ According to economist Hécio Tokeshi, a former secretary of the Ministry of Finance, in a statement in the Chamber of Deputies (CAMARA, 2004, p. 13): "At the first moment of import substitution, for as long as this model was not abandoned, it did not make sense to try to think of defending competition because the State was the coordinating and regulating agent of the markets, directly interfering with supply, prices and quantities."

⁸ It may be said that the antitrust law of 1962 itself had a strong interventionist tendency. Among its objectives was "exercising supervision of the management of government controlled companies and those that constitute national assets [public companies]". It also stated that "the supervision will be extended to the economic management of the company and its

In fact, when the military government took power in 1964, it adopted an orthodox fiscal policy and a contractionary monetary policy to deal with the economic crisis at the time, restricting credit, public spending and wages. However, contrary to the more liberal orientation that predominated at the Ministry of Finance and the recently created Central Bank, the military authorities preferred to maintain a policy of import substitution by investing in state-owned companies. The second military government further entrenched this policy by imposing state control of prices for goods and services as a key mechanism in the battle against inflation, a mechanism that characterized economic policy until the 1980s.

On February 23, 1965, with the issue Interministerial Directive 65, the price control system was improved. Tax and monetary advantages were offered to companies that adopted "moderate" price increases, and the National Commission for the Stimulation of Price Stabilization (*Conep*) was created. Due to the simplicity of the measure and the fact that it could be voluntarily and spontaneously adopted by businesses, a large number of companies adhered to the government policy (Considera and Corrêa, 2002). In the second military government, under Finance Minister Delfim Netto, who was advised by a new group of economists, mostly from the University of São Paulo (Loureiro, 1997), the adoption of the price control system became compulsory (Decree 61,993).⁹ All price increases in the manufacturing industry, part of the food industry, the timber industry, leather, footwear and clothing industries were made subject to analysis and approval by Conep. This control was to be maintained until inflation came to an end.¹⁰

accounting system...", and established that "CADE is to annually review the balance sheets and reports of the companies referred to in this article and, as a result of this inspection, I propose to the Council of Ministers, measures it considers necessary ." (BRASIL, 1962).

⁹ December 28, 1967.

¹⁰ The price increase was subject to a number of conditions. Businesses were first required to demonstrate that the increase was proportional to the increase of costs. CIP, which replaced Conep, calculated the average rate of return on capital for specific businesses and sectors to measure the productivity increase that could be passed on to prices. According to Considera and Corrêa (2002, p.10): "the rules of control were very detailed and complex, representing an intervention in management business secrets, which would be unimaginable in a democratic society. When businesses applied for permission to increase prices, they had to disclose

Since the beginning of the Vargas government, industrial associations had maintained a close relationship with the government, aiming to increase and protect the so-called "fledgling domestic industry" from foreign competition. Between 1930 and 1945, industrial associations were official bodies, established by the Vargas government and receiving contributions from the government to operate. The main associations were *Fiesp* (the Federation of Industries of the State of São Paulo), *Firj* (the Federation of Industries of Rio de Janeiro, now known as *Firjan*), and the *CNI* (National Confederation of Industry), as well as other associations in other states. Their aims were to increase import fees, create import controls, influence the exchange rate and to promote the infrastructure industry, protecting the domestic market and encouraging domestic private capital investment. Their influence in the government was huge, and Fiesp and Firj held key positions in the Dutra government. In addition to these associations, there were 160 other industry associations that negotiated collective wage agreements with labor unions under the auspices of the Ministry of Labor or before labor courts (Considera and Corrêa, 2002).

According to Claudio Considera and Paulo Corrêa (2002), economists who describe this price policy in detail, from the 1970s on, with the increase of inflation, the associations of producers took on an increasingly important role in microeconomic policy also, especially with regard to price policy. The CIP began bringing together public officials and representatives of producers in order to organize the industrial sector and several markets. In practice, the State institutionalized spaces that enabled different organizations to come together to discuss and negotiate prices and costs. Thus, by attempting to stabilize product prices through negotiations, the economic policy adopted in Brazil led to the organization of a structure that enabled the operation of cartels, making it possible for Brazilian industrialists to join together to discuss costs and prices (Considera and Corrêa, 2002). With the end of the 'economic

confidential business information to the government officials, with little assurance that it would not be made available to their competitors."

miracle' – the period of exceptional growth of the Brazilian economy between 1968 and 1973 –, the government's price policy continued, but with less rigidity. Increasing inflation however highlighted the inadequacy of the CIP. Nevertheless, until 1984 the CIP continued to promote agreements among companies, which kept prices homogeneously high. Within this context of strong state intervention in prices, the role of the antitrust entity was minimal.

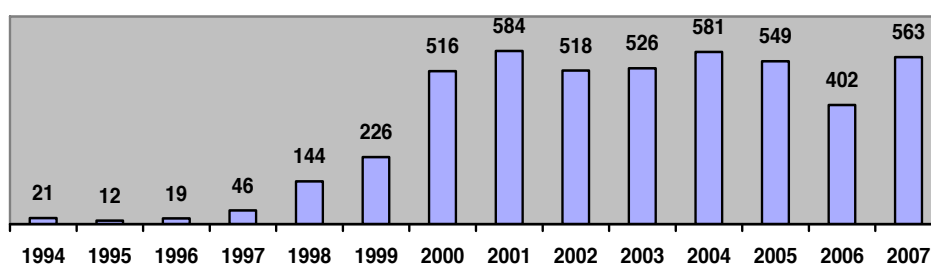
As I have already mentioned, Brazilian economists often say that although there is a strong Antitrust Law on the statute books, the economic sector lacks a general "culture of competition" (Oliveira and Konichi, 2006). As we can see from the historical overview set out above, many experts consider this to be the result of the relationship between the state and businessmen typified by the national price control policy of the 1970s and 1980s. According to Considera and Corrêa (2002, P.3), "the ideological atmosphere does not seem to have favored competition as being the rule of the economic game; the private sector does not see it as the core of the economic activity [...]. On the contrary, the ideological atmosphere seems to have favored 'negotiation' among firms." This "ideological atmosphere" was a legacy of a more developmental or interventionist period of economic policy. As is explained by Elizabeth Farina, a former head of CADE, there was a kind of "cost spreadsheet culture" (personal talk) in the Brazilian economy. This culture was reflected in a business practice that was widespread ever since the military period, in which spreadsheets with the costs of production were sent from one company to another, so that all of them would compare their prices and coordinate their production. The companies considered this practice to be lawful and perfectly acceptable.

According to Farina, in the early 1990s, the competition authorities understood that it would not be easy to modify this "culture". Consequently, they limited the first penalties applied for crimes against the economic order to less than 1% of the revenues of the firms penalized. This was lower than the penalty provided for in the legislation. Regulators argued that the "law was new and there had to be a learning process in the economy." As is explained in

the 1998/1999 CADE Annual Report: "... the legacy of anticompetitive practices left by a closed and nationalized economy is still strong, which justifies the introduction of a mechanism that can act, at times, as an 'antitrust amnesty'" (CADE, 1998/1999: 142). Thus, once again the relationship between the State and the economy served as an explanation for the lack of a "culture of competition" in the country. For many young economists who wrote about antitrust and/or held positions at the antitrust agency in the 1990s and 2000s, the dissemination of competition values was intrinsically related to the transformation of the State that would, gradually, eradicate the "culture of the spreadsheet" or of "negotiation".

It is interesting to note that CADE itself produced numerical indicators that demonstrated the extent to which its (CADE's) efforts were producing the expected educational effects and how the new culture was spreading. The following chart below, published in 2007, illustrates how the number of corporate concentration (merger) cases dealt with from 2000 onwards became stable following the introduction of mandatory notification of mergers and acquisitions under Law 8.884/94 (CADE, 2007):

Chart # 1 –Applications for Corporate Concentration Cases (Mergers) heard by CADE (1994-2007)

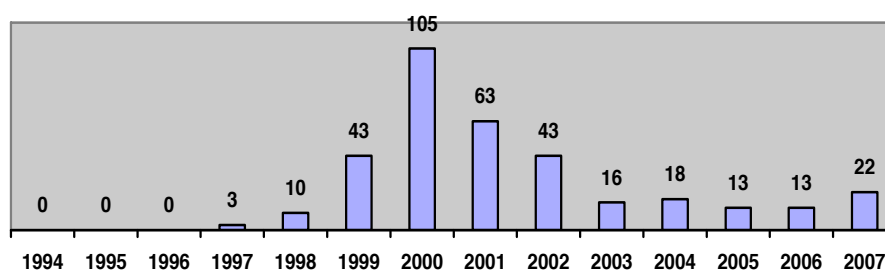


Source: CADE Annual Report, 2007: 66.

A second chart shows the number of concentration acts (mergers) in which fines were imposed on companies for late submission of application for leave (outside the maximum period of 15 working days) . According to the CADE Annual Report (2007), the chart "reveals the *curve of acculturation* in the

business community and learning in the legal community regarding the obligation of submitting to CADE applications for leave to merge."

Chart # 2 – Acts of Concentration (applications for leave to merge) with fines imposed for late filing. (1994-2007)



Source: CADE Annual Report, 2007: 66.

The numerical representation of the data, according to the regulators, clearly demonstrates that society was adapting to the norm i.e. that the desired dissemination of the "culture of competition" was being achieved. The "acculturation curve" in the chart portrayed CADE as an efficient, transparent agency and technically competent, and reflected progress towards the agency's highest goal: cultural transformation.

3. Governing through culture

The present paper demonstrates how Brazilian antitrust policy from the 1990s onwards adopted the notion of cultural transformation (or "cultural dissemination", to be more exact) as its main governmental objective. According to the most common narrative among experts in the field, including the regulators themselves, the "culture of competition" or the cultures that preceded it (such as the "spreadsheet culture") derived from a particular relationship between the State and the economy. Therefore, cultural transformation would therefore follow on from a transformation of that relationship. As is explained in the annual reports of the antitrust agency, this

narrative demonstrates – as has already been pointed out in the literature on governmentality – that the most recent government economic policies cannot be considered measures to "reduce the role of the State", but rather, as attempts to change the relationship established between government and those governed.

By analyzing the educational role of CADE, we can conclude that this form of governmentality seeks to construct subjects that act in a specific manner, deemed morally correct, legally fair and economically efficient. These subjects, which are never defined in the discourse (are they companies, entrepreneurs, directors, managers, shareholders, or all of them?), must conduct themselves according to "competitive ethics" in order for competition defense policy to succeed. This manner of defining the ultimate goal of governmental action has the advantage of conceiving the possibility of an existential aim to competition defense policy. The greater the spread of the culture of competition, the less necessary the public policy itself would be: legal enforcement is reduced as business practices align with established norms. Therefore, cultural transformation becomes the ultimate aim of the policy, its purpose and its conclusion.

However, the notion of "culture" – or "culture of competition" – is not defined in the narratives produced by the antitrust agency or by experts in the field, even when they construct indicators that apparently aim to objectify it. Although we can consider that the culture of competition is related to a set of non-cooperative business practices that are non-collusive and lawful, it remains abstract and its precise meaning is not questioned by experts in the field. What is the reason for relying, in economic policy, on this notion that is so heavily loaded with significance, lacks precise definition and is difficult to visualize or measure?

As I mentioned earlier, anthropologists have long been elaborating on, discussing, and criticizing the use and the meaning of the concept of culture. The current prevailing view is that it should be employed as a tool or 'prop' that enables social scientists to relate different spheres of social life,

simultaneously examining both practices and values.¹¹ More recently, in an attempt to explain the recent dissemination of the notion of culture amongst business, educational and governmental organizations, Cambridge anthropologist Marilyn Strathern stated:

“Once articulated, culture appears as self-evident, a synthesis of what is already known about the contextualization of human affairs. It offers the flexibility of a concept simultaneously normative and comparative. Culture, in other words, is being used with just the range of connotations with which anthropologists have invested it in their writings. The concept points to differences between systems of value, to the link between practice and ethos, to the need to change habits if one is to change the way people think.” (Strathern, 1995:2)

Based on her interpretation, we can initially state that the notion of culture, since it represents a variable and non-essential societal condition, has contributed to the establishment of political projects such as that of neoliberalism. As has already pointed been pointed out in this article, liberal policies conceived in the second half of the twentieth century are fundamentally constructivist: they aim, using legal and governmental tools, to establish the best basis for the existence of efficient and competitive markets. For many people, the notion of culture presupposes the exact opposite of the notion of nature: it is something that can be transformed and taught. Brazilian antitrust policy, in conceptualizing competition as the result of a national cultural trait i.e. reflecting values and practices, has the advantage of conditioning public policy to the characteristics of society (or of its business people, at least) and not just to government action. Since the results of the public policy are then the outcome of a constant and prolonged pedagogical activity, the governmental action becomes less open to criticism, since it

¹¹ “If culture were an absolute, objective ‘thing’, then ‘learning’ it would be the same for all people, native as well as outsider, adult as well as child. But people have all sorts of predisposition and biases, and the notion of culture as an objective, inflexible entity can only be useful as a sort of ‘prop’ to aid the anthropologist in his invention and understanding. For this, and for many other purposes in anthropology, it is necessary to proceed *as if* culture existed as some monolithic ‘thing’ (...)” (Wagner, 1975, p.8).

transfers the responsibility for the success or failure of the policy to the administered parties/subjects. Finally, the notion of culture has contributed to the justification and legitimization of joint transformation of the State and the economy, as is demonstrated by the historical narratives of the Brazilian official policy on prices. The notion of culture enables policy makers to relate the practices and values that characterize the modes of governing the economy in Brazil, at the same time providing a “moral” basis for the actions of the State and, therefore, justifying reforms (radical or otherwise) in national economic policy.

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