

MEMORANDUM TO CLIENTS

ANTITRUST

March 22, 2016

CADE issues a Competition Compliance Program Guide

The Administrative Council for Economic Defense (“CADE”) has issued a Compliance Program Guide (“Guide”), which provides guidelines for companies on how to implement programs, known as “compliance programs”, seeking to prevent violations of the economic order. Such programs must be effective in preventing and combating anticompetitive behavior. The Guide is a comprehensive tool that can be easily adopted by small, medium and large size companies.

In accordance with the Guide, a robust program must include: (i) an effective commitment to ethics by companies through the involvement of high level management, allocation of proper resources and autonomy of the manager in charge of the program; (ii) an assessment of the type of risks to which the company may be exposed in its activities, prioritizing compliance in areas that pose greater competition risks; (iii) development of internal training programs, inclusion of compliance provisions in the company’s code of conduct, monitoring the program’s implementation and documenting compliance activities and punishments; and (iv) continuous review and adjustment of the program.

A comprehensive violation prevention program must also be adapted to the market in which the company operates. The goal of the program must be to identify situations of greater risk of violation, as well as establishing conduct and procedures to be followed in situations of possible antitrust infringement. With this in mind, the Guide offers suggestions for measures to be adopted to minimize competition concerns in connection with: (i) markets that are more susceptible to cartel arrangements; (ii) participation in meetings at associations and standards setting organizations, or “SSO”s; and (iii) unilateral conduct and vertical restrictions seeking to exclude competitors.

In addition to detecting risks, effective programs must allow prompt identification of any violation. This promptness may translate into several benefits to companies, such as obtaining administrative and criminal exemptions as a result of the execution of a leniency agreement. In order to obtain such benefit the company must be the first to present itself to CADE to report the violation and confess its participation.

The purpose of this memorandum is to inform our clients about important changes and developments in the area of law. We remain at the reader's disposal for any additional information that may be desired regarding the subject matter herein.

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Even if the company does not qualify for a leniency agreement, having a solid compliance program may bring other advantages. One advantage is the possibility of executing a cease and desist commitment agreement through which the company is assured of a reduction in the expected fine in exchange for co-operation with the investigation. Although it is not sufficient to avert the possibility of penalties being imposed by CADE, compliance programs may also have a favorable impact in the stipulation of fines.

The English version of the Guide can be accessed by clicking here:

<http://www.cade.gov.br/upload/Compliance%20Guidelines%20-%20final%20version.pdf>

Attorneys of the Antitrust practice

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