

Competition and Market Access Policies in the Resurgence of MSMEs in Post-Covid-19 in Brazil¹

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¹ This report was drafted by Mr. Fernando Furlan, Brazilian Competition Expert. Pierre Horna and Elizabeth Gachuiiri coordinated this work with the overall guidance of Teresa Moreira, Head, Competition and Consumer Protection Branch, UNCTAD.

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Executive Summary

Brazil is no exception to the serious economic and social impacts of the COVID-19 pandemic. In this context, many MSMEs were on the verge of closing or were forced out of the market. In addition, many those that remain are highly vulnerable. MSMEs in Brazil unfortunately face more basic difficulties to be online, beyond competitive issues in exposing and selling goods. Two crucial and complementary issues in dealing with the current pandemic and in the effort to recover national economies are competition policy and market access for MSMEs.

This study provides an overview of the interaction of competition policy and law on the micro, small and medium-sized enterprise (MSME) sector in Brazil. It also includes an analysis of COVID-19 on the competitive environment in Brazil, and how competition agencies have dealt with the challenges so far. It points out the benefit of increased competition and the need to encourage Small Business suppliers to engage competitively. Identifies the strong desire of MSMEs to access digital markets and the difficulties they encounter in attempting to do so.

The study puts forward recommendations addressed especially to competition defense and advocacy authorities, but also to representative and support entities for MSMEs and points out that competition authorities in Brazil have a lot of room to improve their involvement with MSMEs to guarantee the usefulness of competition and law in this sector. Another positive point to underscore is the fact that the recommendations are formulated in an operational way and devoted to each specific stakeholder impacting MSMEs in Brazil.

The study is geared to provide policymakers with an understanding of what competition policy is, explains how competition law is framed and operated in Brazil, and how this law can impact upon MSMEs in this country in the context of pandemic crisis like the Covid-19.

1. Introduction

Brazil is no exception to the serious economic and social impacts of the COVID-19 pandemic. The country, due to internal political debate, has struggled to control the wave of infections and deaths from COVID-19. There were 11.1 million cases and 268,000 deaths (approximately 10% of the total deaths in the world)². Data from the last National Continuous Household Survey (*Pnad Contínua*)³, from the Brazilian Institute of Geography and Statistics (IBGE), confirmed the scenario that was already expected: the registered unemployment rate, between September and November 2020, was 14.1%, higher than that of the same period in 2019, of 11.2%.

In this context, many MSMEs were on the verge of closing or were forced out of the market. In addition, a large number of those that remain are highly vulnerable. Two crucial and complementary issues in dealing with the current pandemic and in the effort to recover national economies are competition policy and market access for MSMEs.

As for competition policy, competition authorities in many jurisdictions have not been well-skilled to handle anti-competitive practices involving MSMEs during the covid-19 pandemic. Some have focused for the first reviewed the impact of their decisions on MSMEs and even made decisions that facilitated ⁴MSMEs to retain or gain access to markets and consumers.

According to UNCTAD⁵, six main trends among antitrust jurisdictions can be identified:

- a) governments are prioritizing support for existing companies;
- b) substantially more coordinated economic activities are being approved by competition regulators;
- c) access to markets is being reduced by international and intranational restrictions on the movement of people, goods and services;
- d) MSMEs are moving online and seeking to improve their ability to access markets using digital technology;
- e) more competition agencies are working directly with development agencies and MSME associations;
- f) Informal MSMEs are increasingly being recognized as an important factor in the consideration of competition and market access policies.

Although no one can consider the current moment to be positive, it is necessary to recognize that the pandemic, and the consequent challenges resulting from it, also brought the opportunity, by virtue of necessity, to leverage the digital inclusion of small businesses.

² Up to March 10, 2021.

³Pnad Contínua: research that provides the official unemployment rate. Available at: <https://www.ibge.gov.br/en/statistics/multi-domain/living-conditions-poverty-and-inequality/18083-annual-dissemination-pnadc3.html?=&t=o-que-e>. Access on 11/09/2020.

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⁵ "How COVID-19 Affects MSME Access To Markets and Competitive Capability: A Review of Key Issues and Recommendations for Future Action". UNCTAD, 2020.

2. Micro, small and medium-sized enterprises (MSMEs) in Brazil

MSMEs play a fundamental role in the Brazilian economy, accounting for more than a quarter of the Brazilian GDP. Together, the country's 9 million micro and small companies represent 27% of GDP, a result that has been growing in recent years. In 1985, IBGE estimated the participation of small companies in the Brazilian GDP at 21%. In 2001, the percentage increased to 23.2% and, in 2011, it reached 27%. In absolute values, the production generated by micro and small companies quadrupled in ten years, jumping from R \$ 144 billion in 2001 to R \$ 599 billion in 2011, in values at the time.

MSMEs are the main generators of wealth in Brazil's trade, as they account for 53.4% of the sector's GDP. In the GDP of the industry, the participation of micro and small companies (22.5%) is already close to the averages (24.5%). In the service sector, more than a third of national production (36.3%) comes from small businesses. Small businesses also employ 52% of the country's formal workforce and account for 40% of the Brazilian wage bill. In short, there are 9 million small businesses, which generate 27% of GDP, 52% of formal jobs and 40% of wages.

In Brazil, the actions taken by the Federal Government to restrict the movement of people and the operation of economic activities considered non-essential are in line with international experiences. Measures were taken to preserve jobs⁶, through the Emergency Employment and Income Maintenance Program, with a set of labor measures to deal with the state of public calamity, as well as measures to stimulate the economy with the payment of emergency aid to self-employed workers, informal and individual microentrepreneurs - MEI⁷.

These measures were part of an economic package that adds up to a total of R\$ 750 billion, aiming to ensure protection for individuals and companies, self-employed professionals, and beneficiaries of income transfer programs from the Federal Government. The extended duration of the measures that restrict the functioning of the market has negatively affected MEs⁸ and MEIs, which have little working capital to support the long period without billing or with low billing.

Research carried out by SEBRAE/FGV⁹, revealed a very difficult scenario for MSMEs during the lockdown period. The most worrying data raised in the survey, shows that the crisis experienced by MEs and MEIs is that 34.2% of MEs and 52.2% of MEIs believe that their business cannot function without their physical presence, that is, the measures of restrictions imposed interrupted the undertaking's operations

⁶ Law 14,020, of 2020 (Provisional Measure 936/2020, converted into law). Available at: http://www.planalto.gov.br/ccivil_03/_ato2019-2022/2020/Lei/L14020.htm. Access: 08/03/2021.

⁷ The individual microentrepreneur (MEI) works on her/his own and is legalized as a small entrepreneur, as long as she/he earns a maximum of 81 thousand reais per year, does not have participation in another company as a partner, administrator or holder and has at most one contracted employee who receives the minimum wage or the floor of the category.

⁸ The Micro Enterprises (MEs) are those companies whose annual revenue is up to R\$ 360 thousand. In addition, MEs can employ up to nine people (if it is business or services), or up to 19 (industrial or construction sector).

EPPs (Small Businesses) have annual gross revenue between R\$ 360 thousand and R \$4.8 million. EPPs in the commercial or service sectors must have between 10 and 49 employees and those in industry or construction, between 20 and 99 employees.

⁹ Crédito no Brasil e MPMEs em tempo de COVID-19. 3^a Edição do Sebrae, maio de 2020. Available at: https://fgvprojetos.fgv.br/sites/fgvprojetos.fgv.br/files/cra0dito_no_brasil_para_mpes_em_tempo_de_covid19_formatacaosite.pdf. Access on 08/03/2021.

The impact of the interruption of activities, the adoption of digital procedures and the retraction of demand itself, explain the reduction in monthly revenue since the beginning of the restriction measures caused by COVID - 19, reported by 88.9% of MEs and 88.6% of the MEI.

2.1 Working group on microeconomic reforms

Another initiative toward the development of small businesses in Brazil was undertaken by the Brazilian Federal Senate, which took the lead in 2017 to create within its Economic Affairs Committee, the Microeconomic Reforms Working Group¹⁰. The working group mission statement holds that the most prosperous nations are those that have been able to build an institutional and legal environment that stimulate entrepreneurship and facilitate production, wealth generation, employment, and income. The microeconomic environment in which companies operate is a fundamental determinant of their productivity and the country's competitiveness. A key conclusion of the report was that an environment favorable to the conception and development of micro and small businesses depends on the cost of capital financing, which is disproportionately high in Brazil, given the international standard.

During the working group public hearings, the Central Bank of Brazil recognized the importance of a structural and sustainable drop in the cost of credit for increasing the economy's efficiency and productivity. In this sense, the Brazilian monetary authority defends an agenda of incentive to default (e.g. *Cadastro Positivo*) to the execution of guarantees, to the promotion of a reduction in administrative costs and to stimulate competition.

Due to technological and institutional innovations, banks are beginning to face competition from new agents, many of them micro and small, such as, for example, FinTech's. It is important that the future regulation of these financial services does not drive small firms out of the market, nor make them susceptible to be incorporated into large banks, thus cooling competition.

During its participation at the hearings, CADE emphasized that the problem of low productivity is directly linked to the issue of total factor productivity that is affected by the so-called “*Custo Brasil*”, which involves: protection of external competition, non-uniform and complex tax system, rigid labor legislation, excessive bureaucracy, precarious infrastructure, direction in credit, uncertain regulatory environment, high judicialization, slowness of the judiciary, legal uncertainty for new investors, low education, among others. Then, three points were raised regarding competition policy that would have an impact on the increase in productivity:

- A. an agenda that involves legislative changes and seeks the synchronization of interinstitutional procedures and the harmony of institutional relations;
- B. the implementation of normative frameworks and interinstitutional procedural flows with rationality from the “law and economics”; and

¹⁰ The Working Group on Microeconomic Reforms of the Federal Senate Economic Affairs Committee was coordinated by Senator Armando Monteiro Neto, former Minister of Industry, Foreign Trade and Services - MDIC and former president of the National Confederation of Industry - CNI.

C. more efficient institutions, with meritocratic management and decisions based on benchmarking, as well as with greater skill in interinstitutional relations, facilitating faster and more coherent decision-making, that is, without conflict.

In its conclusions, SEBRAE highlighted the issue of tax and bureaucratic complexity for entrepreneurs and for micro and small companies. The first issue was largely resolved by SIMPLES¹¹; however, bureaucracy still strongly affects entrepreneurs and their companies in Brazil.

Among its assumptions¹², the Federal Senate working group stressed the importance of encouraging competition and reducing cross-subsidies. It also highlighted the need to encourage the participation of new players to expand the competition and stimulate the supply of credit in the financial system, whether through cooperatives, fintechs (companies or innovative platforms in financial services) and simple credit companies (equity loans for small businesses).

2.2 Competition authorities in Brazil

According to article 3 of Law 12.529 / 11, the Brazilian System for the Defense of Competition - SBDC is established by the Administrative Council for Economic Defense - CADE and the Secretariat of Competition and Competitiveness Advocacy - SEAE, of the Ministry of Economy.

CADE is a federal agency (*autarquia federal*), linked to the Ministry of Justice and Public Security, which is ultimately responsible for the application of competition policy in the country, investigating and judging cases of mergers and acquisitions and anticompetitive conduct. Its decisions can only be reviewed by the judiciary, exclusively on matters of legality and proportionality. CADE is also responsible for responding to inquiries and instructing the public on the forms of violation of the economic order.

SEAE is responsible for the advocacy of competition to all government institutions (federal, state, and local) and the public. This includes giving an opinion on proposals for legislative changes to regulatory acts submitted for public consultation by regulatory agencies, public and private entities; advocate legislative proposals in progress at the National Congress; prepare studies assessing the competitive situation of specific sectors of national economy; and to propose the revision of laws and regulations. SEAE also advises on other normative acts that affect or may affect competition in the various economic sectors of the country. Both CADE and SEAE, therefore, have competence to advocate for competition in Brazil, both in the public and private sectors.

¹¹ The Integrated System of Payment of Taxes and Contributions of Micro and Small Enterprises - SIMPLES is a simplified taxation system, created in 1996, by means of a provisional measure, converted into Law nº 9.317 / 1996, whose objective is to facilitate the collection and inspection of taxes by micro, small and medium-sized companies.

¹² Available at :

file:///Users/fernandodemagalhaesfurlan/Downloads/ARQUIVO_PORTAL_CAE_2636ComissaoPermanenteCAE20171130.pdf. Access on: 04/11/2020.

2.3 Brazilian Government department responsible for the development of small business

Undersecretariat for Micro and Small Business Development, Entrepreneurship and Crafts of the Ministry of Economy

The reformulated Brazilian Ministry of Economy¹³ is also responsible for the national policies to support MSMEs. The Undersecretary reports to the Secretariat for Development of Industry, Commerce, Services, and Innovation, which in turn reports to the Special Secretariat for Productivity, Employment and Competitiveness.

2.4 Institutions for the support of MSMEs in Brazil

The Constitution of the Federal Republic of Brazil contains an umbrella part that deals with the economic order in Article 170, whose provisions reflect the general principles of economic activity. Among them are free competition; parts, articles, chapters (IV) and the favored treatment for small businesses (IX). The Brazilian Constitution elects free enterprise as the foundation of the economic order. The constitution acts as a guiding principle for all other institutions that support MSMEs in Brazil.

SEBRAE is a private, non-profit institution that promotes competitiveness and sustainable development of micro and small companies (with annual gross sales of up to R \$ 4.8 million. It was created by decree nº 99.570 / 90, which complements Law nº 8.029/90. It is maintained by transfers from companies in the country, proportional to the value of their payrolls¹⁴.

SEBRAE works to strengthen entrepreneurship and accelerate the process of formalizing the economy, through partnerships with the public and private sectors, training programs, access to credit and innovation, encouraging associations, fairs and business roundtables. The solutions developed by the organisation seek to serve the entrepreneur who intends to open his first business, to small companies that are already consolidated and seek a new position in the market. It operates throughout the national territory. In addition to the national headquarters in Brasília-DF, the institution has service points in the 27 states, where courses, seminars, consultancies and technical assistance for small businesses are offered.

2.5 Public policies of entrepreneurship and access to credit for MSMEs in Brazil

Organization for Economic Cooperation and Development (OECD) carried out a study¹⁵ on public policies for micro and small enterprises (MPEs) and entrepreneurship in Brazil. The OECD listed some recommendations for improving Brazilian public policies on access to credit:

¹³ The Ministry of Economy of Brazil was created by Decree 9,679, of January 2, 2019, as a result of the merger of four former Ministries: Finance; Planning, Development and Management; Industry, Foreign Trade and Services; and Labor.

¹⁴ The social contribution rates for “Sistema S” vary according to the type of taxpayer. The contribution is paid by Social Security on the amount of remuneration paid to all employees. The rate of business contribution to learning services (Senai, Senac and Senat) is 1%. The exceptions are Senar, which has a variable contribution of 0.2% to 2.5%, and Sescoop, for which the rate is 2.5%. Social services (Sesi, Sesc and Sest) receive 1.5% of the payroll.

¹⁵ Available at: <https://www.oecd.org/economy/surveys/Brazil-2018-OECD-economic-survey-overview-Portuguese.pdf>. Access on March 10, 2021.

- ✓ Expand the use of government loan guarantees to further strengthen access to finance for MSMEs;
- ✓ Introduce non-financial forms of support in public development banks, based on evidence that the combination of financial support with technical advice improves the performance of supported companies and / or partner financial institutions;
- ✓ Advance in the current trend in which BNDES loans are increasingly directed to MSMEs;
- ✓ Consider launching a specific credit line for startups, as done by other countries, such as the United Kingdom (Beginner Loans Program);
- ✓ Encourage more competition in the credit market, simplifying entry procedures for foreign banks, but continuing to encourage the development of alternative domestic creditors (for example, credit unions and information technology organizations);
- ✓ Reform insolvency procedures, applying deadlines within the closure procedure, encouraging extrajudicial agreements and strengthening the rights of creditors;
- ✓ Continue to develop an appropriate regulatory framework for credit unions.

Other commendable initiatives were cited by the Brazilian National Congress and the Central Bank of Brazil, which include, for example, *Open Banking*¹⁶ and the *Cadastro Positivo*¹⁷ of users.

Policies for accessing credit, transparency and deregulation of the financial market are crucial for small businesses. Without the ability to finance their development and growth, small businesses would be doomed to remain small, without access to the natural process of economic evolution.

3. Competition policy and market access

Competition policy is used to govern the competition process between companies, by guaranteeing the functioning of the market in order to offer a level playing field for all, and a net benefit for society and the economy. Market access is the ability of companies to enter and operate in a domestic or international market. The ability of a company to freely offer its goods or services to consumers, both current and potential, is essential to its survival, and therefore an unavoidable issue for competition policy.

This interaction between competition policy and market access plays an even more crucial role in ensuring the survival of MSMEs, both during and after COVID-19. In this context, some intuitive recommendations, some cited above, range from supporting MSMEs to access new markets, assistance to help them operate more

¹⁶ Open Banking, which started operating in 2021, considers that bank details belong to customers and not to financial institutions. Thus, as long as authorized by the account holder, financial institutions will share data, products and services with competitors and suppliers, through the opening and integration of technology platforms and infrastructures. Bank customers will be able, for example, to view, in a single application, the consolidated statement of all their bank accounts and investments. It will also be possible to make transfers of funds or payments, without the need to directly access the bank's website or application.

¹⁷ The data used by the Credit Bureau starts to inform the punctuality of the consumer when paying their bills and records commitments and payment habits, listing the good payers and those who fulfilled their commitments on time. With the positive registration, it can be verified, for example, that the delay is just a punctual problem in view of the consumer's history of good payer (default). People who can be good payers start taking out loans at lower interest rates or longer terms, failing to pay for the risk of bad payments, encouraging economic growth.

effectively in the digital economy and building institutional capacity for associations of MSMEs and representative bodies.

But, however, only a minority of MSMEs sell their products or services internationally. In addition, in many sectors where MSMEs are predominant, such as personal services, health and related services, travel and tourism, the restriction of physical movement of consumers, derived from the pandemics, denies MSMEs access to these consumer markets.

3.1 Application of Competition Policy and MSMEs

Studies have shown that most MSMEs have very limited knowledge of their rights and obligations in relation to competition laws, and even less inclination to use them to their benefit, unless they are assisted by a trade association or similar body¹⁸. This also applies when an MSME is the victim of a violation of competition law by another company. Many are not even aware of such violations or are aware of the remedies available. In addition, the legal system in most countries is slow, expensive to use and rarely offers a commercially viable outcome. Consequently, in competition matters, small businesses are effectively being denied access to justice and effective economic public policies¹⁹.

For developing economies, where knowledge of competition laws and policies may be even more limited for small businesses, representative associations have a key role to play, both in educating their MSMEs on the existence of competition laws, and in helping to apply and enforce them²⁰.

Although it is recognized that associations can often be instruments for, example, the formation of "innocent" cartels involving MSMEs²¹, it must also be considered that lawful business collaboration can result in better access to markets. Empirical research²² finds that horizontal ties allow for the collective use of resources, as well as joint product innovation and provide a means of circumventing scale and infrastructure limitations²³. Likewise, vertical ties can provide effective ways to update national companies,

¹⁸ Schaper, M. (2016) "Small Business, The Law and Access to Justice: Issues and Challenges" in Clark, D.; McKeown, T. & Battisti, M. (eds) (2016) *Rhetoric and Reality: Building Vibrant and Sustainable Entrepreneurial Ecosystems*, Melbourne: Tilde Press, pp.21-35. *Apud* "How COVID-19 Affects MSME Access To Markets and Competitive Capability: A Review of Key Issues and Recommendations for Future Action". UNCTAD, 2020.

¹⁹ Australian Small Business & Family Enterprise Ombudsman (2018) *Access To Justice: Where Do Small Businesses Go?* Canberra: ASBFEo; Burgess, R. (2016) "SMEs and Private Enforcement of Competition Law: Achieving Redress" Global Competition Law Review, No. 3, pp.85-88. *Apud* "How COVID-19 Affects MSME Access To Markets and Competitive Capability: A Review of Key Issues and Recommendations for Future Action". UNCTAD, 2020.

²⁰ Burgess, R. Trade Associations: Competition Law Advocates or Offenders? in Schaper, M. and Lee, C. (eds) (2016) *Competition law, Regulation and SMEs in the Asia-Pacific: Understanding the Small Business Perspective*, Singapore: ISEAS – Yusof Ishak Institute. *Apud* "How COVID-19 Affects MSME Access To Markets and Competitive Capability: A Review of Key Issues and Recommendations for Future Action". UNCTAD, 2020.

²¹ How COVID-19 Affects MSME Access To Markets and Competitive Capability: A Review of Key Issues and Recommendations for Future Action". UNCTAD, 2020.

²² Mesquita, L. & Lazzarini, S. (2009) Horizontal and vertical relationships in developing economies: Implications for SMEs' access to global markets in *New Frontiers in Entrepreneurship*, Springer, pp. 31–66. *Apud* "How COVID-19 Affects MSME Access To Markets and Competitive Capability: A Review of Key Issues and Recommendations for Future Action". UNCTAD, 2020.

²³ Markusen, A. (1996) Sticky Places in Slippery Space: A Typology of Industrial Districts. *Economic Geography*, Vol 72, No.3, pp. 293-313. *Apud* "How COVID-19 Affects MSME Access To Markets and Competitive Capability: A Review of Key Issues and Recommendations for Future Action". UNCTAD, 2020.

facilitating the transfer of technology, knowledge, and skills, improving business and management practices, and facilitating access to markets.

Business associations of MSMEs, therefore, have an essential role in raising awareness and complying with the mechanisms available in competition laws to exempt or authorize conduct. It is natural that MSMEs, individually, are afraid of reprisals or damage to their reputation with suppliers and consumers, and representation through associations is crucial.

3.2 Effectiveness of competition policies and market access among MSMEs

Competition authorities have a lot of room to improve their involvement with MSMEs in order to guarantee the usefulness of competition policy and law for this sector. On a practical level, many agencies are composed of civil servants with little or no experience in operating a small business and little involvement in the sector's day-to-day activities. MSMEs, and even their associations, may have limited knowledge and understanding of competition laws, which makes competition advocacy, education, and training important tools for improving their access to markets²⁴.

Some competition authorities, in different parts of the world, are already focused on improving their involvement with MSMEs. In Hong Kong, Mexico, South Africa, the United Kingdom, Australia, the Philippines, Singapore and Malaysia competition authorities regularly engage with MSMEs or prepare publications or sessions targeted at the sector.

The Malaysian Competition Commission, for example, provided a distance learning course, specifically aimed at complying with competition laws by MSMEs. The authorities of Mexico and South Africa have published guides on antitrust enforcement for MSMEs²⁵.

In Brazil, even though CADE's actions were quick in relation to doubts about the application of competition law during the COVID-19 pandemic, either by issuing clarifications on its website, or by instructing and judging cases, there is no specific guide for MSMEs or any competition advocacy activity aimed at the sector or its representative associations, either from CADE or from SEAE/ME.

This deficiency was recently pointed out by the Brazilian Bar Association stating that: -

“It is necessary to strengthen the advocacy side of the council. CADE is very informative for those who work directly with the topic but need to focus more on

²⁴ UNCTAD (2008) Creating business linkages https://unctad.org/en/Docs/diaeед20091_en.pdf (accessed on 28 December 2020).

²⁵ See, for example: FAQs for SMEs publicada pela Hong Kong Competition Commission (<https://www.cedb.gov.hk/citb/doc/en/publication/faq.pdf>); A autoridade da África do Sul publicou guia sobre defesa da concorrência para MPMEs: “Competition Act – A Guide for SMEs: <http://www.compcom.co.za/wp-content/uploads/2017/11/SME.pdf>.

*small companies. Someone who does not have a specialized structure has many difficulties, including finding information on the website*²⁶.

3.3 Competition advocacy and access to financial markets

In 2018, CADE and the Central Bank published Joint Normative Act No. 01²⁷, which established procedures to harmonize the revision of M&A and anticompetitive conduct cases within the National Financial System (SFN).

Art. 3, III, of the Joint Normative Act No. 01/2018, provides that the Central Bank and CADE, observing the duty of secrecy, will maintain communication and exchange of data and information that allow, among others, the verification competitive infractions, including the provision of supporting documentation.

Art. 40 of the same joint normative act, provides that the Central Bank and CADE will meet, whenever necessary, to discuss topics that may give rise to normative action with competitive impacts on markets and institutions submitted to the Central Bank's supervision or surveillance; and technical cooperation in the context of administrative processes in the control of merger and acquisitions and in the investigation of violations of the economic order, involving institutions supervised by the Central Bank, including with their participation.

The good cooperation between the regulator of the financial system and the competition authority was considered so crucial that the Federal Senate took the initiative and approved the Complementary Bill (PLP)²⁸ that provides for the defense of competition in financial institutions. It also provides guidelines of cooperation and sharing of competences between the Central Bank of Brazil and the Administrative Council for Economic Defense (CADE) in competition matters. The legislative proposal is now being processed in the Chamber of Deputies (*Câmara dos Deputados*). Article 2 of the PLP provides for the Central Bank of Brazil and CADE to maintain a permanent forum for communication, through a technical cooperation agreement.

In spite of the importance and essentiality of the work of the Secretariat of Competition and Competitiveness Advocacy (SEAE), of the Ministry of Economy, CADE, as an independent authority, endowed with police power, and, therefore, with the capacity to intervene or sanction economic agents, public or private, is ultimately responsible for advocating for competition in the country. In such context, bringing into force PLP 499/2018 would help to strengthen legal certainty in the country for competition policy in the financial sector.

The case of Means of Payment (“Maquininhas”) by CADE

²⁶ "OAB criticizes Cade's performance with small and medium-sized companies". Available at: <https://diariodocomercio.com.br/legislacao/oab-critica-atacao-do-cade-junto-as-pequenas-e-medias-empresas>. Accessed on 10/01/2021.

²⁷ Disciplines the procedures applicable to the analysis of acts of economic concentration involving financial institutions; and the investigation of violations of the economic order involving institutions subject to the supervision or surveillance of the Central Bank of Brazil.

²⁸ PLP 499/2018. Pending in the Chamber of Deputies.

Administrative inquiry²⁹ initiated by CADE originally sought to ascertain evidence that recently established credit card issuers would be facing difficulties imposed by incumbents (financial institutions) for their development. CADE investigations first sought to scrutinize the remaining exclusive relationships between credit card brands and the market's leading accreditors³⁰. CADE analyzed the occurrence of possible anticompetitive conduct by already established agents (incumbents) that would be limiting or preventing the access of new competitors to the market.

The Central Bank of Brazil recognizes the possibility of using electronic money based on the design of a digital payment account (the means of payment or "maquininhas"). This allows the points of sale (stores, bars, etc.) to receive values independently from a bank account. This system affirms a culture of competition, innovation, and financial inclusion, since in Brazil it is estimated that there are 15 million "unbanked" people.

Digital accounts, due to their reduced costs in relation to traditional bank accounts, allow merchants to receive payments through cards, slips and transfers, reducing the use of paper money and increasing receiving options, without any connection to the accreditation activity.

In addition, prepaid digital accounts are operated without going through the traditional banking network, through payment arrangements made by the FinTech's themselves, precisely because they do not involve monetary risk, since, unlike banks, they cannot take deposits from customers or operate in the financial market.

The results of the agreements signed by CADE with the investigated companies were immediate and expressive: with the breaking of the accreditation / flag exclusivity, the rate charged for credit cards fell by 20%, according to ABECS (Brazilian Association of Credit Card and Services Companies).

This was an emblematic case because it resulted in the possibility of any street vendor receiving payments through a portable payment gadget (*maquininha*), via debit or credit card, from any brand or accreditation company. As a result, countless small businesses, even informal ones, were included financially and their businesses were highly leveraged.

4. Impact of COVID-19 on Market Access and Competition Policy for MSMEs

In general, there are a number of common characteristics for small enterprises: they are independent; founded and managed by the owners; they have a small number of employees; produce or sell a limited range of goods and/or services; have limited market shares and a small customer base; and have limited access to support resources such as finance, advice, and assistance.

²⁹ Inquérito Administrativo nº 08700.000018/2015-11. Available at: https://sei.cade.gov.br/sei/modulos/pesquisa/md_pesq_processo_exibir.php?2pXoYgv29q86Rn-fAe4ZUaXIR3v7-gVxEWL1JeB-

³⁰ Cielo, Visa accreditation for Banco do Brasil and Bradesco; and Rede, Mastercard accreditation for Itaú-Unibanco. Access on 03/03/2021.

Most MSMEs are particularly vulnerable. Many of them have not sufficient financial reserves to fight a sudden drop in income. As a group, MSMEs have a low survival rate, which can easily be threatened by sudden unexpected shocks or changes in consumer behavior; not surprisingly, they also typically have a much shorter lifespan than larger competitors. Besides difficulties in market access, as we will explore further, small businesses encounter other troublesome challenges such as lack of regulatory knowledge and compliance and limited interaction with public agencies and business associations.

Another major feature of the MSME sector is the high proportion of firms which operate within the so-called informal sector or informal economy – that is, outside the normal formal legal requirements of governments.

Brazil is no exception, and its peculiarities bring extra challenges for small entrepreneurs. The most common include the complexity and burdensomeness of the Brazilian tax system, even with the most recent changes for the simplification in the tax bureaucracy. The restricted access to credit, as discussed above, is another problem for MSMEs, as well as personnel qualification, including on finance, management and Internet and Social Networks.

Naturally, the COVID-19 crisis brought enhanced challenges for MSMEs, especially in market access.

At the beginning of the pandemic, it was estimated that between a quarter and a third of all MSMEs in the world could close permanently because of it³¹, according to the estimates below:

Country	Estimated closures	Estimated date of closure
Brazil	500.000	July 2020
Philippines	26% of business	July 2020
South Africa	60% of business	July 2020
United Kingdom	24% of business	April 2020
United States	7.5 million	April 2020

Table 4.1: Probable permanent and temporary closures of MSMEs.

In Latin America, the United Nations Economic Commission for Latin America, and the Caribbean (ECLAC) estimates that the pandemic will force 2.7 million companies to close their doors, leaving 8.5 million workers unemployed³². ECLAC also considers microenterprises to be the largest single group of companies closed during the pandemic, accounting for up to 96% of all closures. The sectors most affected are wholesale and retail trade, hotels and restaurants, real estate, social and personal services, and small-

³¹ McKinsey (2020) Which Small Businesses Are Most Vulnerable to COVID - And When. Disponível em: <https://www.mckinsey.com/featured-insights/americas/which-small-businesses-are-most-vulnerable-to-COVID-and-when>. Acesso em 08/03/2021. Apud “How COVID-19 Affects MSME Access To Markets and Competitive Capability: A Review of Key Issues and Recommendations for Future Action”. UNCTAD, 2020;

³² ECLAC (2020) Recovery Measures for the Tourism Sector in Latin America and the Caribbean. Available at: <https://www.cepal.org/en/publications/45767-recovery-measures-tourism-sector-latin-america-and-caribbean-present-opportunity>. Access on 11/01/2021. Apud “How COVID-19 Affects MSME Access To Markets and Competitive Capability: A Review of Key Issues and Recommendations for Future Action”. UNCTAD, 2020.

scale manufacturing. These sectors generate about a quarter of the region's GDP and absorb almost a third of the workforce.

In the Brazilian context, SEBRAE has carried out a series of surveys³³ with the MSMEs sector, since the beginning of the pandemic, which gives us a very comprehensive perspective of its past, current, and future challenges³⁴.

The pandemic has already resulted in significant disruptions to global supply chains, trade, and international tourism. Jurisdictions such as the European Union, the United States and China have restricted part or all their international trade, the effect of which was a drop in global trade volumes, which could reach 32 percent, according to WTO estimates³⁵.

In addition, MSMEs tend to depend on a limited number of suppliers and are therefore more likely to be affected by disruptions in the supply chain. Many MSMEs that participate in global or regional supply chains may also find it difficult to rebuild connections after the pandemic.

Since the coronavirus pandemic, a new dynamic in business relations between countries seems to be drawing. Preventive measures are being adopted in order to minimize the risks, especially in those countries where the spread of the virus has already been controlled. Political decisions adopted by governments will be able to repercussions directly into trade relations. The form of containment of virus propagation, measures implemented for the preservation of human life and internal political disputes (in the case of Brazil) are examples of factors that will be analyzed for the conclusion of new trade partnerships.

With the limitation of movement of persons, prevention protocols will be adopted both at ports, airports, and commercial establishments. Tourist activity will remain seriously impacted and some countries will keep the access limitation of foreigners. New

³³ Such surveys include, but are not limited to:

- 1) https://databasebrae.com.br/wp-content/uploads/2020/10/Impacto-coronav%C3%ADrus-nas-MPE-8%C2%AAedicao_DIRETORIA-v6.1.pdf
- 2) https://databasebrae.com.br/wp-content/uploads/2020/09/Impacto-coronavi%C3%81rus-nas-MPE-7%C2%AAedicao_DIRETORIA-v7.pdf
- 3) https://databasebrae.com.br/wp-content/uploads/2020/09/Impacto-coronavi%C3%81rus-nas-MPE-6%C2%AAedicao_DIRETORIA-v12.pdf
- 4) <https://databasebrae.com.br/wp-content/uploads/2020/08/Impacto-coronav%C3%ADrus-nas-MPE-6a-edicao-historico-v1.pdf>
- 5) https://databasebrae.com.br/wp-content/uploads/2020/09/Impacto-coronavi%C3%81rus-nas-MPE-5%C2%AAedicao_Apresentacao-DIRETORIA-v8.pdf
- 6) https://databasebrae.com.br/wp-content/uploads/2020/09/Impacto-coronav%C3%ADrus-nas-MPE-4%C2%AAedicao_Apresentacao-DIRETORIA-v3.pdf
- 7) <https://databasebrae.com.br/wp-content/uploads/2020/06/Impacto-coronav%C3%ADrus-nas-MPE-4a-edicao-historico-v3.pdf>
- 8) https://databasebrae.com.br/wp-content/uploads/2020/05/Impacto-do-coronav%C3%ADrus-nas-MPE-3%C2%AAedicao_Mei-MPE-e-geral.pdf
- 9) https://databasebrae.com.br/wp-content/uploads/2020/04/Impacto-do-coronav%C3%ADrus-nas-MPE-2%C2%AAedicao_geral-v4-1.pdf
- 10) https://databasebrae.com.br/wp-content/uploads/2020/04/Impacto-do-coronav%C3%ADrus-nas-MPE_geral-1.pdf

³⁴ MSMEs COVID-19 challenges in Brazil include but are not limited to: expressive restrictions in the movement of people; increase in the proportion of companies that have changed their way of functioning, instead of interrupting the operations temporarily; delayed debts, lay-offs, restricted access to credit, among others.

³⁵ WTO (2020) Helping MSMEs Navigate the COVID Crisis. Available at: https://www.wto.org/english/tratop_e/COVID19_e/msmes_report_e.pdf. Access on 14/01/2021.

protocols should be set up for the circulation of products and services and, even if there is no fall in demand - as in the case of agribusiness (Brazilian competitive advantage) - the entry of many products will face delays in release in various ports and airports.

4.1 Access to digital markets by small companies in the post COVID-19

The pandemic has contributed radically to “pushing” digital transformation for small businesses. Recent published research shows that consumers in emerging economies, more than in developed countries, have opted for online shopping. This trend is expected to continue in the future after COVID-19³⁶.

Technological innovation represents an important competitiveness strategy and many MSMEs were digitalized during the pandemic to survive, changing the way they do business.

However, there is a lack of digital readiness among many small businesses. MSMEs in developing countries face specific challenges, such as the quality of IT infrastructure and related services in these regions, which puts their companies at a competitive disadvantage compared to companies based in industrialized countries and, in comparison, larger national companies, who generally have more resources online.

There may be unequal access to ICT (information and communication technologies) within the same country (i.e. last mile barriers), power supply is often expensive and unreliable, many managers and employees lack digital literacy and in some communities there may be low levels of consumer familiarity with online tools. In addition, MSMEs are typically less protected against cyberattacks than their larger counterparts.

Nevertheless, access to digital platforms is vital for the diversification of MSMEs and has become essential for competition during (and after) the pandemic. The growing dependence on digitalization raises competitive concerns in a number of different facets, such as the institution of policies by providers that restrict their users' freedom to also negotiate with competitors, or stipulate unreasonable fees and conditions.

According to a recent OECD document³⁷, digital markets deserve priority in post-pandemic recovery, as digital platforms are among the few winners of the crisis. Total online spending in the U.S., for example, increased 76% year-over-year last May³⁸. As a result, the market power of some of these companies, which has raised concerns in certain markets before, may continue to expand and justify scrutiny by competition authorities.

³⁶ UNCTAD (2020), ‘COVID-19 and E-commerce – Findings from survey of online consumers in 9 countries’, 8 October 2020. Disponível em: <https://unctad.org/news/COVID-19-has-changed-online-shopping-forever-survey-shows>. Apud “How COVID-19 Affects MSME Access To Markets and Competitive Capability: A Review of Key Issues and Recommendations for Future Action”. UNCTAD, 2020. Acesso em 14/01/2021.

³⁷ OCDE (2020), O papel da política de concorrência na promoção da recuperação econômica. DAF / COMP / WD (2020) 78. Available at: www.oecd.org/daf/competition/the-role-of-competition-policy-in-promoting-economicrecovery-2020.pdf. Access on 03/04/2021.

³⁸ Adobe Analytics (2020), Digital Economy Index. Disponível em: <https://www.adobe.com/experiencecloud/digital-insights/digital-economy-index.html>. Apud OCDE (2020), O papel da política de concorrência na promoção da recuperação econômica. DAF / COMP / WD (2020). Available at: www.oecd.org/daf/competition/the-role-of-competition-policy-in-promoting-economicrecovery-2020.pdf. Access on 03/04/2021.

As we can see in the results of the survey below (3.5.), small businesses in Brazil are using online tools to adapt and stay in the market. Most of MSMEs in the country are either already using technology and want to increase their online reach or are keen to enter the cyber markets.

Nevertheless, MSMEs find it somehow difficult to effectively ply their trade on digital platforms., which means they face challenges to expose their goods on the Internet and to sell them online also. One of the main reasons for that in Brazil is the lack of computer/online skills.

On the other hand, CADE has dismissed some strategic investigations, such as Administrative Process 08700.009082/2013-03, in June. 2019, against Google for "scraping", which consists of copying competitive content of rivals for use in their own thematic search engines. Google would be "scraping" product ratings that clients left on the rival sites Buscapé and Bondfaro, to display them as content of their own price comparison service, Google Shopping. CADE understood that "there would be no rationality in the supposed anti-competitive conduct".

Nevertheless, CADE decided to continue to investigate competition conditions and eventual abuse of dominant position by Google on the search market and on the vertically related news market.

4.2 MSMEs are going online

An evident trend among MSMEs worldwide is the large-scale migration of commercial activity to the online environment. Whether through web pages, social media, chat functions or a combination of these, many companies are now using these tools to sell products and services.

Different approaches are being used by MSMEs. In some cases, small businesses are creating or redesigning websites to make them more attractive and to allow direct purchases by consumers for the first time. Some companies are selling directly, through various social media platforms. Others are using large-scale aggregate platforms, such as eBay, Amazon and the like. Those companies that were exploring online advertisement and sales already were more likely to take advantage and capitalize on e-commerce. The Chinese government, for example, is encouraging platform companies to cut entry fees³⁹, so small business would have more facilitated access to online sales and advertise. Such example should be, if not followed by other countries, at least inspiring for future action.

However, the success of these changes depends, to a large extent, on the competitiveness of the logistics and transport sectors. A survey conducted in July 2020 by the United Nations Economic Commission for Africa, for example, found that 58% of African companies encountered challenges in terms of product transportation and logistics, compared to just 30% of service providers⁴⁰.

³⁹ UNCTAD, 2020. "How COVID-19 Affects MSME Access To Markets and Competitive Capability: A Review of Key Issues and Recommendations for Future Action". UNCTAD, 2020. Access on 28/02/2021.

⁴⁰ UN Economic Commission for Africa (2020) Reactions and Outlook To COVID-19 in Africa: African Business Survey Results, July [online]. Available at: https://www.uneca.org/sites/default/files/PublicationFiles/COVID-19_africa_impact_survey_july_2020-en-final.pdf. Apud "How COVID-19 Affects MSME Access To Markets and Competitive Capability: A Review of Key Issues and Recommendations for Future Action". UNCTAD, 2020. Access on 18/01/2021.

Although online commerce has been a major facilitator of access to new and existing customer markets for small-scale entrepreneurs, in many developing economies, , access to the digital market is limited by the lack of adequate communication infrastructure, by precarious access to the internet, due to limited capacity wi-fi and, mainly, due to the lack of digital skills.

In Latin America, where only two thirds of the population have access to the Internet⁴¹, this becomes a significant problem of digital exclusion and makes it difficult for small businesses to access the virtual world⁴². UNCTAD data informs that only one in five people in least developed countries have access to the Internet and less than 5% of people in developing countries buy products online⁴³.

The UNCTAD B2C E-commerce Index 2020⁴⁴ took a closer look at the Latin American and Caribbean region, which represents 9% of the world population aged 15 and over and 11% of the world's Internet users. However, the region's share of global online buyers was just 6% of the global total in 2019.

The UNCTAD report also notes that five countries account for 92% of online shoppers in the region, far more than their share (72%) in the general population. The lack of reliability in postal services is the biggest weakness of the region's e-commerce infrastructure, especially in the Caribbean.

As seen globally, COVID-19 has boosted online shopping in the region. For example, 7.3 million Brazilians made online purchases for the first time during the pandemic. In Argentina, the number of online shoppers for the first time during the pandemic was equivalent to 30% of the 2019 online shopping base.

Another challenge, as seen, is the lack of relevant skills and knowledge among employees and small business owners. The limited understanding of how digital platforms work, the low levels of participation in social media and the limited skills in building and maintaining websites can restrict the ability of MSMEs to enter and remain online.

Therefore, the need for broad, simple, and practical digital training for small entrepreneurs is evident. Such technological knowledge deficiencies are even more felt amongst informal MSMEs, that lack not only knowledge, but access to official programs and aide.

⁴¹ Informe especial COVID 19 “Universalizar el acceso a las tecnologías digitales para enfrentar los efectos del COVID-19” agosto 2020. Available at: https://repositorio.cepal.org/bitstream/handle/11362/45938/4/S2000550_es.pdf. Access on: 28/02/2021.

⁴² Maloney A. (2020), Could Coronavirus Lockdown Help Close Latin America's Digital Divide?, World Economic Forum. Disponível em: <https://www.weforum.org/agenda/2020/05/could-lockdowns-help-close-latin-americas-digital-divide>. Apud “How COVID-19 Affects MSME Access To Markets and Competitive Capability: A Review of Key Issues and Recommendations for Future Action”. UNCTAD, 2020. Access on 18/01/2021.

⁴³ UNCTAD (2020) The COVID Crisis: Accentuating the Need to Bridge Digital Divides. Disponível em: https://unctad.org/en/PublicationsLibrary/dtinf2020d1_en.pdf. Apud “How COVID-19 Affects MSME Access To Markets and Competitive Capability: A Review of Key Issues and Recommendations for Future Action”. UNCTAD, 2020. Access on 18/01/2021.

⁴⁴ The UNCTAD B2C E-commerce Index 2020: Spotlight on Latin America and the Caribbean. Disponível em: <https://unctad.org/webflyer/unctad-b2c-e-commerce-index-2020-spotlight-latin-america-and-caribbean>. Access on: 01/03/2021.

China, for example, has adopted a number of policies to encourage MSMEs to use online tools for remote work, help them expand their marketing channels and thereby accelerate the digital transformation⁴⁵. In the Philippines, Congress is proposing a bill with a series of measures designed to stimulate the economy and promote business continuity, including the acceleration of online commerce and the digitization of MSMEs⁴⁶.

Finally, there is the issue of equal access to e-commerce. Larger companies generally have a greater ability to gain access to the online environment than smaller companies. For example, larger companies may employ a strategy to protect multiple URLs and optimize search engines to prevent access by other companies - a strategy that is not illegal, but is unlikely to be available to small businesses, without the financial resources or time to carry out such an activity.

Several platforms have also been accused of employing allegedly anti-competitive practices that harm smaller companies. For example, the European Commission fined Google € 2.42 billion in 2017 for abusing its dominant position by giving preference to its own website when comparing prices on its search engine⁴⁷. In Brazil, CADE decided to discontinue an administrative proceeding⁴⁸ to investigate whether Google would have placed its Google Shopping in a privileged position within the results of its Internet search engine (Google Searches), violating the neutrality of the algorithm to favor its own service to the detriment of competitors.

4.3 Competition policy in Brazil during COVID-19

Mergers and acquisitions⁴⁹ in Brazil were somehow stimulated by the crisis resulting from the pandemics, and CADE faced an increase in the volume of analysis of large transactions⁵⁰.

⁴⁵ World Bank (2020) Map of SME-Support Measures in Response to COVID. Available at: <https://www.worldbank.org/en/data/interactive/2020/04/14/map-of-sme-support-measures-in-response-to-COVID>.

Apud "How COVID-19 Affects MSME Access To Markets and Competitive Capability: A Review of Key Issues and Recommendations for Future Action". UNCTAD, 2020. Access on 18/01/2021.

⁴⁶ Aquende, E. (2020) "Balancing Competition Law and the Preference for Filipino Businesses" Business Mirror. Available at: <https://www.phcc.gov.ph/column38-bm-ceba-balance-complaw-filipino-businesses/>. *Apud* "How COVID-19 Affects MSME Access To Markets and Competitive Capability: A Review of Key Issues and Recommendations for Future Action". UNCTAD, 2020. Access on 18/01/2021.

⁴⁷ Google LLC and Alphabet Inc. v. European Commission (Case T-612/17). Available at: <http://curia.europa.eu/juris/liste.jsf?language=en&td=ALL&num=T-612/17>. Access on: 18/01/2021.

⁴⁸ Administrative Proceeding N. 08012.010483/2011-94.

⁴⁹ In 2020, 1038 transactions were announced, a volume 48% higher than the average for the same period in the last 5 years (701 transactions), with an increase of 14% in relation to the previous year (912 transactions). In 2020 the record for the historical series was broken (which had been reached in December 2019), reinforcing a trend of accelerated recovery in the M&A market, strongly affected by the effects of COVID-19 between April and June 2020. PwC Brasil. Mergers and Acquisitions in Brazil - December, 2020. Available at: <https://www.pwc.com.br/pt/estudos/servicos/assessoria-tributaria-societaria/fusoes-aquisicoes/2020/fusoes-e-aquisicoes-no-brasil-december-20.html>. Accessed on: 01/03/2021.

⁵⁰ There was a small increase from 436 cases notified to CADE of acts of economic concentration in 2019 to 469 cases in 2020.

However, the methodology of analysis of mergers and acquisitions was not affected by the pandemic, according to the Brazilian authority⁵¹.

An important discussion has been the possibility for the authority to recognize failing firm defense allegations in certain operations. That is, in certain situations, can be less harmful for a company in crisis to merge or be acquired by a competitor, thus guaranteeing job retention, tax collection and consumer and creditor satisfaction. However, CADE jurisprudence has been very careful in accepting failing firm doctrine, performing a thorough exam of less constraining alternatives for competition.

CADE also examined possible anti-competitive practices during the pandemic and approved several mechanisms for cooperation between competitors to overcome the crisis and preserve its activities. For example, in the food and beverage sector, cooperation agreements were examined, such as that signed between Ambev and Pepsi, on May 19, 2020. In this case, CADE considered five conditions for the approval of cooperation between competitors: i) exceptionality of the situation; ii) adoption of preventive measures; iii) the causal relationship between the crisis and the desired cooperation; iv) determined period of cooperation or coordination; and v) benefits generated and ways of passing them on to the consumer⁵².

As an example of collaboration between competitors and the effort of the Brazilian authority to help smaller companies in the recovery and supply chain, CADE authorized, in the context of the pandemic, the launch of a memorandum of understanding presented by a group of companies whose objective was to help them to continue operating.

According to the parts of the memorandum, the proposed measures will have important economic impacts on the trade of MSMEs. The arguments of the signatory companies were that, given the profound effects of the crisis, isolated actions would not have the capacity to produce effective results for the resumption of their activities.

The CADE Administrative Tribunal, unanimously, recognized that companies adopted the risk prevention antitrust protocols, safeguarded their prerogative to revise their position at any time, and recognized that among companies there was concern about restoring competitiveness and normal operations in the sector.

On July 6, 2020, CADE published a temporary information note⁵³ on collaboration between competitors to tackle the COVID-19 crisis. The Brazilian authority

⁵¹ CEPAL/UNCTAD Webinar on the Dialogue between competition authorities and MSMEs regulatory institutions on post COVID 19 recovery. Geneva and Santiago, 5 August 2020. Available at: [file:///Users/fernandodemagalhaesfurlan/Downloads/Report%20-%20ECLAC-UNCTAD%20Regional%20Meeting%205%20August%202020%20\(1\).pdf](file:///Users/fernandodemagalhaesfurlan/Downloads/Report%20-%20ECLAC-UNCTAD%20Regional%20Meeting%205%20August%202020%20(1).pdf). Access on: 20/11/2020.

⁵² Proceeding. N. 08700.002395/2020-51. Available at: https://sei.cade.gov.br/sei/20óculos/pesquisa/md_pesq_documento_consulta_externa.php?DZ2uWeaYicbuRZEfhBt-n3BfPLlu9u7akQAh8mpB9yPlqoilIhpHzrBPwmSBqPnKbW3f5D7XP-3cinp8w_IPI2RGNNNo3rIhlajkFTTncPvz-HllUvyw0sXWK8wyR6RX. Access on 04/25/2021.

⁵³ CADE (2020) Note on the collaboration among competitors. Available at: <http://en.cade.gov.br/cade-discloses-an-informative-note-on-the-collaboration-among-competitors-to-face-the-COVID-crisis/provisional-informative-note-on-the-collaboration-among-companies-to-face-the-COVID-crisis.pdf>. Apud "How COVID-19 Affects MSME Access To Markets and Competitive Capability: A Review of Key Issues and Recommendations for Future Action". UNCTAD, 2020. Access on 14/01/2021.

sought to promote greater transparency and legal certainty, establishing mechanisms for rapid and effective analysis that would support the collaborative strategies of economic agents.

This increased the fight against the effects of the pandemic and thus preserved competition in the affected sectors. CADE's general guidelines for collaboration between companies include considerations on duration, territorial extent, governance, transparency and good faith.

During the crisis, CADE also evaluated public policies and standards, examining the competitive impact in legislative proposals that established, for example, maximum prices for products and services.

The Brazilian antitrust authority also issued opinions and technical notes assessing the possible effects of imposing discounts or mandatory ceilings on prices⁵⁴. Having overcome the crisis, the objective is to maintain the competitiveness of MSMEs and their ability to face the challenges of their activities in the new scenario. On that occasion, CADE established that:

The well-intentioned initiative from the Service of Protection of Consumer of the State of São Paulo (Procon-SP) may cause undesired effects, when fixing maximum liquefied petroleum gas (LPG) prices, in an ad hoc and ex post manner.

Such a practice can generate effects ranging from the loss of price signaling as a means of efficient social allocation of the purposes of supply and demand to the generation of a focal point for resellers who had lower prices than those indicated by Procon-SP. In relation to the resellers who had higher prices to those indicated by Procon-SP, it is possible to have shortages and / or eventual bankruptcy of establishments, due to this type of intervention.

It should also be noted that such intervention is exclusively designed for the resale of LPG, with no impact on the price debate of other links in the chain, which may also have some role in the pricing, punishing the dealer, to the detriment of other agents who also profit in this market.

What currently occurs in São Paulo can also be seen as a test tube capable of anticipating what may occur in Brazil, on a larger scale, if the bills, with similar content (which seek to limit the LPG price officially in states and at the national level), will perhaps be approved. These effects tend to appear and amplify in the social sphere, generating great

legal and economic insecurity to essential marketing agents, in times of pandemic.

Thus, it is necessary to be sparing in the search for solutions against the effects of the Covid-19 pandemic, so that the remedies found do not cause more harm than good to society.

Although CADE does not have jurisdiction in economic sectors such as logistics and transportation, which have been crucial during the pandemics, its core work includes assessing M&A cases, as well as investigating and sanctioning anticompetitive conduct. Recent examples of CADE's role in the logistics and transportsations sectors include cases

⁵⁴ Technical Note CADE nº 19/2020/DEE/CADE. Process nº 08012.000908/2020-48. Available at: <https://cdn.cade.gov.br/Portal/centrais-de-contenidos/publicacoes/estudos-economicos/notas-tecnicas/2020/nota-tecnica-n19-advocacy-08012000908202048.pdf>. Access on April 30th, 2021.

n. 08700.008751/2015-83 (OGMO-BVC case)⁵⁵ and 08700.003969/2020-17 (Stone-Linx Merger)⁵⁶, among others. Furthermore, CADE's Department of Economic Studies (DEE) has been continuously releasing reports regarding competition in specific economic sectors such as the air cargo transportation (2017)⁵⁷ and maritime container transports markets (2018)⁵⁸.

In addition, CADE has maintained the traditional mechanisms of technical analysis in all sectors, including digital markets, although it has a necessary update ahead of the recent disputes of the Federal Trade Commission vs. Google⁵⁹ and the European Commission vs. Amazon⁶⁰, about the abuse of dominant positions in these markets⁶¹.

In this context, CADE published Working Document 005/2020, entitled: "Competition in digital markets: a review of specialized reports"⁶². In this document, CADE analyzed the main international studies that face the competitive dynamics of digital markets and concluded that, in general, these markets may present several problems of a competitive nature, justifying special attention from antitrust authorities

⁵⁵ Available at: https://sei.cade.gov.br/sei/modulos/pesquisa/md_pesq_documento_consulta_externa.php?HJ7F4wnIPj2Y8B7Bj80h1lskjh7ohC8yMfhLoDBLddb8XRLBxdQ9sXZA0NEFvA2TZZOckOGv8t1DmpLPeqJUzhScurBydGsILvGTFb6mIv1UqMj0b7N8Fsb1ecyy5ZaX. Access on: October 4, 2021.

⁵⁶ Available at: https://sei.cade.gov.br/sei/modulos/pesquisa/md_pesq_documento_consulta_externa.php?DZ2uWeaYicbuRZEfHbt-n3BfPLlu9u7akQAh8mpB9yMEqBKbKnOfTfW_jY7qBD3yVhR1dHdtrmAQFwDzPb7U6wza4ylc4aKpXOv-6lmbqXhqtqyHKOTk9tS-q8VicVd. Access on: October 4, 2021.

⁵⁷ Available at: http://antigo.cade.gov.br/acesso-a-informacao/publicacoes-institucionais/publicacoes-dee/Mercado_de_transporte_aereo_de_passageiros_e_cargas.pdf. Access on: October 4, 2021.

⁵⁸ Available at: <http://antigo.cade.gov.br/acesso-a-informacao/publicacoes-institucionais/publicacoes-dee/caderno-mercado-de-transporte-maritimo-de-conteneires-versao-final.pdf>. Access on: October 4, 2021.

⁵⁹ In 2013, the Federal Trade Commission struck a deal with Google in an antitrust investigation that accused the company of favoring its own products in users' search results. In late 2020, however, the United States Department of Justice (DoJ) and 11 states in the country filed an antitrust lawsuit against Google, accusing the company of using its market power to ward off rivals. The FTC claims that Google has acted illegally to maintain its position in the search and advertising markets on the Internet.

⁶⁰ The European Union formally accused, in late 2020, the American company Amazon of violating the bloc's rules on competition, claiming that the e-commerce giant uses its size, power and data to take advantage of smaller independent vendors using the platform.

⁶¹ In 2019, CADE filed Administrative Case No. 08012.10483 / 2011-94, which investigated Google's alleged anti-competitive practice. The rapporteur of the case understood that there would have been no manipulation of Google's organic search algorithms. The lawsuit was opened based on the complaint made by Media Group Information and Technology. According to the allegations, Google Searches would have privileged its own thematic sites in the organic search results. Also, according to the complaint, Google benefited its service when it decided, in 2013, to position Google Shopping results at the top or on the side of the search engine's page, by means of advertisements with images. However, these ads would be incompatible with the operation of competing price comparators, which would constitute supposedly discriminatory treatment. However, for the case reporter, counselor Mauricio Oscar Bandeira Maia, it was not possible to verify the manipulation of Google's organic search algorithms in the Brazilian market. The rapporteur considered that the reduction of price comparators in the Brazilian market has no causal link with Google's commercial practices. In addition, he understood that the conducts for blocking access to an essential structure, tying and lack of transparency on the part of Google have not been confirmed. According to him, the relationship between the increase in the cost-per-click (CPC) value and Google's anti-competitive conduct was also not verified. CADE also pointed out efficiencies for Brazilian consumers and advertisers as a result of Internet search market practices.

⁶² CADE. Department of Economic Studies. Working Document No. 005/2020: "Competition in digital markets: a review of specialized reports". Available at: http://antigo.cade.gov.br/acesso-a-informacao/publicacoes-institucionais/publicacoes-dee/DocumentodeTrabalho5_Concorrenciaemmercadosdigitaisumarevisaodosrelatoriosespecializados.pdf. Accessed on 03/03/2021.

around the world, which should maintain its technical and scientific update in the face of the challenges brought by the digital economy.

In its conclusions, the CADE working document recognizes that one of the possible solutions to the competitive problems in digital markets is the change in the standards of proof and intervention, based on potential competition, especially regarding the acquisition of startups by incumbents.

The report highlights not only the difficulties of applying antitrust instruments to zero-price markets, but also the need for authorities to create instruments to better understand the cases in which startups can challenge incumbent companies. The report specifically discusses how new legislation can reverse standards of proof, create open-ended assumptions about the deleterious effects of certain conducts, and increase requirements for firms to prove that efficiencies will be shared with the markets.

In fact, at the end of 2020, the European Commission published the "Digital Markets Act"⁶³, seeking to regulate the so-called "gatekeepers", large companies that operate one of the so-called "core platform services" services) ", such as search engines, social networking services, some messaging services, operating systems and online intermediary services, and which have a large and long-lasting user base in several countries.

The proposal defines the "gatekeeper" as a large company that plays a particularly important role in the domestic market due to its size and importance as a gateway for business users to reach their customers. There are three main cumulative criteria that place a company under the new law:

- ✓ A dimension that impacts the internal market and provides a main platform service in at least three Member States;
- ✓ Control of an important gateway for business users with the end consumer. This is assumed to be the case if the company operates a core platform service with more than 45 million monthly active end users established or located in the EU and more than 10,000 annual active commercial users established in the EU in the last financial year;
- ✓ An expected consolidated and durable position. This is assumed to be the case if the company has met the other two criteria in each of the last three financial years.

If a company meets the cumulative criteria mentioned above, it is identified as a gatekeeper. These guardian companies have an extra responsibility to behave in a way that guarantees an open online environment and that is fair to companies and consumers.

According to the EU Digital Markets Act, gatekeepers are required to implement certain procedures and must avoid engaging in unfair behavior, which are defined in the legislation in light of the market experience to date.

⁶³ Available at: https://ec.europa.eu/commission/presscorner/detail/en/QANDA_20_2349. Access on: 12/01/2021.

The Digital Markets Law also lists some examples of what to do and not to do for the companies in question, such as allowing their business users to access the data generated by their activities on the “gatekeeper” platform or allowing third parties to interact with the services themselves. porter, using data obtained from your business users to compete with those business users or to allow your users to access services that they may have purchased outside your platform.

If a “gatekeeper” does not comply with the rules, the EC may impose fines of up to 10% of the company's total annual turnover and periodic penalty payments of up to 5% of the company's total annual turnover. In the case of systematic violations, the EC can also impose additional solutions, that is, structural or behavioral solutions.

The EC has exclusive authority to enforce the Digital Markets Act, but National Competition Authorities in other Member States may request the EC to initiate the process.

4.4 Web Survey amongst Brazilian MSMEs on issues related to competition and access to digital markets

Between 12/17/2020 and 12/29/2020, SEBRAE conducted a web survey using an online form (web survey) with (universe) 4,182,951 micro-enterprises (ME) and small companies (EPP), from Industry, Construction and Services.

As seen in item 1.3.1 SEBRAE has access to mailing lists amongst the small business community of millions of contacts. Through this amazing network, including even informal MSMEs, any research or survey gains in credibility and reality.

Of these, 1,205 (sample), from all 26 states and the DF, responded to the survey. The sampling error margin (estimated) is +/- 2.8%, for national results and the confidence interval is 95%.

The online form contained 15 simple answer questions, as per Annex 2 (below).

The content of the survey was proposed and discussed by UNCTAD ad hoc consultant for this Brazil Study to ECLAC and then to SEBRAE.

The Micro Enterprises (ME) are those companies whose annual revenue is up to R \$ 360 thousand. In addition, MEs can employ up to nine people (if it is commerce or services), or up to 19 (industrial or construction sector).

EPP (Small Businesses) have annual gross revenue between R \$ 360 thousand and R \$ 4.8 million. EPPs in the commercial or service sectors must have between 10 and 49 employees and those in industry or construction, between 20 and 99 employees.

3.5.1. Benefits from increased competition

According to the survey, for small businesses, the benefits of increased competition would be greater if this increase occurred among small business suppliers (26%), closely followed by increased competition between buyers, or customers (20%).

Small businesses in the Southeast (27%) and South (27%) demand greater competition among their suppliers, while small businesses in the northern region (22%) demand greater competition in the financial sector. This result leads to the suggestion that there is less competition in the financial sector in the northern region of the country (farther from large centers), with fewer options for the borrower. It is expected that with the implementation of Open Banking in the country, this reality will change in the medium term.

EPP (30%) and the construction (36%) and industry (32%) sectors demand greater competition among their suppliers, while small businesses in the service sector (17%) demand greater competition in the financial sector. The numbers indicate that the service sector, with less physical assets, has greater difficulty in accessing credit.

3.4 Benefits of accessing digital markets

As for the access of small businesses to digital markets and the benefits derived from it, the survey showed that 90.7 of the respondents already have access to the benefits of the digital world. In the southern region, this indicator reached 92.6%.

Among small businesses, EPP (92.2%) and the service sector (91.9%) have the highest proportions of companies that claim they already have access to the benefits of the digital world. Due to the very nature of the services companies' businesses, a greater digital skill of their employees is projected, a greater need to be connected, in addition to the greater financial capacity of the EPP in relation to ME.

Seeking to address specific questions only to companies that have already entered the digital world, the survey conducted by SEBRAE showed that for 85% of companies that have already entered digitally, their market shares improved after entering the digital space. In the northern region, this proportion reaches 89%.

Entering the digital world has improved the company's situation for 86% of respondents in the industrial sector and also for 86% of the services sector.

81% of small businesses that are already inserted in the digital world intend to make investments to increase the level of digitalization of their businesses. In the North region, this figure reaches 89%.

The service sector (83%) and industry (78%) are those that intend to invest more to make their businesses more digital. It is assumed that this willingness to invest is, to some extent, linked to the greater previous insertion of industry and services in the online world.

Access to digital platforms

One of the most strategic issues for any company to find space in the digital world is to have access to virtual “showcases”, which are all platforms, websites, chats and social media available on the Internet. Between 42% and 43% of respondents, from the five regions of the country, said they found it difficult to expose their products or services on the Internet.

The sectors of industry (43%) and services (43%) have a higher proportion of companies that find it difficult to expose their products or services on the Internet, with no significant differences between the means of ME and EPP, that is, in relation to the size of the business.

Among the greatest difficulties in exposing products and services on the Internet, the highlight is that of obtaining visibility in online search engines, which for 40% are expensive and for 29% are difficult.

EPP (48%) and the service sector (43%) are the most expensive to have visibility on online search engines. Perhaps due to the medium size (EPP) and, therefore, greater business volume and greater level of participation in supply chains, in addition to greater prior digital insertion, it is natural for the service sector.

The survey also revealed that 49% of respondents find it difficult to sell their products or services over the Internet. Difficulty is more common in the Midwest (52%).

The ME (50%) had a higher proportion of companies with difficulties than the EPP (47%) to sell over the Internet. There were no significant differences by sector of activity. While to expose products and services on the Internet there are no significant differences between ME and EPP, that is, in relation to the size of the business; to sell, however, the size becomes relevant, denouncing the need for some prior planning and logistical management, often demanded by the customers and suppliers themselves.

Among the difficulties in selling, the costs and / or delays in transporting products and services stand out (24%). The high percentage of 64% who answered that the difficulties were other, seems to be in line with the fact that the greatest difficulty for small businesses in the virtual world is really the lack of knowledge and qualified personnel.

The Construction (33%) and Industry (33%) sectors are the most difficult to sell on the Internet. In industry, there is also a complaint about the costs of purchasing raw materials (23%). On the other hand, no significant differences were detected by business size in relation to the difficulties in selling online.

Some research questions were addressed only to companies that have not yet entered the digital world. Of those (who are not yet online), 76% intend to make investments to digitally include their business. In the northern region, this figure reaches 88%. The data clearly reveals that those outside the virtual world are looking forward to entering.

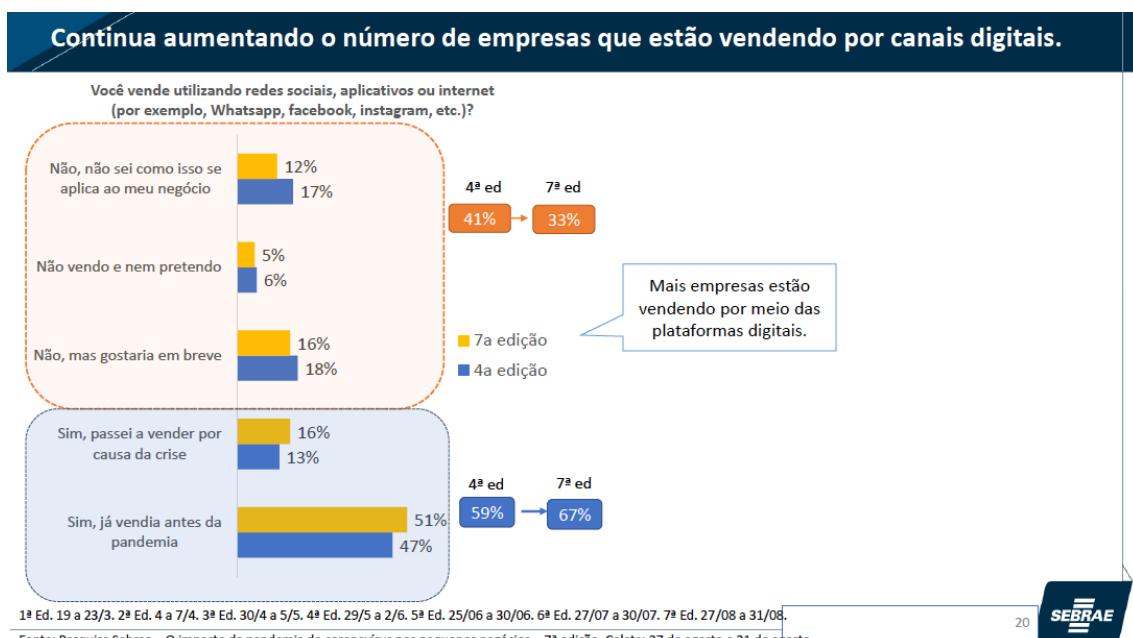
Companies in the Construction and Industry sectors (both with 80%) are the ones that most intend to invest to enter the digital world. No significant difference was detected by company size (ME or EPP).

As already detected in previous questions and answers, the lack of personnel with skills and knowledge is considered the greatest difficulty (55%) for small and medium businesses to make themselves present (to enter) in the digital world (Slide 20).

In the North Region (75%) the lack of personnel with skills and knowledge to enter the digital world is more felt than in other regions of the country (Slide 21).

The lack of personnel with skills and knowledge to enter the digital world is greater in the industry (63%), with no significant differences by business size (Slide 22).

A previous online survey⁶⁴, carried out by SEBRAE between 08/27 and 08/31/2020, showed that the number of companies that sold or sought to sell through digital channels continued to increase, as shown in the slide below.

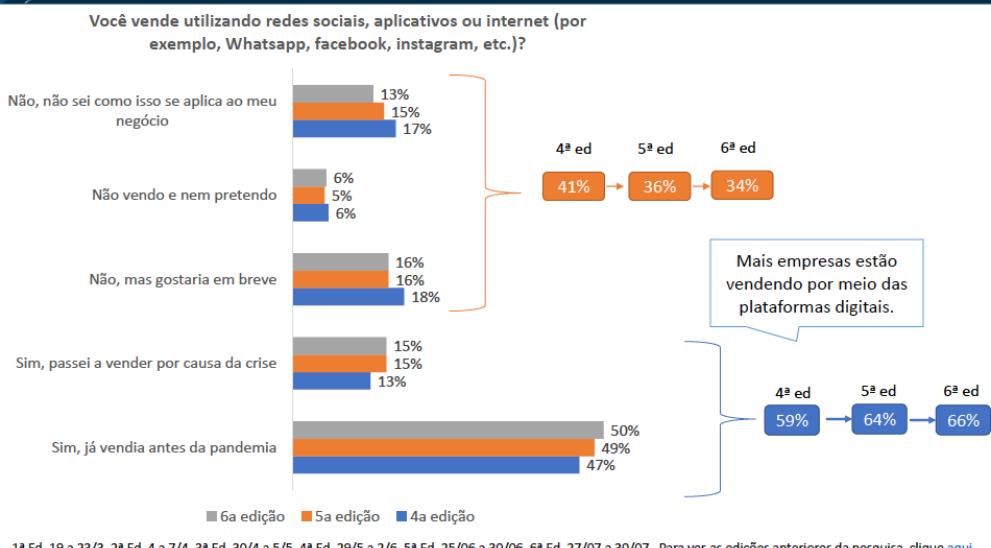


Another survey⁶⁵, carried out between 07/27/2020 and 07/30/2020, already pointed out that the number of small businesses selling through digital platforms or social networks was growing in Brazil, even before the pandemic:

⁶⁴ Quantitative research using an online form (web survey). Realization Period: 08/27/2020 to 08/31/2020. Universe: 17.2 million small businesses. Sample: 7,586 respondents from all 26 states and the Federal District, comprising 57% MEI, 38% ME, 5% EPP (Size declared in the survey). The sampling error is +/- 1% for national results. Available at: https://databrae.com.br/wp-content/uploads/2020/09/Impacto-coronavi%C3%A7%C3%A3o-nas-MPE-%C2%AAdicao_DIRETORIA-v7.pdf. Accessed on: 04/02/2021.

⁶⁵ Quantitative research using an online form (web survey). Realization Period: 07/27/2020 to 07/30/2020. Universe: 17.2 million small businesses. Sample: 6,506 respondents from all 26 states and the Federal District, comprising 57% MEI, 38% ME, 5% EPP (Size declared in the survey). The sampling error is +/- 1% for national results. Available at: https://databrae.com.br/wp-content/uploads/2020/09/Impacto-coronavi%C3%A7%C3%A3o-nas-MPE-%C2%AAdicao_DIRETORIA-v12.pdf. Accessed on: 04/02/2021.

Continua aumentando o número de empresas que estão vendendo por canais digitais.



1ª Ed. 19 a 23/3. 2ª Ed. 4 a 7/4. 3ª Ed. 30/4 a 5/5. 4ª Ed. 29/5 a 2/6. 5ª Ed. 25/06 a 30/06. 6ª Ed. 27/07 a 30/07. Para ver as edições anteriores da pesquisa, clique [aqui](#).

Fonte: Pesquisa Sebrae – O impacto da pandemia do coronavírus nos pequenos negócios – 6ª edição. Coleta: 27 de julho a 30 de julho.

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Conclusions from the Web Survey

According to the results from the web survey:

- ✓ The benefits of increased competition would be greater if this increase occurred among Small Business suppliers (this item was most cited by the construction PN and EPP);
- ✓ Almost 91% of respondents said they already have access to the benefits of the digital world (although they experience difficulties to “expose” and “sell” their products online);
- ✓ 85% of these said that this access improved their company's situation;
- ✓ 81% of those who are already part of the digital world intend to make investments to increase the level of digitalization of their business;
- ✓ 43% say they have difficulties to EXPOSE their products / services on the Internet;
- ✓ 49% say they have difficulties to SELL their products / services on the Internet;
- ✓ Among those outside the digital world, 76% intend to invest, in the next 6 months, to ENTER the digital world;
- ✓ The greatest difficulty of these to ENTER the digital world is the lack of personnel with skills and knowledge (55%). The difficulties are greater in the northern region.

The survey confirms the general perception and the current reality that there is a strong desire of MSMEs to access digital markets and even to increase their participation.

However, it also revealed the difficulties in having qualified personnel, exhibiting and selling products and services online.

The extra extension of the social distancing measures and the possibility that such measures may come into force again in the future have transformed online business if not in the only way out from the crisis, at least in one the most effectives.

The web survey showed that MSMEs in Brazil unfortunately face more basic difficulties to be online, beyond competitive issues in exposing and selling goods. In other words, they lack personnel with enough knowledge to manage online business, to access platforms and interact with clients.

Concerning market access, the web survey showed that the benefits of increased competition would be greater if this increase occurred among small business suppliers. Such result confirms a systemic problem in the supply chain that is the small volume gap. Big suppliers tend to be less efficient when supplying to small volume buyers.

5. Main Conclusions

The role of national competition defense and advocacy authorities in the recovery of MSMEs in the post-pandemic will be especially important in increasing interaction and reciprocal influence with the entities representing and supporting MSMEs; in the permanent advocacy of competition to increase competitive conditions in the financial market, especially in access to credit for MSMEs and, last but not least, in ensuring equal, fair and reasonable access and use to digital platforms and markets.

In the late 1990s and early 2000s, shortly after CADE became an independent authority, several competition advocacy activities were carried out at universities and entities affiliated throughout the country⁶⁶.

The dissemination, education and prevention activities are crucial for jurisdictions, such as the Brazilian, which have been under economic control and price-fixing regimes for decades and also where there is an ocean of micro and small companies, many of them informal.

At that time, seminars, colloquia, debates, round tables, an infinite number of models of competition law activities were held. Not only by SEAE / MF, but also by CADE.

The Permanent Competition Forum (FPC), for example, was intended for the promotion and diffusion of competition, through debates held between specialists, leaders of society, professionals, and civil servants. Representatives of more than 30 partner entities, such as universities, unions and associations, were permanent members⁶⁷ and, thus, maintained a permanently open channel with the antitrust authorities.

After two decades, it is certain that CADE and the culture of competition have evolved and spread throughout the country. However, it is not possible to consider that

⁶⁶ CADE Annual Report - 1998/1999. Available at: http://en.cade.gov.br/cade/cesso-a-informacao/auditorias-1/auditorias-anexos/antes_2003/i.pdf. Accessed on: 01/03/2021.

⁶⁷ *Idem.*

the knowledge of the legislation and the tradition of competition are mature in the country.

In this context, CADE must not only guide society and the market through its decisions, but also through the daily contact and interface with that same society, guiding and clarifying the antitrust legislation, its interpretation and application.

As for small business access to digital markets, the study showed that competition authorities have a key role in ensuring that digital platforms with stratospheric market shares (eg Google, Facebook, Apple, Amazon, etc.) do not abuse their positions dominant, causing anticompetitive effects.

Finally, closer proximity is suggested between competition defense and advocacy authorities, MSMEs support agencies and entities representing the sector. Initiatives to educate business associations and cooperatives of MSMEs about their rights in relation to competition laws⁶⁸, create and maintain permanent mechanisms for reciprocal consultations and allow competition authorities to become familiar with the reality of MSMEs and vice versa.

6. Recommendations

In times of pandemic and post-pandemic of COVID-19, competition authorities should follow best international practices of market access policies for MSMEs. These practices, recognized by the international antitrust community, also apply to the Brazilian reality, although specific measures for Brazil are also suggested here.

Recommendations are addressed largely to competition defense and advocacy authorities, but also to representative and support entities for MSMEs.

For Competition Defense and Advocacy authorities (CADE and SEAE / ME):

- a) Expand disclosure, as well as guidance, to MSMEs, and other interested parties, about the competition authorities' approach to COVID-19. For example, by posting and updating FAQs on websites and on social networks⁶⁹, or by sending e-mails regularly with information on relevant issues. Disclosure through institutions such as SEBRAE and other representatives of small businesses can also enhance the reach of communication. The language must be as accessible as possible in order to reach MSMEs employees;

⁶⁸ Philippines Competition Commission. PCC (2020). Facebook post. Available at: <https://www.facebook.com/competitionph/posts/3420606798003815>. Apud "How COVID-19 Affects MSME Access To Markets and Competitive Capability: A Review of Key Issues and Recommendations for Future Action". UNCTAD, 2020. Access. on 18/01/2021.

⁶⁹ The Chinese government, for example, is encouraging companies that own digital platforms to reduce their entry fees. See: PCC (2020) COVID19 Questions. Available at: <https://phcc.gov.ph/wp-content/uploads/2020/07/PCC-COVID-Resources-Frequently-Asked-Questions.pdf>. Apud "How COVID-19 Affects MSME Access To Markets and Competitive Capability: A Review of Key Issues and Recommendations for Future Action". UNCTAD, 2020. Accessed on 1/14/2021.

- b) Ensure the competitiveness and efficiency of the logistics and transportation sectors, at a time of great increase in demand for products and services⁷⁰. Whether through the analysis and review of mergers and acquisitions in the sector, or through antitrust monitoring and inspection of possible anti-competitive practices or, if necessary, the authorization of flexibilities in the application of legislation in favor of the proper functioning of the market;
- c) Ensure equal access to digital commerce, regardless of the size of the company. Larger companies may employ a strategy to protect multiple URLs and optimize search engines to prevent access by other companies. A tactic that is not available to small businesses, without financial or personnel resources, and, therefore, potentially exclusive^{71⁷²};
- d) Prevent the formation of anti-competitive structures in digital markets, which harm MSMEs. Since the pandemic, access to digital markets has almost always been equivalent to access to the market in general. Ensuring access for MSMEs to the digital trading environment and online markets is therefore crucial. As small businesses become more dependent on digital platforms and digital providers to trade in the post-COVID world, it is important to ensure that access to digital trading platforms is open and accessible to all companies that wish to sell to them. If MSMEs do not have access to the digital market, they will be deprived of survival and growth. Competition authorities, therefore, need to ensure that the laws in force guarantee the equitable right of access to significant platforms⁷³;
- e) Increase the closeness between competition authorities, MSMEs support agencies and entities that represent MSMEs. Increase interaction between them, through initiatives aimed at educating business and cooperative associations about their rights in relation to competition laws⁷⁴. Create and maintain mechanisms for regular consultations with associations representing MSMEs, ensuring that competition authorities are familiar with the reality of MSMEs and the

⁷⁰ A survey conducted in July 2020 by the United Nations Economic Commission for Africa, for example, found that 58% of African companies encountered challenges in terms of product transportation and logistics, compared to just 30% of service providers. UN Economic Commission for Africa (2020) Reactions and Outlook To COVID-19 in Africa: African Business Survey Results, July [online]. Available at: https://www.uneca.org/sites/default/files/PublicationFiles/COVID-19_africa_impact_survey_july_2020-en-final.pdf.

Apud "How COVID-19 Affects MSME Access To Markets and Competitive Capability: A Review of Key Issues and Recommendations for Future Action". UNCTAD, 2020. Access on 18/01/2021.

⁷¹ Several platforms have also been accused of employing allegedly anti-competitive practices that harm smaller companies. For example, the European Commission fined Google € 2.42 billion in 2017 for abusing its dominant position by giving preference to its own website, when comparing prices on its search engine.

⁷² Google LLC and Alphabet Inc. v. European Commission (Case T-612/17). Available at: <http://curia.europa.eu/juris/liste.jsf?language=en&td=ALL&num=T-612/17>. Access on: 18/01/2021.

⁷³ Cade recently banned the iFood food and meal delivery platform from entering into new exclusive contracts with restaurants. The decision was taken as a preventive measure by the General Superintendence while analyzing reports of anti-competitive measures by the company. The measure also prohibits the company from changing contracts already signed to include an exclusivity clause. Cade's decision came in an open process based on the complaint of another food delivery platform, Rappi. According to the company, iFood uses its dominant market condition to hinder the performance of competitors. Available at: <https://agenciabrasil.ebc.com.br/economia/noticia/2021-03/cade-proibe-que-ifood-faca-contratos-de-exclusividade-com-restaurante#:~:text=O%20Conselho%20Administrativo%20de%20Defesa,contratos%20de%20exclusividade%20com%20restaurantes..>. Accessed on: 12/03/2021.

⁷⁴ Philippines Competition Commission. PCC (2020). Facebook post. Available at: <https://www.facebook.com/competitionph/posts/3420606798003815>. Apud "How COVID-19 Affects MSME Access To Markets and Competitive Capability: A Review of Key Issues and Recommendations for Future Action". UNCTAD, 2020. Access on 18/01/2021.

functioning of their representative associations and vice versa. Representative entities of MSMEs with a greater capacity to work with the government and public servants with a good understanding of the practical world of MSMEs, mean higher quality public policies and better results, as policy makers will develop more targeted and effective strategies to improve access to markets for MSMEs;

- f) The Brazilian competition authority (CADE) could issue specific guidelines (e.g. more common situations, such as refusals to supply due to small volumes, etc.), both for MSMEs, and for larger companies that relate to MSMEs (e.g. suppliers, distributors, etc.). Perhaps through a Competition and Market Access Guide for MSMEs. Businesses work best when they receive clear and unambiguous guidelines from the authorities, especially small ones;

For Brazilian entities that support MSMEs:

- g) SEBRAE and CADE could enter into a cooperation agreement with each other, whereby SEBRAE would provide CADE with the perspective of MSMEs, suggest ideas and points of view for consideration and also partnerships to promote education and training campaigns within the MSMEs community;
- h) Workshops between competition officials and employees. from MSMEs entities (e.g. SEBRAE and others) to familiarize themselves with the environments in which MSMEs work, how they are managed, the problems of market access they face and the competitive pressures within which they operate. Over time, this capacity development will create competition authorities that are more responsive to the needs of small businesses;
- i) Round tables between officials and directors of representative associations and support to MSMEs and civil servants and officials of competition authorities on competition laws and policies and how MSMEs may be affected by them. The debate should not be focused on compliance, but it should be practical in nature and designed to encourage small businesses to use the main features, benefits and protections that the law offers them;

For federal government agents:

- j) Broad, simple and practical digital training for small entrepreneurs, including, as much as possible, informal actors. Adoption of public policies to encourage MSMEs to use online tools, to expand marketing channels and accelerate digital transformation⁷⁵⁷⁶. The implementation of this recommendation involves articulation between SEBRAE and entities representing the MSMEs and the secretariats of the Ministry of Finance, including, but not limited to, the Competition and Competitiveness Advocacy Secretariat (SEAE) and the Micro

⁷⁵ World Bank (2020) Map of SME-Support Measures in Response to COVID. Available at: <https://www.worldbank.org/en/data/interactive/2020/04/14/map-of-sme-support-measures-in-response-to-COVID>.

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⁷⁶ Aquende, E. (2020) “Balancing Competition Law and the Preference for Filipino Businesses” Business Mirror. Available at: <https://www.phcc.gov.ph/column38-bm-ceba-balance-complaw-filipino-businesses/>. *Apud* “How COVID-19 Affects MSME Access To Markets and Competitive Capability: A Review of Key Issues and Recommendations for Future Action”. UNCTAD, 2020. Access on: 18/01/2021.

and Small Development Secretariat Companies, Entrepreneurship and Crafts (SEMPE);

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ANNEX 1

SEBRAE RESEARCH QUESTIONS ON COMPETITION AND ACCESS TO MARKETS

Hello.

Facing the impacts of Covid-19 on Small Business, the United Nations (UNCTAD and ECLAC), with the support of Sebrae, are conducting a survey on actions that can help them in the defense of competition and access to digital markets. We would like to count on your participation in this poll.

Can we count on your participation?

- (1) Yes
- (2) No (close the questionnaire)

P1. Where would increasing competition most benefit your company?

- (1) In the financial sector
- (2) Among your company's suppliers
- (3) Among your company's customers
- (4) In the sector where your company operates
- (5) Don't know / didn't want to answer

P2. Does your company already have access to the benefits of the digital world (for example, uses WhatsApp, Instagram, websites, online platforms, etc.)?

- (1) Yes
- (2) No (go to P9)
- (3) Don't know / didn't want to answer (go to P9)

FOR THOSE WHO ENTERED THE DIGITAL WORLD

P3. Has entering the digital world improved your company's situation?

- (1) Yes
- (2) No
- (3) Don't know / didn't want to answer

P4. In the next 6 months, does your company intend to invest MORE to make your business MORE digital (eg on websites, WhatsApp, Instagram, online platforms, etc.)?

- (1) Yes
- (2) No
- (3) Don't know / didn't want to answer

P5. To EXPOSE your products / services on the Internet (websites, WhatsApp, online platforms, etc.) has your company encountered difficulties?

- (1) Yes
- (2) No (go to P7)
- (3) Don't know / didn't want to answer (go to P7)

P6. What are the difficulties that your company has to EXPOSE on the Internet?

- (1) it is difficult to hire online sales platforms (e-commerce)
- (2) it is expensive to sell on online sales platforms (e-commerce)
- (3) it is difficult to have visibility on online search engines (Google, Bing, Yahoo, etc.)
- (4) it is expensive to have visibility on online search engines (Google, Bing, Yahoo, etc.)
- (5) Other difficulties.
- (6) Don't know / didn't want to answer

P7. In order to SELL via the Internet, has your company faced difficulties?

- (1) Yes
- (2) No (go to P11)
- (3) Don't know / didn't want to answer (go to P11)

P8. What difficulties does your company have to SELL on the Internet?

- (1) Delays or increased costs in transporting your products / services (sales)
- (2) Delays or increased costs in the purchase of raw materials, etc. (purchasing)
- (3) Delays or increased costs in storing your products / services
- (4) Transporters refuse or are unable to perform services
- (5) Other

GO TO QUESTION 11

FOR THOSE WHO DID NOT ENTER THE DIGITAL WORLD

P9. In the next 6 months, does your company intend to invest to enter the digital world (eg on websites, WhatsApp, Instagram, online platforms, etc.)?

- (1) Yes
- (2) No
- (3) Don't know / didn't want to answer

P10. What are the difficulties that your company has to be present in the digital world (Internet).

- (1) lack of Internet access
- (2) lack of staff with skills and knowledge
- (3) lack of financial resources
- (4) lack of time
- (5) Don't know / didn't want to answer

PROFILE QUESTIONS

P11. What is your age?

- (1) Up to 35 years
- (2) 36 to 54 years old
- (3) 55 years or older
- (4) Don't know / Didn't want to answer

P12. What is your education level?

- (1) Until incomplete high school
- (2) Complete high school
- (3) Incomplete superior
- (4) Higher education or more
- (5) Don't know / didn't want to answer

P13. What is your gender?

- (1) Female
- (2) Male

P14. With respect to race / color, how do you classify yourself?

- (1) White
- (2) Black or brown
- (3) Yellow or indigenous
- (4) Don't know / didn't want to answer

P15. How big is your company?

- (1) Individual microentrepreneur (MEI)
- (2) Microenterprise (ME)
- (3) Small Business (EPP)
- (4) Don't know / didn't want to answer