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THE FRONTIERS OF INFORMATION EXCHANGE IN BRAZIL

BRUNO BASTOS BECKER

Partner, Berardo Lilla Advogados

Professor of Antitrust Law, ESPM

LL.M., Yale Law School | Ph.D., University of São Paulo (USP)

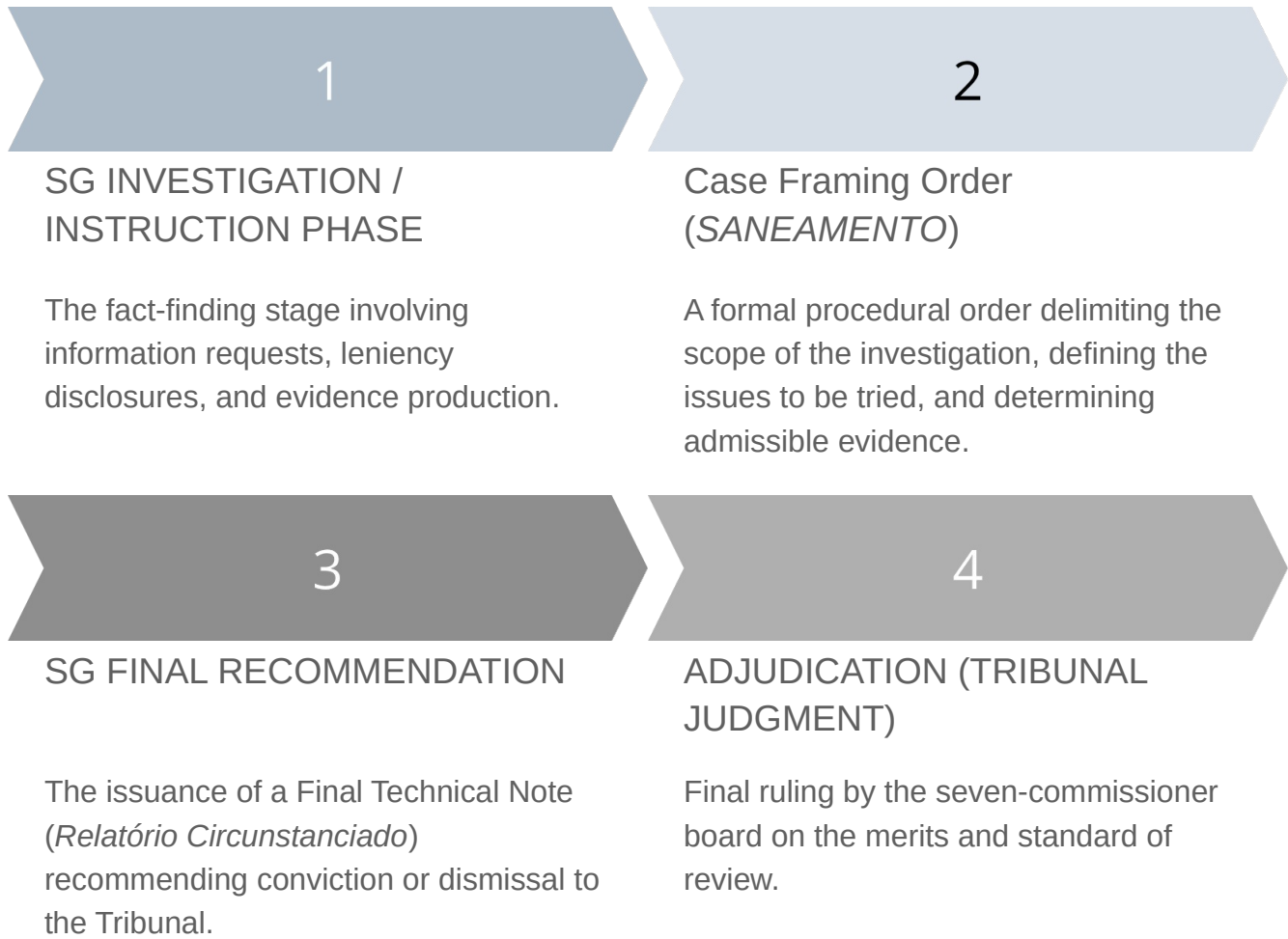


LEGAL FRAMEWORK AND PROCEDURAL OVERVIEW

STATUTORY BASIS: ARTICLE 36 OF LAW NO. 12.529/2011

- **The Law:** Conduct that has as its **object or is capable of producing** (i) the limitation or injury of free competition/initiative or (ii) the control of a relevant market constitutes an infringement.
- **Administrative Interpretation:** The General Superintendence (SG) identifies information exchange as:
 - **Ancillary** (facilitating a broader cartel) or
 - **Stand-alone** (the exchange itself constitutes the primary infringement).
- **Merger Control Jurisdiction:** Outside of conduct investigations, CADE scrutinizes information flows during M&A review (*Gun Jumping* and Clean Team protocols) under Art. 88, § 3º.

BRAZILIAN ADMINISTRATIVE PROCEDURE PHASES





BINDING PRECEDENT VS. PROSECUTORIAL POSTURE

THE GENERAL SUPERINTENDENCE (SG) DOES NOT ESTABLISH PRECEDENT

- **Investigative Posture:** The SG acts as the investigative arm. Its Technical Notes represent current enforcement risks and prosecutorial theories of harm.
- **The Current Reality:** None of the recent stand-alone information exchange cases (HR, Insurance, Auto) have reached a final Tribunal decision.

The PVC Case (2020): The Tribunal clearly differentiated information exchange from cartels, rejecting automatic illegality: "The configuration of the administrative illicit of sharing... differs from the structuring of a cartel... its punishment must pass through an analysis not only of the existence of evidence of the conduct, but of the potentiality of producing its effects." (Reference: *Reporting Commissioner's Vote*, PA 08700.001422/2017-73, Sept. 2020)

THE ADMINISTRATIVE TRIBUNAL ESTABLISHES PRECEDENT

- **Binding Jurisprudence:** The Tribunal is the sole adjudicative body. Its final rulings establish the actual boundaries of antitrust liability in Brazil.

Operação Dubai (June 2025): The Tribunal reinforced that it will not presume the illegality of sensitive information sharing (no se ilícito per se). The core adjudicative test is the "Reduction of Uncertainty": whether the exchange makes a competitor's "next step more predictable." A restriction "by object" only occurs when the exchange is susceptible to eliminating strategic uncertainty between participants. (Reference: *Reporting Commissioner's Vote*, PA 08012.008859/2009-86, Jun. 2025)



LENIENCY FRAMEWORK

- All stand-alone information exchange cases in Brazil were initiated by Leniency Agreements.
- A Leniency Agreement requires the applicant to "**confess their participation in the reported infringement**" and provide evidence of a previously unknown practice.
- Under Art. 86, the conduct must be an unequivocal infringement for a leniency agreement to be validly executed.



- To preserve the Leniency program for information exchange cases, the SG classified the cases as **infringements by object**.
- This establishes the "unequivocal illegality" required for the statutory confession, effectively bypassing the uncertainty of an effects-based review at the initiation stage.



If a stand-alone exchange were analyzed strictly under the **Rule of Reason** (where illegality is conditional upon a complex balance of effects), an applicant could not logically confess to an infringement on "day zero."



CHRONOLOGICAL HARDENING IN SG REVIEW

The General Superintendence (SG) seems to progressively harden its stance, moving from a behavioral inquiry into "*influence*" to a structural "*equivalence doctrine*" where certain data flows are deemed illegal **by object**.

2021

INDUCEMENT AND BEHAVIORAL IMPETUS

- "Competitively sensitive data establish parameters, **induce mimesis**, and allow for the retaliation of deviants." (Technical Note No. 36/2021, PA 08700.004548/2019-61, Mar 15, 2021, Para 84. Unofficial translation).
- "If different companies have access to each other's present or future strategies, the **competitive impetus between them is affected**." (Technical Note No. 36/2021, PA 08700.004548/2019-61, Mar 15, 2021, Para 84. Unofficial translation).

2024

STRUCTURAL EQUIVALENCE AND "BY OBJECT" LIABILITY

- "Thus, the conduct is an **infringement by object** if the information is (i) exchanged among competitors, (ii) disaggregated, and (iii) related to future intentions... or even current ones, provided they eliminate uncertainties regarding the behavior of the participating companies." (Technical Note No. 06/2024, PA 08700.001198/2024-49, Oct 7, 2024, Para 80. Unofficial translation).
- "The systematic exchange of current salary and benefit data... has the potential to uniformize the market, which is **equivalent to collusive coordination**." (Technical Note No. 06/2024).

2026

FACILITATION AND "ARTIFICIAL GLASSHOUSE" TRANSPARENCY

- "The exchange encompassed recent and current information... granting companies a visibility of market conditions that competitors did not have... transforming the market into an artificial glasshouse." (Technical Note No. 10/2026, PA 08700.000171/2019-71, Jan 12, 2026, Para 638. Unofficial translation).
- "The exchange acts as a **vector of facilitation**... allowing for the monitoring of compliance and reduction of the costs of punishing deviations." (Technical Note No. 10/2026, PA 08700.000171/2019-71, Jan 12, 2026, Para 29. Unofficial translation).



STAND-ALONE CASES: THE ENFORCEMENT PIPELINE

NO FINAL ADJUDICATION

CADE currently possesses a dense pipeline of stand-alone investigations. Importantly, none of these cases have reached a final decision by the Tribunal.

PROSECUTORIAL UNIFORMITY

Given the contemporaneous launch dates (2019–2024) and centralized investigation by the SG, practitioners could expect a highly uniform prosecutorial approach across all these pending proceedings.

Case Name (Sector)	PA Number	Scope of Exchange
MedTech (Health HR)	08700.004548/2019-61	Future/Current strategic HR data.
GECON (Consumer HR)	08700.001198/2024-49	Granular salary/merit increase plans.
GES/GEAB (Multi HR)	08700.000992/2024-75	Headcount, turnover, and benefit costs.
Aviation Insurance	08700.000171/2019-71	Individualized slips and premiums.
Light Vehicles (Auto)	08700.000478/2024-30	Technical specs and R&D forecasts.
Forklifts (Industrial)	08700.007061/2024-06	Volume of sales and no-poach data.



CASES: LABOR ANTITRUST PIONEERS

CASE: **MEDTECH** (HEALTHCARE HR)

PA 08700.004548/2019-61

- **Origin & Status:** Leniency Agreement, currently in SG Instruction Phase.
- **Mechanism:** Informal self-identified group ("MedTech"). Information was directly shared via WhatsApp groups, email lists, and informal periodic meetings.
- **Scope of Data:** Benchmarking regarding remuneration scales, salary adjustments, and employee benefit packages.

SG Position: "The group's initial purpose was to replace the hiring of external HR consultancies... which evolved into direct exchanges of current and future individualized strategic HR data among competing companies."
(Technical Note No. 36/2021, Mar 15, 2021, Para 12. Unofficial translation).

CASE: **FORKLIFTS** (EMPILHADEIRAS)

PA 08700.007061/2024-06

- **Origin & Status:** Leniency Agreement, currently in SG Instruction Phase.
- **Mechanism:** Multilateral email exchanges and frequent (usually monthly) meetings among executives.
- **Scope of Data:** Information related to sales volumes, trade show advertising practices, and employee hiring matters.

SG Position: "There are strong indications of an agreement among competitors for the exchange of commercially sensitive information... and the non-hiring of workers."
(Technical Note No. 39/2024, May 22, 2024, Para 8. Unofficial translation).



CASES: INSTITUTIONALIZED HR BENCHMARKING

CASE: **GECON** (CONSUMER GOODS HR)

PA 08700.001198/2024-49

- **Origin & Status:** Leniency Agreement, currently in Case Framing Order (Saneamento).
- **Mechanism of Exchange:** Formal group (Gecon). Data was gathered via a centralized portal, messaging groups, and periodic physical and virtual meetings.
- **Scope of Data:** Benchmarking regarding HR "best practices", including benefit (e.g., meal vouchers, health plans, pensions). salary structures.

SG Position: "The systematic exchange of current salary and benefit data... possesses an anticompetitive effect of market uniformization, equivalent to that of collusive coordination." (Technical Note No. 06/2024, Oct 7, 2024, Para 117. Unofficial translation).

CASE: **GES / GEAB** (MULTINATIONAL HR)

PA 08700.000992/2024-75

- **Origin & Status:** Leniency Agreement, currently in Case Framing Order (Saneamento).
- **Mechanism of Exchange:** Formal groups ("Executive Salary Group" and "Benefits Administrators Group") utilizing structured surveys and periodic meetings.
- **Scope of Data:** Benchmarking regarding HR "best practices", including benefits, headcount and turnover metrics.

SG Position: "The conduct reflects a pattern of behavior designed to eliminate independent decision-making regarding labor inputs." (Technical Note No. 05/2024, Oct 7, 2024, Para 16. Unofficial translation).



CASES: TRANSPARENCY IN SERVICES & INDUSTRY

CASE: AVIATION INSURANCE

PA 08700.000171/2019-71

- **Origin & Status:** Leniency Agreement, currently at SG Final Recommendation (Conviction Recommended Jan 2026).
- **Mechanism of Exchange:** Direct sharing via fax, emails, phone calls, and bilateral/multilateral meetings during the renewal periods of insurance policies.
- **Scope of Data:** Documentation related to insurance policies ("slips"), premium indications, and brokerage commission structures.

SG Position: "The exchange granted companies visibility that competitors did not have... transforming the market into an artificial glasshouse." (Technical Note No. 10/2026, Jan 12, 2026, Para 638. Unofficial translation).

CASE: LIGHT VEHICLES (AUTOMOTIVE)

PA 08700.000478/2024-30

- **Origin & Status:** Leniency Agreement, currently in Case Framing Order (Saneamento).
- **Mechanism of Exchange:** International thematic working groups, recurrent technical meetings, and email correspondence among engineers and executives.
- **Scope of Data:** Information related to technical production parameters, R&D cycles, and commercial forecasting.

SG Position: "Sharing technical parameters... allows companies to align long-term policies... reducing the innovation impetus and harming the competitive process." (Technical Note No. 03/2024, July 15, 2024, Para 30. Unofficial translation).