COMPETITION AND ANTITRUST

CADE SANCTIONS FOR THE FIRST TIME HUB-AND-SPOKE CARTEL

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AUTHORS

ANA BÁTIA GLENK
PARTNER / SÃO PAULO

IVAN VINÍCIUS NUNES FERNANDES
LAWYER / SÃO PAULO

GABRIELA CAMPOS DE OLIVEIRA
LAWYER / SÃO PAULO

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The Tribunal of the Administrative Council for Economic Defense (Cade) sanctioned, in April of this year and for the first time, a *hub-and-spoke* cartel for defrauding competition in public tenders and private sales in the market for distribution and resale of digital whiteboards. Fines were imposed on 18 companies and 20 individuals in the total amount of approximately R$ 7.9 million. There are at least three other *hub-and-spoke cartel* investigations ongoing at CADE.

Such antitrust violation consists of the indirect alignment of prices among competitors, facilitated by a common business partner that operates in a different but related market. Usually, the business partner is a supplier or distributor *(hub*) that has a supply contract with several resellers (*spokes*) that compete with each other.

It is a type of cartel with a façade of a legitimate commercial relationship between vertically related agents, under which commercial decisions among competitors are made without a direct exchange of information between them.

In the case recently ruled by CADE, the practice occurred as follows: a reseller identified a potential client that would buy whiteboards and projectors and informed the distributor that it has mapped such client, along with the value above which the other resellers should submit coverage proposals to the same client. The distributor informed the other resellers, requesting the presentation of coverage proposals in the bidding of the mapped client. With such arrangement, which lasted for years, there seemed to be effective dispute when, in practice, prices were kept artificially high.

This practice has been the subject of concerns by competition authorities in several countries. For example, in Portugal the competition authority has issued, since December 2020, at least ten decisions condemning *hub-and-spoke* cartels in the retail distribution market for food products, with fines amounting to a total of more than 675 million euros (approximately R$ 3.7 billion).

In such precedents, the distributors fixed the resale price in supermarkets, reducing competition among their stores, through contacts established through a common supplier. With this, they stipulated prices to final consumers at artificially higher levels than in a free competition scenario.

To prevent and detect practices of this nature, it is important that companies address the issue in their competitive *compliance* training, highlighting risk situations for the specific activities of the company, both in the *hub* (instrumental partner) and in *spoke* (competitor) positions.