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Brazilian antitrust regulator seeks convictions for 14-year resin cartel

Matt Richards

Brazil's competition authority has recommended that two companies and seven individuals be convicted of colluding in the market for coatings and composite resins from 2000 to 2014 – with a further nine companies already admitting to the cartel.

The country's Administrative Council for Economic Defence (CADE) accused resin maker Royal Química and consulting firm CEMPRE Apoio Educacional of facilitating the operation of the cartel, which allegedly involved dividing customers, exchanging sensitive information, and fixing prices and commercial conditions.

Coatings and resins are bought by a range of manufacturers, including those that make swimming pools, abrasive products, brake pads, paint and varnish.

The enforcer said it received a leniency application from cartel member Reichhold do Brasil in April 2014 and carried out dawn raids on the other suspected participants in May 2014. In May 2016, following analysis of the collected data, CADE initiated administrative proceedings.

The other companies involved in the cartel were: Água Química, Ashland Polímeros do Brasil, CCP Composites e Resinas do Brasil, Novapol Plásticos, Elekeiroz, Brampac, Akzo Nobel and SI Group Crios Resinas.

CADE's Superintendent-General has recommended dropping the cases against these companies and 40 associated individuals, as well as leniency applicant Reichhold do Brasil, because they have all signed either leniency or settlement agreements. Investigations into four other individuals should also be dropped due to a lack of evidence, the agency said.

The nine companies admitted to participating in the cartel, and committed to ending the practice and working with the enforcer on the case. They have paid a total of 78.9 million reais (US\$21 million) in administrative sanctions, the enforcer added.

CADE noted that it was the first time that settlement agreements had been used during the preliminary phase of the investigation, with four being signed following the dawn raids before the agency initiated its administrative proceedings.

Daniel Oliveira Andreoli, a partner at Demarest Advogados in São Paulo who acted for Akzo Nobel in the case, said the nine companies' admissions of wrongdoing meant Royal Química and CEMPRE Apoio Educacional are likely to be convicted.

“It will be very difficult for the two remaining companies to demonstrate that they have not participated in the same anticompetitive conduct,” he said. Andreoli also noted the potential for follow-on damages claims in the civil courts.

While CADE usually investigates every single individual with management responsibility who comes up in the evidence of a cartel, Andreoli said, the authority typically concludes that some individuals initially targeted were not cartel participants, or that there was not enough evidence to convict them – as happened in this case.

The case will now be decided by CADE's Administrative Tribunal. The agency said that, if convicted, the companies could have to pay up to 20% of their annual turnover, with fines for individuals ranging from 50,000 reais (US\$13,310) to 2 billion reais (US\$530 million).

None of the companies responded to requests for comment from Latin Lawyer's sister publication *Global Competition Review*.

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