

## Na Mídia

18/02/2019 | [Latin Lawyer](#)

### **Brazil ends 13-year cartel probe with fines**

Charley Connor

Brazil's competition authority has fined Toshiba and two other electricity component manufacturers 55 million reais (US\$15 million) for colluding to fix prices for air-insulated switchgear parts.

The Administrative Council for Economic Defence said last Thursday that it had fined Toshiba Brasil, Inepar Energia and Laelc Reativos for their roles in a cartel that began fixing prices and rigging bids when Brazil's electricity grid was privatised during the 1990s.

The authority said that the companies took advantage of the break-up of state electricity incumbent Eletrobras to fix prices for electrical components that electricity suppliers needed in order to bid for four national electricity projects.

The companies fixed the price of electrical equipment that was required to supply air-insulated switchgear substations, which control the flow of electricity within Brazil's electricity transmission and distribution networks by increasing or decreasing the voltage supply as needed. The authority said the cartel affected equipment such as transformers, circuit breakers, capacitors, and power protection and control components.

The authority's investigation revealed that the companies first began conspiring through formal agreements in 1996, when public procurement was underway for four important projects to establish a national interconnected electricity grid. The projects were known as North-South I, North-Northeast 1st Circuit, North-Northeast 2nd Circuit and Furnas Itaipú 3rd Circuit.

The components manufacturers held meetings – so-called “discussion tables” – that divided the market to provide electrical components to the electricity supply companies that bid for the projects. They also fixed the prices of the products they supplied, the authority said.

The cartelists continued to hold discussion tables until at least 2006, where they allocated among themselves all air-insulated switchgear substation projects in the Brazilian market, the enforcer said.

The electricity component manufacturers organised a subcontracting system to allocate work among several companies, once one of the cartelists was awarded a bid. They also created a scheme to compensate cartel members that had been passed over during public tenders.

João Paulo de Resende, who led the authority's case, said the cartel's members concluded written agreements for its operation and organisation; were in constant contact via face-to-face meetings and emails; and even established a system to punish members who broke the unlawful agreements.

Eight companies and 14 individuals have already signed settlement agreements with the enforcer worth 235 million reais (US\$65 million) in fines. The settling companies are Alstom Brasil Energia e Transporte; Siemens; Grid Solutions Transmissão de Energia; VA Tech Transmission and Distribution; WEG; Schneider Electric Brasil; General Electric Brasil; and Trafo Electrical Equipment.

**Bruno de Luca Drago at Demarest Advogados in São Paulo said the disparity between the fines collected from the settlement agreements and the fines handed down to the other three cartelists indicates a growing trend among investigated companies to settle their proceedings rather than wait for a final decision.**

CADE's increased focus on cartel enforcement may have dissuaded companies from forming explicit, organised cartels like the air-insulated switchgear cartel, he said.

"From my experience, the greater the level of enforcement by the authorities, the greater the level of corporate compliance or the level of sophistication to collude," he said. CADE increased its cartel enforcement from 2002 onwards, with strong campaigns and new legal tools that helped detect collusion, he added.

In parallel with its air-insulated switchgear components probe, CADE also investigated the international gas-insulated switchgear components cartel for rigging bids and fixing prices.

The enforcer fined Toshiba and Mitsubishi Electric 4.9 million reais (US\$1.5 million) last August for their roles in that cartel. In 2016, it concluded settlement agreements worth 26 million reais (US\$7 million) with Japan AE Power Systems, Alstom, Siemens and VA Tech.

ABB and its subsidiaries escaped penalties in both probes for revealing the existence of both cartels to the enforcer.

Toshiba Brasil, Inepar Energia and Laelc Reativos did not respond to requests for comment.

#### Counsel to Toshiba do Brasil

Mattos Engelberg Advogados

Partner Ubiratan Mattos and associate Andrea Astorga

#### Counsel to Inepar Energia

Cunha de Almeida Hollanda & Monclaro Advogados Associados

Partner Pedro Ivan Vasconcelos Hollanda

Counsel to Laelc Reativos

Fadel Gonçalves Leite Sociedade de Advogados