Competition policy in Brazil

Too little, too late

SAO PAULO

Merger plans puts weak antitrust enforcement in the spotlight

A BATTLE is escalating between two giant French retailers, Carrefour and Casino, over who gets to join up with Pão de Açucar, Brazil's biggest supermarket chain. On June 28th Abilio Diniz, Pão de Açucar's chairman, revealed plans to merge with Carrefour's Brazilian operations. That came as news to Carrefour's arch-rival, Casino, which has been a part-owner of Pão de Açucar since 1999. This week Casino's boss, Jean-Charles Naouri, flew to Brazil to denounce the plans, which he dubs "expropriation", and to berate BNDES, the national development bank, which offered to finance them.

If the deal goes through, the combined company would have 27% of the national retail market, and 69% of Sao Paulo state's. Given the risk of such concentration, it is hardly surprising that the deal's fate may rest with the government. But the verdict on the merger will come from the BNDES—whose president, Luciano Coutinho, now says it will only back the deal if Casino is reconciled-rather than from CADE, the competition authority. The outcome of the fight could hinge on any number of strategic, legal or political factors. Consumer welfare, however, will not be among them.

Antitrust policy has long been weak in Brazil. In the 1990s the country started opening its economy and privatising firms in order to increase competition. But a study in 2007 by Edmund Amann of the University of Manchester and Werner Baer of the University of Illinois found that 15 years later, the market share of the top four companies in most sectors had become even greater.

CADE is crippled by rules that stop it from acting until after deals have gone through. It can then impose conditions, or even order mergers unpicked if it thinks them irredeemably anti-competitive. But by then it is often too late.

In 2004 CADE ordered Nestle to sell Garoto, a chocolate company it had bought two years earlier. Nestle is still fighting that ruling in court. Last month CADE threatened to undo the 2009 merger that formed Brasil Foods, the leading firm in Brazil's processed-food market. Even if the regulator sticks to its guns (a ruling is due on July 13th), the firm can file a court challenge.

A bill that would require pre-approval from CADE for mergers that could damage consumers was presented to Congress in 2005. However, progress has been glacial. Even if the pace picks up, it will be too late to affect the proposed Pão de Açucar deal.

In some cases the state actively promotes industrial concentration, to help firms gain the scale to compete abroad. In the 1990s a privatising government got around the scarcity of capital and know-how by coaxing state-owned pension funds to co-operate with private companies, and pushed public banks into giving them subsidised loans. Today Brazil's firms are stronger and its capital markets deeper. But the government continues to intervene. With Carrefour, the BNDES is seeking to fund a merger between two of the largest forces in retail-perhaps to stop Casino from taking sole control of Pão de Açucar, as it could otherwise do in 2012.

A side-effect of such activity is complex corporate structures with nebulous state involvement. According to Sergio Lazzarini of Insper, a business school in Sao Paulo, around half of listed Brazilian firms participate in cross-holdings or layered holding companies. And of the 600-odd biggest, about 100 get a chunk of their capital from big state entities. The more complex a company's structure, Mr Lazzarini finds, the less consumers and private shareholders benefit from public investment in it.

The ruling Workers' Party has maintained orthodox domestic economic policies. However, it has been more interested in creating national champions than in fostering competition. The result, says Mr Lazzarini, is that businesses "can consolidate markets, reduce competition and increase their profits with government money." •

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