



# **Crushed Rock Cartel Case: *Lessons Brazil Learned from its First Dawn Raid***

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# INTRODUCTION



# 1. Brazilian Antitrust Law & Policy

- **Antitrust law and practice in Brazil is governed primarily by Law No. 8.884, of 1994, as amended in 2000 and 2007**
- **3 Antitrust Agencies:**
  - **SEAE -- Secretariat of Economic Monitoring of the Ministry of Finance**: issues non-binding opinion in merger reviews, and may issue non-binding opinion in matters related to anticompetitive practices
  - **SDE -- Secretariat of Economic Law of the Ministry of Justice**: chief investigative body in matters related to anticompetitive practices, and it issues non-binding opinions in merger reviews
  - **CADE -- Administrative Council of Economic Defense**: Administrative Tribunal composed of seven Commissioners, which makes the final rulings in connection with merger reviews and anticompetitive practices
- **Criminal prosecution is conducted by the State and Federal Public Prosecutors Offices (jail term of 2 to 5 years)**





## **2. From Merger Review to Cracking Cartels**

- **During the first eight years of enforcement of the 1994 law, the Brazilian antitrust authorities focused primarily on merger review**
  - **Substantial resources devoted to the review of competitively innocuous mergers**
  
- **Since 2003, the Brazilian antitrust authorities promoted a hierarchy of antitrust enforcement that places hard-core cartel prosecution as a top priority**
  - **Aprox. 300 cartel investigations being handled by SDE**
  - **75% of the SDE's resources are currently devoted to cartel investigations**
  - **Use of aggressive investigative tools**



### **3. 2003: A Year to be Remembered...**

- **SDE efforts to exploit the statutory powers created by the 2000 amendments did not get underway until 2003**
- **Beginning in that year, SDE restructured itself to focus increased attention on anti-cartel enforcement**
  - **Creation of a department of quantitative and econometric techniques to undertake analyses in conduct investigations**
  - **Creation of an Intelligence Center**
  - **First dawn raid conducted**
  - **First leniency agreement signed**





# THE CRUSHED ROCK CARTEL CASE



## **4. Crushed Rock Cartel Case: A Landmark**

- **First antitrust dawn raid ever conducted in Brazil (2003)**
- **The case resulted from a strong cooperation among SDE, the Federal Police and the Public Prosecutor Office**
- **The cartel was condemned in 2005 with record fines**
- **Judicial review confirmed condemnation**
- **Successful criminal prosecution**
  - **The proceedings led to strong cooperation and joint interviews of witnesses by SDE and the Public Prosecutors and ultimately to criminal indictments**
  - **The criminal proceedings were all settled with the payment of fines and the establishment of other conditions (appearing before the judge every month, not participating in other cartels, etc.)**





## **5. Crushed Rock Cartel Case: Timeline**

- **April 2002**: Proceedings were initiated after SDE was tipped off about an alleged cartel involving crushed rock companies in São Paulo
- **July 2003**: After preliminary investigations, and with the cooperation of the Federal Police, SDE ran a dawn raid at the offices of the industry association “Sindipedras” in São Paulo
- **November 2004**: SDE completed its investigation and concluded that 18 companies and the industry association should be held liable by CADE for cartel infringements
- **July 2005**: CADE issued its ruling, fining the defendants with record fines, in amounts ranging from 15 to 20% of their 2001 gross revenues, depending on the degree of involvement in the cartel





## **6. The Anonymous Tip...**

- **SDE was tipped off about the existence of a cartel in the market for crushed rock, an essential raw material in the civil construction industry**
- **The tip provided SDE with information on market participants, the software used in order to monitor and put in place the cartel, frequency of their meetings and manner in which they controlled and agreed on prices, consumers and market division**
- **Cartel members used the industry association as a cover for conspiracy meetings**
- **Alleged participant companies accounted for 70% of the crushed rock produced in São Paulo, and had allegedly been operating the cartel for the previous two years**





## **7. Preliminary Investigations: The Importance of Cooperation**

- **After being tipped off, SDE launched preliminary investigations with the cooperation of the Federal Police**
  - **Passage of legislation in 2002 under which the Federal Police was authorized to assist in cartel investigations that entail interstate or international aspects**
- **The Federal Police secretly investigated the industry association for over six months**
  - **Regular meetings among competitors, especially at the day before governmental bids**

**Federal Police:  
Investigative  
Techniques**



**SDE:  
Antitrust Expertise**





## **8. The Launch of the Dawn Raid**

- **The anonymous tip and the investigation run by the Federal Police provided SDE with the necessary information to obtain a judicial warrant to execute the dawn raid**
- **The dawn raid was conducted at the offices of the industry association Sindipedras (State of São Paulo Flintstone Industries Association)**
- **SDE seized five computers, a laptop, and twenty-seven boxes of documents, including minutes of meetings, manuals, flip charts, receipts, etc.**





## **9. The Seized Evidence**

- **Seized evidence showed that there was in fact an illegal agreement in place and that the defendants:**
  - **Maintained pricing data and daily sales figures in a central computer software at Sindipedras**
  - **Met at the association's premises to set cartel policies**
  - **Levied fines for failure to comply with group decisions**
  - **Divided customers and allocated sales quotas (including sales arising from bids tendered in public competitions)**
  - **Required a surcharge on sales made to customers assigned to other companies**





## **10. The Cartel Dynamics**

- **Two sophisticated softwares were in place to allocate market and customers (“Bible”) and control output and sales**
- **Daily information exchange**
- **Regular “seminars”, and mandatory “advanced cartel courses for Managers”**
- **Steering Committee, Audited System**
- **Penalties were provided for the companies that did not respect the agreement**





## **11. The Cartel Mottos**

- **“Respect the deal – don’t bite the rope”**
- **“Attack non-allied companies. NOT THROUGH LOW PRICES”**
- **“Discover our non-allied companies weaknesses’ and denounce them to the authorities to generate inspections”**
- **“CONCENTRATE THE MARKET”**
- **“CONTROL PRODUCTION”**
- **“Buy the non-allied companies’ output”**
- **“Value the group. Study and decide together”**



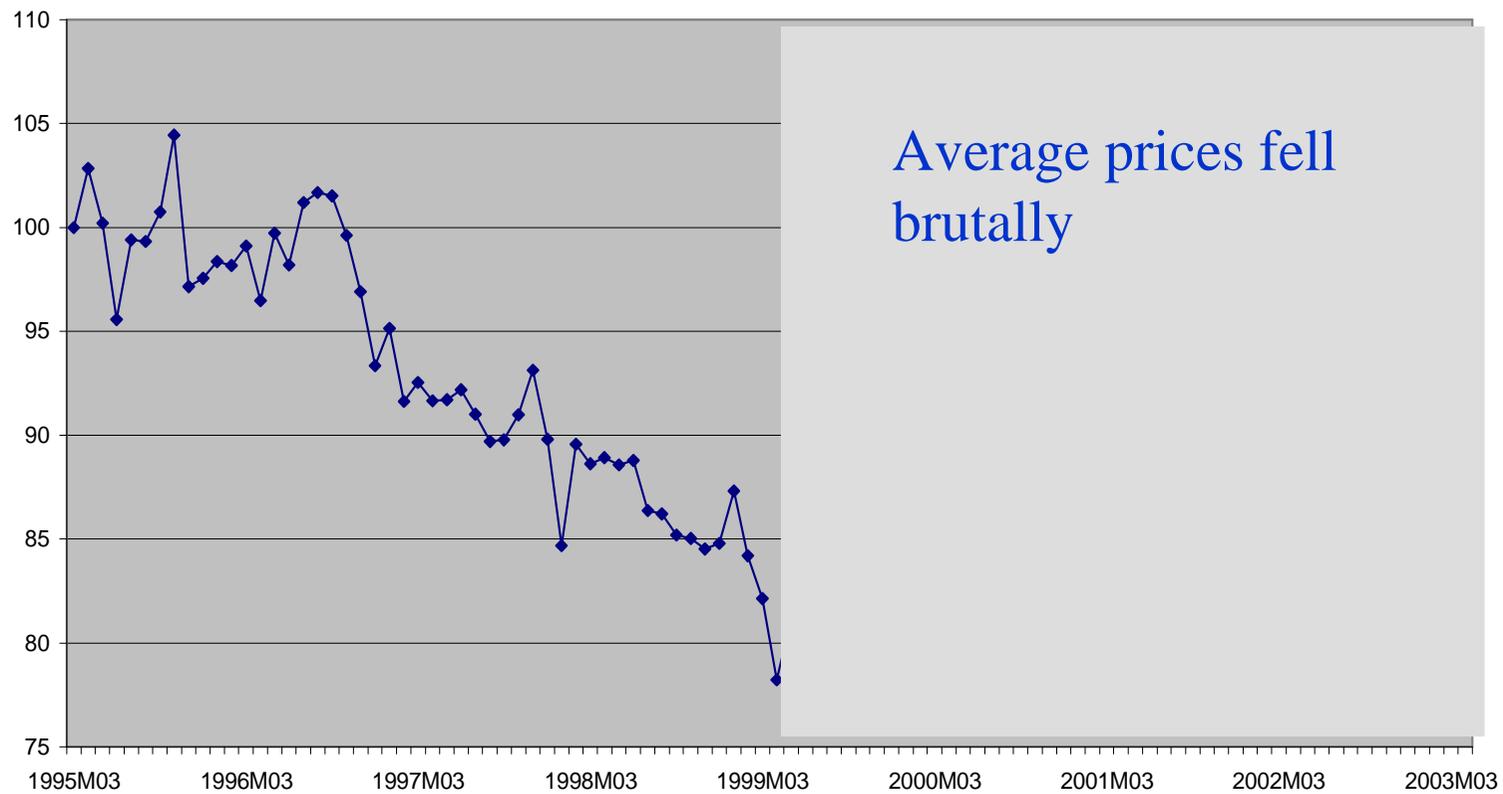


## **12. The Effects of the Cartel**

- **Steady output levels**
- **Cartel participants' turnover rose significantly**
- **Prices increased, as planned**

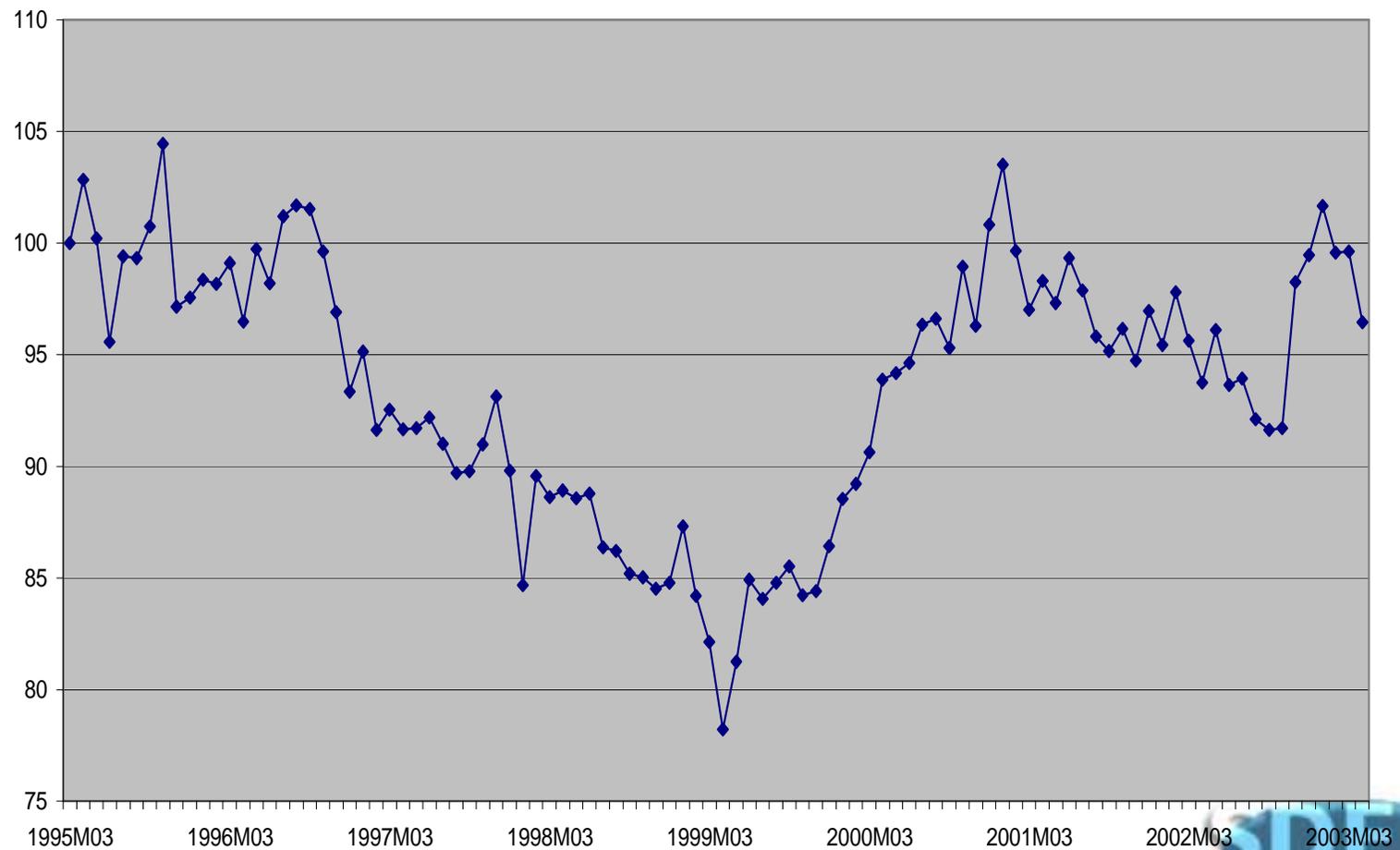


## Price dynamics in the 4 years before the cartel





## The Cartel seems to have worked...





# WHAT WERE THE LESSONS LEARNED?



## **13. The importance of Direct Evidence**

- **Raids are a very effective tool to obtain direct evidence**
- **Direct evidence:**
  - **Supports criminal applications**
  - **Supports the administrative rulings before the Judiciary**
- **Since the first case, growing number of search warrants served:**
  - **2003, 2004 and 2005 – 11 warrants served**
  - **2006 – 19 warrants served**
  - **2007 (January/October) – 84 warrants served**





## **14. The importance of Digital Evidence**

- **Gathering digital evidence requires special collection and preservation techniques**
  
- **Processing and Analyzing**





## **15. Getting Prepared...**

- **Critical to identify type of evidence to be seized**
- **Determine the composition of search teams, and map out who will do what and when during the conduct of the search**
- **Briefing sessions prior to the execution the search**

## **16. Getting in and Establishing Control**

- **Upon entry to the premises, establishing control is the top priority**



# **17. The importance of Cooperation**

## **➤ Creation of an “Intelligence Center”**

- **Formed by SDE, SEAE, Federal Police, State-level police, and Public Prosecutors**
  - **SDE is about to sign a formal cooperation agreement with the Federal Police**
- **Regular exchange of information and expertise**
- **Work closely during all stages in the gathering of evidence**
  - **Intelligence gathering exercises before the raid**
- **Arrests of individuals when conducting criminal dawn raids in cooperation with Public Prosecutors**
  - **2 people temporarily arrested in 2003**
  - **30 people temporarily arrested in 2007**





## **18. Raids & Leniency: The Upward Spiral**

- **Leniency and Dawn Raids walk hand in hand**
  - **Leniency provides the level of evidence needed for a judge to authorize a dawn raid**
  
- **Upward Spiral: Searches → Leniency Agreement → More Searches → More Agreements → etc.**
  
- **Great advantage of leniency:**
  - **Commitment of one of the parties to present detailed insider information of the cartel**
  - **Which in turn will be used to convince judge to authorize raid**
  - **Raids with greater chances of success due to higher precision of information available**
  - **Success stories of previous dawn raids help to convince the judge to authorize future dawn raids**





# CONCLUSION



## 19. Conclusion

- **The re-deployment of resources by SDE to cartel investigations -- rather than merger review -- has been proven to be successful**
- **The dawn raid activity has not only greatly increased the profile of competition law enforcement in Brazil, but also generated direct evidence (i) that public prosecutors have used to support criminal applications; (ii) that supports the antitrust rulings before the Judiciary**
- **There is much work to be done; whenever we improve our techniques, the companies adapt to our movements → cat-n-mouse game**





**Thank you!**

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