Antitrust as Industrial Policy

Government-Sponsored Mergers as Passive Industrial Policy in Brazil, 1995–2002

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The puzzle

> *"The best industrial policy is to have no industrial policy." — Pedro Malan, Minister of Finance*

Yet the government **sponsored** the mergers that built two national champions: Gerdau and Ambev. **How pursue industrial policy while denying it?** Not through subsidies or protection, but by **reinterpreting the enforcement of competition law** — at no cost to the Treasury.

Figure 1: Pedro Malan, Minister of Finance

The argument

Antitrust can serve as a *passive, fiscally cheap* industrial policy — we study a case of a fiscally conservative, liberalizing government that explicitly denies doing industrial policy.

- **Claim.** Brazil's flexible antitrust enforcement in the 1990s worked as *de facto* industrial policy, forging "national champions" to become brazillian multinational companies.
- **Evidence.** Two government-backed mergers: **Gerdau/Pains** (steel) and **Antarctica–Brahma → Ambev** (beer).
- **Mechanism. Institutional conversion** (Mahoney & Thelen 2010) of a young competition regime — against its original intent.

The received view — and its crack

- Antitrust scholarship, from **Brandeis to Williamson**, rejects state-led industrial policy as market-distorting.
- Yet early-20th-century U.S. market regulation already worked as *de facto* industrial policy, without direct state intervention (Dobbin 1994; Prasad 2012).

The antitrust / industrial-policy boundary was always porous. The question is *how* the crossing happens in a liberalizing context.

Economization: form-based vs. effect-based

Ergen & Kohl (2019): since the 1960s, competition regimes were **economized** — reoriented from broad societal goals to economic ones — in two opposed forms.

	Form-based (Ordoliberal)	**Effect-based** (Chicago)
Illegality	Of certain structures *per se*	Only if net harm is shown
Tools	Structural presumptions, thresholds	Rule of reason, efficiency defense
Remedies	Structural (divestiture)	Behavioral (conduct)
Discretion	**One** soft joint: market definition	**Three**: market, effects, efficiencies

The two concepts bent in Brazil — **efficiency** and **relevant market** — are exactly the joints the effect-based approach pries open.

From military developmentalism to the regulatory state

- **The military state (1964–85):** national-developmentalism — import substitution, state-owned firms, market reserves, tariff walls.
- **FHC's rupture (1995–2002):** trade opening, **privatization** (Vale 1997, Telebrás 1998), the end of market reserves, fiscal discipline.
- **A new bureaucracy** — Bresser-Pereira's *managerial reform* (MARE / PDRAE, 1995): from a patrimonial-bureaucratic state to a **regulatory** one, staffed by technocrats and independent agencies (ANEEL, ANATEL, ANP).
- **CADE (strengthened 1994) is a child of this moment:** a technocratic regulator born as the state stopped *producing* and started *regulating*.

Liberalization *reconfigured* state power — it did not retreat. The same move that built the regulatory state built the discretion antitrust would convert.

Context: liberalization and runaway inflation

- Liberalization followed decades of direct intervention: state-owned firms, protectionism, price controls and trusts.
- In a period of **runaway inflation**, stabilization (the Real Plan) made **competition a tool of inflation control** — not a developmental one.
- Trade opening exposed domestic firms, raising fears of **denationalization**.

Figure 2: Price-tagging amid runaway inflation

A new competition authority (1994)

- The 1994 law granted autonomy to **CADE** (Administrative Council for Economic Defense); councilors appointed by the President.
- Mandate: "strengthen the competition culture" — competition **as part of inflation control**.

CADE's challenge: to legitimate a brand-new mandate — a young regime with **no entrenched professional community** to defend it.

The rebars of discord

- Gerdau acquires Korf's Brazilian assets; the vertical-integration part is approved unanimously.
- Contention centers on the **steel rebar market** (Korf's core business), where Gerdau's share would approach **50%**.
- Under Law 8.884/94, a **20% structural threshold** still bit — a hard, *form-based* element.

Gerdau–Pains: timeline

- **Mar 1995** — CADE postpones; the deal would lift Gerdau's long-steel share **39.6% → 46.2%**.
- **Oct 1995** — **partial approval, deconstitution ordered** (46.5% of common long steel; the law bars >20%).
- **Late 1995** — refusing compliance, Gerdau bypasses the courts and appeals to Justice Minister **Jobim**, who suspends the ruling — *contra* Art. 50 ("no executive review").
- **Then** — Cardoso **recomposes CADE**, replacing jurists with transaction-cost economists ("Don't cause me problems!").
- **Mar 1998** — the reconfigured CADE approves with **10 conditions**: keep Pains, but sell the Contagem rolling unit and Transpains, rehire workers, invest US$78M.
- **1999** — the champion goes global: 75% of **AmeriSteel** (US).

Gerdau: why it took brute force

- **Relevant market** — firms: steel is a *global commodity*. CADE: domestic prices **decoupled** from world benchmarks → national market.
- **Efficiency (Art. 54)** — firms: proprietary technology, rescue of distressed assets. CADE: achievable **without** integration; no consumer gain.

Only one soft joint (market definition) → the executive had to act *against the letter of the law* (Jobim) and **replace the councilors** with transaction-cost economists ("Don't cause me problems!" — Cardoso).

The "green-and-yellow multinational"

- After failed tie-ups with foreign firms, the two largest brewers — **Antarctica and Brahma** — merge into **Ambev** (1999).
- Framed as a *verde-e-amarela* champion; executives mobilized fears of **denationalization**.
- Costly domestic credit let foreign rivals **outbid** Brazilian firms — scale at home as a defense.

Figure 3: Ambev: "the flavor of Brazil to the world"

Ambev: a public war

- **Jul 1999** — unveiled at the **Palácio da Alvorada**, Cardoso beside the founders; the new firm holds ~**70%** of beer.
- **14 Jul** — CADE strikes back with a **precautionary suspension** — yet the firms already operate as one, a *fait accompli*.
- **Media war** — rival **Kaiser** runs **three** press campaigns: "the merger means higher prices, against the consumer."
- **The staff revolt** — SEAE finds efficiencies of **6.9%**, not the claimed 14.1%; a **Federal Police bribery probe** brushes the council.
- **The executive leans in** — ministers phone CADE's president; Dev. Minister Carvalho dangles **R$3bn** of BNDES for champions; Cardoso: "the world runs on oligopoly."
- **Mar 2000** — approved over **one dissent** (Ruy Lima) — a Performance Commitment Term: sell the weak *Bavária*, keep *Skol*.

Ambev: the effect-based regime at work

- **Relevant market** — Ambev: define broadly as *"beverages"*, frame rivalry as international (vs. Coca-Cola). Critics/SEAE: the market is **beer**, exports $<$**1%**.
- **Efficiency** — **14.1%** claimed vs. **6.9%** found; speculative, unlikely to reach consumers.
- **CADE (Gesner Oliveira):** regulate **conduct over structure** $\rightarrow$ approved with conditions.

An even louder war than Gerdau — media, ministers, a bribery probe, a lone dissent — and **yet no illegal override**. The three joints had room; the doctrine absorbed it.

Discussion: the two cases compared

- **Gerdau (form-based, still hard):** one discretionary joint → open conflict and an *illegal* override.
- **Ambev (effect-based, installed):** three joints → the same pressure absorbed as routine.
- The sequence measures **how many discretionary joints the regime had** — not actor fatigue.
- **Conversion = a fiscally free industrial policy** (forbearance, not spending): "passive."
- **Denial = illegibility.**
- **Caveat (Ergen & Kohl):** change is *piecemeal*; two cases are a precedent, not a permanent regime.

Brazil's contribution: policy under public denial

- **Public denial is the crux.** Industrial policy pursued while disavowed at the programmatic level (Malan) — not merely quiet, but officially rejected.
- **Denial → illegibility.** The developmental aim leaves no trace in the doctrine; it survives only in the case files — so **process tracing** is the necessary method, not a convenience.
- **Conversion → fiscally free.** The champion is forged by *forbearance* (letting firms concentrate), not by spending. That is what "*passive*" means.
- **The irony.** The effects-based toolkit was built (Chicago) to keep the state *out*; in Brazil it let the state *in*. Conversion runs on **loud executive politics + personnel turnover** — "covert" is *constitutive*, not cosmetic.

Industrial policy: the normality of denial

*"Government policies that **explicitly target the transformation of the structure of economic activity** in pursuit of some public goal. ... A key characteristic is the exercise of **choice and discretion** by the public authorities — 'We promote X but not Y' — though the latter part is **typically left implicit**." (Juhász, Lane & Rodrik 2024)*

- **Not fiscal by definition:** "the gamut runs from import protection to **exemptions from specific regulations**" — industrial policy can run through the regulatory apparatus, at no Treasury cost.
- **Discretion and denial are built in:** the selective "X but not Y" is "typically left implicit"; in developing countries the term itself is avoided for its "negative connotation."
- **Brazil is not a freak — it is the pure case:** the *targeting* is deliberate; only the *label* is denied.

Three fates of administrative discretion

Foster & Thelen (2024): the **administrative-law structure** — how much discretion regulators hold, and *how it is disciplined* — decides which paradigm sticks. Ergen & Kohl supply the ideas; the container decides their fate.

Regime	Discretion disciplined by	Outcome
Germany	Ordoliberal **rules** (form-based profession)	Robust form-based control; blocks economization
EU	**Social learning** (deliberative administration)	Brandeisian *"regulated competition"*
Brazil	**Nothing yet** — young regime, executive capture	**Conversion** → covert industrial policy

Discretion is not destiny — the *container* decides. Brazil fills the missing cell: discretion captured *before* a profession could discipline it.

Thank you

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