

companies in relation to Brazil, which began to announce large-scale investments that would become regular (albeit with different profiles) in subsequent years”²³.

In this context, as the first stage of Chinese investments, the country prioritized investments in activities directly linked to commodities, which comprise most of Brazil's export agenda to the China. As an example, one can mention the purchase of 40% of the Brazilian operations of Spanish company Repsol by the Chinese state-owned enterprise Sinopec. It is important to point out that this acquisition is linked to China's dependence on the importation of large amounts of Brazilian crude oil. The policy adopted since then marks the moment in which Chinese investors began to buy companies linked to the exploration of natural resources²⁴.

The second stage, between 2011 and 2013, was marked by a transition in the profile of Chinese investments in Brazil and subsequent sectoral diversification in capital allocation. From an investment practice more focused on the area of exploration of natural resources, China started to also investing in the industrial sector, especially in the machinery and equipment, automotive and electronic devices sectors. Among the main examples of Chinese investments in the industrial area at the time, there are manufacturers of machinery and equipment, and automobiles, such as *Sanny* and *Chery*. There was also an increase in investments from companies already established in the country, such as *Huawei* and *Lenovo*, representatives of the electronics and communication sector²⁵. According to the Brazil-China Business Council, this attraction of Chinese capital is directly related “to the favorable conditions that Brazil had to receive such investments. Among them, the good pace of economic growth and the expanding domestic consumer market”²⁶.

In this vein, in the third stage, which started in 2013, Chinese investments acquire a more focused appearance on financial services, in which Chinese banks start to settle in Brazil or acquire shareholdings in national or international banks operating in Brazil. Among the main Chinese investments in this area, the establishment of the *Industrial and Commercial Bank of China (ICBC)* in Brazilian territory stands out, with an initial investment of US\$ 100 million. Furthermore, it should be noted that a relevant factor for this is the progressive internationalization of the yuan, which now has the status of a global currency²⁷.

Finally, the fourth stage started 2014, when there was a remarkable increase in Chinese investments, and “the enterprises underwent not only quantitative changes, but also

²³ CONSELHO EMPRESARIAL BRASIL-CHINA. Investimentos chineses no Brasil 2016. 2017, p.7. Available: <http://www.cebc.org.br/arquivos_cebc/investimentos-chineses/5.1.%20%20InvestimentosChinesesNoBrasil2016_PT.pdf>. Access: 30 July 2019.

²⁴ CONSELHO EMPRESARIAL BRASIL-CHINA. Investimentos chineses no Brasil 2016. 2017, p.6-10. Available: <http://www.cebc.org.br/arquivos_cebc/investimentos-chineses/5.1.%20%20InvestimentosChinesesNoBrasil2016_PT.pdf>. Access: 30 July 2019.

²⁵ CONSELHO EMPRESARIAL BRASIL-CHINA. Investimentos chineses no Brasil 2016. 2017, p.8. Available: <http://www.cebc.org.br/arquivos_cebc/investimentos-chineses/5.1.%20%20InvestimentosChinesesNoBrasil2016_PT.pdf>. Access: 30 July 2019.

²⁶ CONSELHO EMPRESARIAL BRASIL-CHINA. Investimentos chineses no Brasil 2016. 2017, p.8. Available: <http://www.cebc.org.br/arquivos_cebc/investimentos-chineses/5.1.%20%20InvestimentosChinesesNoBrasil2016_PT.pdf>. Access: 30 July 2019.

²⁷ EICHENGREEN, Barry; LOMBARDI, Domenico. RMBI or RMBR? Is the Renminbi Destined to Become a Global or Regional Currency? *Asian Economic Papers*, MIT Press, v. 16(1), 2017, p. 35-59.

administrative and strategic changes”²⁸. According to the Brazil-China Business Council, the investment entry phase at the time took place through a series of characteristics that follow “the pace dictated by the general context of Chinese investments in the world, the changes in the sense of attractiveness of certain sectors of the economy Brazilian economy, the mode of entry of these companies in the country and the situation of the national economy”²⁹.

This fourth phase is also marked by a change in the focus of Chinese investments, which have advanced, in particular, in the areas of electricity production and transmission. In this sense, Chinese companies won bids for the construction of hydroelectric plants and transmission lines, acquiring assets from both Brazilian and foreign companies operating in the Brazilian energy sector. Among the Chinese companies that invested in this sector at the time, *State Grid* and *China Three Gorges* stand out. Also in this context, it is worth noting the expansion of Chinese capital in the agribusiness sector through acquisitions of trading companies.

Among the main characteristics of this stage, the option of Chinese investors for business arrangements based on mergers and acquisitions of companies already operating in Brazil, both national and foreign, stands out. Therefore, since 2014, most Chinese investments in Brazil are represented by mergers and acquisitions, “which reflects a global particularity of Chinese investments, which have shown a strong tendency to purchase assets already in operation abroad”³⁰. In other words, this is not a peculiarity of Chinese investments only in Brazilian territory, but a part of an ongoing global Chinese strategy, which has proven to be an efficient way of inserting Chinese capital, through the control of assets with high levels of maturity in the domestic market³¹.

The preference of the Chinese for acquiring local assets can be explained in part by the ease of operating from companies already consolidated in the domestic market. Among the sectors that entered Brazil via mergers and acquisitions, the participation of companies in the financial, infrastructure, agribusiness, energy and mining areas stands out. For all the above, in 2016 there was a predominance of Chinese investments in Brazil via mergers and acquisitions³².

As for greenfield investments, these were predominant in the manufacturing sectors, especially in the electronics, renewable energy, automobile sectors, in addition to a project announced in the steel sector. Additionally, there were entries of Chinese companies through joint ventures, especially in the area of home appliances. Chinese companies such as *TCL* and *Midea* bet on local alliances with the aim of expanding their presence in the Brazilian domestic

²⁸ CONSELHO EMPRESARIAL BRASIL-CHINA. Investimentos chineses no Brasil 2016. 2017, p.8. Available: <http://www.cebc.org.br/arquivos_cebc/investimentos-chineses/5.1.%20%20InvestimentosChinesesNoBrasil2016_PT.pdf>. Access: 30 July 2019.

²⁹ CONSELHO EMPRESARIAL BRASIL-CHINA. Investimentos chineses no Brasil 2016. 2017, p.8. Available: <http://www.cebc.org.br/arquivos_cebc/investimentos-chineses/5.1.%20%20InvestimentosChinesesNoBrasil2016_PT.pdf>. Access: 30 July 2019.

³⁰ CONSELHO EMPRESARIAL BRASIL-CHINA. Investimentos chineses no Brasil 2016. 2017, p.9. Available: <http://www.cebc.org.br/arquivos_cebc/investimentos-chineses/5.1.%20%20InvestimentosChinesesNoBrasil2016_PT.pdf>. Access: 31 July 2019.

³¹ CONSELHO EMPRESARIAL BRASIL-CHINA. Investimentos chineses no Brasil 2016. 2017, p.9. Available: <http://www.cebc.org.br/arquivos_cebc/investimentos-chineses/5.1.%20%20InvestimentosChinesesNoBrasil2016_PT.pdf>. Access: 31 July 2019.

³² CONSELHO EMPRESARIAL BRASIL-CHINA. Investimentos chineses no Brasil 2016. 2017, p.10. Available: <http://www.cebc.org.br/arquivos_cebc/investimentos-chineses/5.1.%20%20InvestimentosChinesesNoBrasil2016_PT.pdf>. Access: 01 August 2019.

market, given the advantage offered by the previous experience of their partners that already operated in Brazil, namely the *Midea-Springer* and *TCL Multimedia-SEMP* partnerships³³.

B. SECTORAL DISTRIBUTION OF CHINESE INVESTMENTS IN BRAZIL

It is noteworthy that Chinese investments in Brazil have been presented in a diversified way, covering both the area of exploration of natural resources, as well as manufacturing, services and agriculture. For example, most investments by Chinese oil companies in Latin America are in the pre-salt fields³⁴. State-owned enterprises *China National Petroleum Corporation (CNPC)* and *China National Offshore Oil Corporation (CNOOC)* are part of the winning consortium for the exploration of Libra, carried out in 2013.

Furthermore, manufacturing also attracts investment projects from Chinese companies in Brazil. Most of these investments are aimed at growing local markets, as opposed to exporting to third countries or exporting to China. These companies normally operate production plants, after years of importing their products from China, to gain proximity and better understand the local market or, even, to mitigate import restrictions. As Brazil is a large market and one of the most regulated in terms of tariffs, import restrictions and local content rules, many factories set up plants to produce components that the same company produces in China, so that there is local supply and compliance at the minimum necessary regarding local content requirements for operation. Ludeña³⁵ points out that trust in components imported from China is fundamental for many Chinese subsidiaries in Brazil. In this regard, it should be noted that in 2011, Brazil increased the tax on cars with less than 65% local content by 30% and, as a result, JAC temporarily suspended the construction of its factory there, which denotes the impact of domestic policies on the development of Chinese capital in Brazilian territory.

At the moment, only *Chery* and *Build Your Dreams (BYD)* – the latter being the largest electric car manufacturer in the world – are producing cars in Brazil. Other Chinese companies worth mentioning are *Sanny*, with a 40% share of the crane market in the country, *Gree*, a manufacturer of air conditioning equipment, and several motorcycle manufacturers operating in the Manaus Free Trade Zone³⁶.

In this sense, it is noteworthy that, in recent years, China has also invested heavily in providing infrastructure in Brazil, more than any other country. This helped the development of some Chinese companies in all types of infrastructure, such as energy, transport and civil construction. However, to date, the largest Chinese investments in this sector are concentrated in the Brazilian electricity sector. For example, *State Grid* took control of transmission lines from two Spanish companies in 2010 and 2012 for US\$2.7 billion, and in 2014 led the winning consortium to supply transmission lines to the Belo Monte hydroelectric plant. .

³³ CONSELHO EMPRESARIAL BRASIL-CHINA. Investimentos chineses no Brasil 2016. 2017, p.10 e p.18. Available: <http://www.cebc.org.br/arquivos_cebc/investimentos-chineses/5.1.%20%20InvestimentosChinesesNoBrasil2016_PT.pdf>. Access: 01 August 2019.

³⁴ LUDENA, Miguel Pérez. Chinese Investments in Latin America Opportunities for growth and diversification. ECLAC - Production Development Series No. 208. United Nations, 2017, p.15.

³⁵ LUDENA, Miguel Pérez. Chinese Investments in Latin America Opportunities for growth and diversification. ECLAC - Production Development Series No. 208. United Nations, 2017, p.16.

³⁶ LUDENA, Miguel Pérez. Chinese Investments in Latin America Opportunities for growth and diversification. ECLAC - Production Development Series No. 208. United Nations, 2017, p.16.

Other Chinese companies are also present in Brazil, such as Huawei and ZTE, manufacturers and installers of telecommunications equipment. Although the equipment is manufactured in China, these companies have built a strong presence in Brazil, which includes a research and development center in Brazil. The *Centro de Pesquisa e Desenvolvimento em Telecomunicações* (CPqD) is a partnership signed in 2013 between Huawei and the Brazilian government, and is located in Campinas, within the state of São Paulo. The initiative supports the development of high-speed Information and Communication Technology (ICT) studies and equipment for the Brazilian market.

In addition to infrastructure, Chinese investments in the country also cover the service sector. Here, the focus has been on the banking sector, mainly in the acquisition of Banco Industrial e Comercial in Brazil by the Construction Bank of China in 2013 for US\$ 814 million. In addition, the Chinese presence in the air services sector is also noteworthy, as Hanan Airlines bought a 24% stake in the airline Azul in Brazil, in 2015, for US\$ 460 million³⁷.

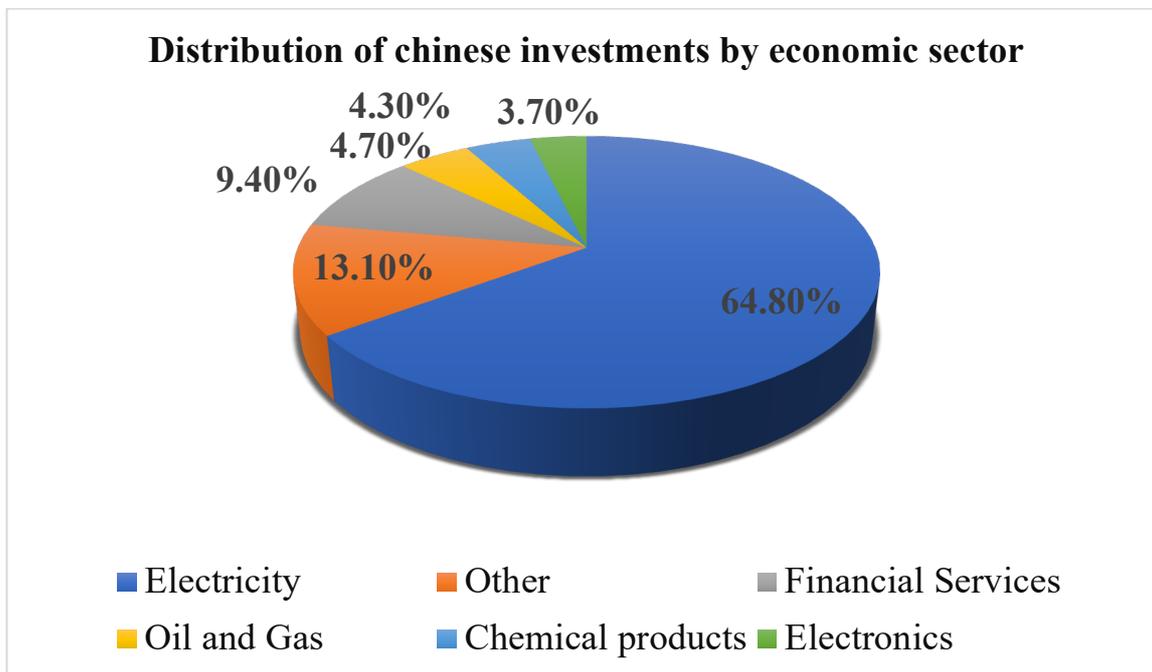
Thus, considering the sectoral distribution of Chinese investments in Brazil between 2003 and 2017, according to Célio Hiratuka³⁸, in recent years, the importance of Chinese investments in natural resources exploration sectors, such as mining, and in manufacturing, has been decreasing, since the slowdown that happened from 2014. However, there is an increase in Chinese investments in the service sector, especially the financial and electric energy (generation and distribution) sectors.

According to the Central Bank of Brazil, in the period between 2014 and the first half of 2018, the distribution of Chinese investments by sector of economic activity was concentrated in more than half in the electric energy sector, in an estimate using the criterion of the final controller. Among the other relevant areas highlighted are financial services, oil and gas, chemicals, electronics and other products. This distribution can be analyzed more precisely through graph 4 below:

³⁷ LUDENÑA, Miguel Pérez. Chinese Investments in Latin America Opportunities for growth and diversification. ECLAC - Production Development Series No. 208. United Nations, 2017, p.17.

³⁸ HIRATUKA, Celio. CHINESE OFDI IN BRAZIL Trends and Impacts, 2000-2017. In PETERS, Enrique Dussel (Org.). China's Foreign Direct Investment in Latin America and the Caribbean Conditions and Challenges. Cidade do México: Universidad Nacional Autónoma de México, 2019, p.167-187.

Graph 4: Chinese capital inflows from 2014 through the first semester of 2018 by economic sector



Source: Designed by the author, based on Central do Brasil, 2018, p. 32.

Thus, Chinese companies in the electricity sector have become the biggest players of Chinese investments in the Brazilian market due to the high amounts invested and the relatively long maturation periods³⁹. In this context, the Brazil-China Business Council also highlights the emergence of a fifth stage in the evolution of Chinese investments in Brazil, which takes place from 2015-2016, in which projects in the area of electricity predominate.

It is noteworthy that, in addition to the previous history of Chinese investments in the electricity sector, these have become even more dense as of September 2016, when *State Grid* concluded the acquisition of a shareholding in CPFL Energia (acquiring a 23% participation), an electricity distributor in São Paulo and the largest electricity supplier in the country. This took place through the purchase of shares that belonged to Camargo Corrêa and to the pension funds Previ, Fundação Cesp, Sabesp, Sistel and Petros. In total, *State Grid* acquired 556,164,817 NGO shares from CPFL Energia at a price of R\$25.51 per share, which is equivalent to a transaction of R\$14.19 billion. Also noteworthy was the acquisition of the shares of CPFL Renováveis, which also belonged to Camargo Corrêa, which were sold for R\$12.20 per share, totaling R\$3.17 billion⁴⁰, and of CPFL Renováveis, expanding its in the Brazilian

³⁹ CONSELHO EMPRESARIAL BRASIL-CHINA. Investimentos chineses no Brasil 2016. 2017, p.13. Available: <http://www.cebc.org.br/arquivos_cebc/investimentos-chineses/5.1.%20%20InvestimentosChinesesNoBrasil2016_PT.pdf>. Access: 01 August 2019.

⁴⁰ CONSELHO EMPRESARIAL BRASIL-CHINA. Investimentos chineses no Brasil 2016. 2017, p.23-24. Available: <http://www.cebc.org.br/arquivos_cebc/investimentos-chineses/5.1.%20%20InvestimentosChinesesNoBrasil2016_PT.pdf>. Access: 01 August 2019.

market in the energy transmission and distribution sectors and, above all, in the generation of electricity from renewable energies⁴¹.

In addition, *China Three Gorges (CTG)*, which operates the Three Gorges hydroelectric plant in China, entered Brazilian territory in 2013, by acquiring assets from Portuguese EDP, and today, after a rapid expansion, is the second largest non-state generator in the country⁴². This company, through *CTG International*, *CTG Brasil* and other subsidiaries, acquired *Duke Energy's* assets in Brazil in a transaction valued at US\$1.2 billion⁴³. As a result, CTG Brasil increased its installation capacity to 8.27 GW, so the total assets include eight hydroelectric plants with a total installed capacity of 2,242 MW. These are located in the State of São Paulo, on the Paranapanema River, and two small hydroelectric plants with a total installed capacity of 32 MW are located on the Sapucaí-Mirim River.

Still with regard to the fifth and recent underlined stage, the entry of Chinese investors also into the Brazilian agribusiness sector stands out. In this area, *Hunan Dakang Pasture Farming*, a unit of the Chinese group *Shanghai Pengxin Group*, invested around US\$ 200 million in the acquisition of 57% of the shares of the Brazilian grain processing and trading company *Fiagril*, which again shows the Chinese tendency for mergers and acquisitions. Furthermore, “this marks the Chinese strategy of buying smaller trading companies abroad with a view to having greater control over the flow of agricultural products, especially grains, to China”⁴⁴.

C. GEOGRAPHICAL CONCENTRATION

Thus, it is also necessary to highlight the geographical distribution of Chinese investments in Brazil. In 2016, these were mainly concentrated in the Southeast region (54%), more specifically in the state of São Paulo (44% of all investments in the country)⁴⁵, followed by the Northeast (17%) and Midwest (17%) regions. The northern (6%) and southern (6%) regions were the ones that received the least Chinese investments at the time. This distribution by region can be better visualized by analyzing graph 6 below:

⁴¹ CONSELHO EMPRESARIAL BRASIL-CHINA. Investimentos chineses no Brasil 2016. 2017, p.13. Available: <http://www.cebc.org.br/arquivos_cebc/investimentos-chineses/5.1.%20%20InvestimentosChinesesNoBrasil2016_PT.pdf>. Access: 01 August 2019.

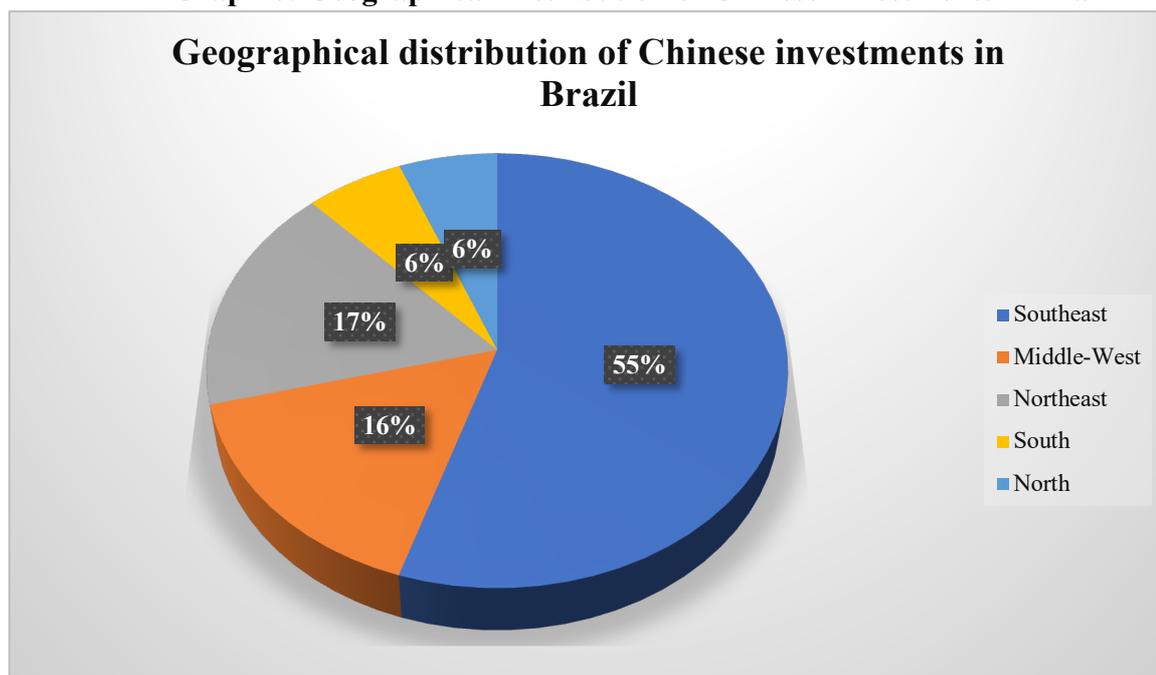
⁴² EXAME. O setor elétrico brasileiro caiu no colo dos chineses. 11 ago. 2016. Available: <<https://exame.abril.com.br/revista-exame/o-setor-eletrico-brasileiro-caiu-no-colo-dos-chineses/>>. Access: 28 August 2019.

⁴³ CONSELHO EMPRESARIAL BRASIL-CHINA. Investimentos chineses no Brasil 2016. 2017, p.13. Available: <http://www.cebc.org.br/arquivos_cebc/investimentos-chineses/5.1.%20%20InvestimentosChinesesNoBrasil2016_PT.pdf>. Access: 01 August 2019.

⁴⁴ CONSELHO EMPRESARIAL BRASIL-CHINA. Investimentos chineses no Brasil 2016. 2017, p.18. Available: <http://www.cebc.org.br/arquivos_cebc/investimentos-chineses/5.1.%20%20InvestimentosChinesesNoBrasil2016_PT.pdf>. Access: 01 August 2019.

⁴⁵ According to the Brazil-China Business Council, besides the state of São Paulo, the states with the most investments were, respectively, Rio de Janeiro, Goiás, Maranhão, Rio Grande do Sul, Mato Grosso, Ceará, and Amazonas. See, CONSELHO EMPRESARIAL BRASIL-CHINA. Investimentos chineses no Brasil 2016. 2017, p.18. Available: <http://www.cebc.org.br/arquivos_cebc/investimentos-chineses/5.1.%20%20InvestimentosChinesesNoBrasil2016_PT.pdf>. Access: 01 August 2019.

Graph 6: Geographical Distribution of Chinese Investments in Brazil



Source: Designed by the author, based on Brazil-China Business Council, 2017, p.20.

In this vein, the high level of recent Chinese investments in the Northeast stands out. In 2016, *China Unicom* announced an ambitious project in the area of telecommunications in the city of Fortaleza, for the installation of a fiber optic submarine cable that will link Ceará to Cameroon. Also, *CBSteel* announced the signing of an agreement with the Brazilian government to invest in the construction of a steel plant in Maranhão.

Furthermore, Chinese investments in the region related to security and new technologies cannot be ignored. *Dahua*, a company that manufactures cameras capable of facial recognition, already supplies equipment to the governments of Pernambuco (1,300 cameras installed in the subway system) and Bahia, in addition to having already participated in the bidding process for the São Paulo subway. In addition, Bahia also received Chinese investments in relation to Huawei's facial recognition technology. The Northeastern states are considering launching the *Nordeste Conectado* (Northeast Connected) program, a public-private partnership to attract investments in fiber optics to connect the states, which has already aroused the interest of Chinese companies such as Huawei and ZTE⁴⁶.

IV. PRELIMINARY CONCLUSIONS

Therefore, Chinese investments in Brazil, led mainly by state-owned enterprises, have undergone a progressive and sectorial evolution. Initially, the focus of Chinese capital was on the exploration of natural resources, which later changed, through investments more focused on the industrial and service sector. In other words, Chinese investments in Brazil crossed through the primary, secondary and tertiary sectors.

⁴⁶ FOLHA DE SÃO PAULO. Nordeste vira palco de guerra fria tecnológica entre EUA e China. 30 August 2019. Available: <https://www1.folha.uol.com.br/mundo/2019/08/nordeste-vira-palco-de-guerra-fria-tecnologica-entre-eua-e-china.shtml?utm_source=whatsapp&utm_medium=social&utm_campaign=compwa>. Access: 03 September 2019.

However, in recent years, the sector with the highest incidence of Chinese capital is, without a doubt, the electricity sector. In addition to the high capital contribution, what contributes to this direction is the long period of maturation of these investments. They range from the construction of hydroelectric plants to the installation of transmission lines, i.e., generation and

Regarding the geographic concentration, Chinese investments in Brazil are concentrated in the Southeast and Midwest regions. However, as recently reported, the Northeast region has already shown itself as a new and attractive gateway for new Chinese investments in the country.

Finally, in recent years, although China has diversified its investments in the country, also directing it to agribusiness, due to the fact that this country is already considered one of the greatest technological powers in the world and is experiencing the so-called “trade war” with the USA, marked, especially, by the technological dispute in the expansion of 5G, it is envisaged that the next wave of Chinese investments in Brazil will inevitably be marked by companies of a technological nature. This could range from mobile transport platforms and financial services to facial recognition engines and information technology. It follows, therefore, what will be the next transformation in the profile of Chinese investments in Brazil.

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NORMATIVE DEVELOPMENTS FOR THE PROTECTION OF TOURIST-CONSUMERS UNDER PRIVATE INTERNATIONAL LAW: LOCAL, REGIONAL AND GLOBAL EFFORTS

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ABSTRACT: This article explores national (Brazilian) and regional (Mercosur) normative schemes erected to help tourist-consumers, and the development carried out before the Hague Conference on Private International Law since 2013, as it acknowledged the importance to establish a worldwide network intended to assist international tourists in the country of visit by providing ex ante information in an attempt to reduce the number of cross-border litigation ex post facto. This way, it is our goal to assess which one – if the regional or the international level – is contributing more to the establishment of a more effective assistance to international tourists.

KEYWORDS: protection of tourist-consumers – Private International Law – Hague Conference on Private International Law – cross-border litigation

I. Introduction

Tourism is one of the sectors of the world market that has most developed in the last half-century not only because of globalization itself, which intensified the economic exchanges among nations, but also because of the desire of people to connect with other cultures¹ and extend their personal, educational and work relations², being these important trends of our postmodern times³. No wonder international tourist arrivals have increased from 25 million in

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¹ MARTINEZ, Cláudia Madrid. El derecho internacional privado venezolano y su respuesta frente al consumidor internacional. In: RAMSAY, Iain; MARQUES, Claudia Lima; FERNANDEZ ARROYO, Diego; PEARSON, Gail (Edts.) *The Global Financial Crisis and the Need for Consumer Regulation: New Developments on International Protection of Consumers*. Porto Alegre/Asunción: Orquesta/ASADIP, 2012, p. 255.

² Today, besides leisure and cultural tourism, there is conference tourism, adventure tourism, youth tourism, religion tourism, educational tourism etc., which are not only accessible to an elite, but it is rather seen as a cross-class phenomena (TUDELA, José. Madurez y insuficiencia del derecho del turismo español: su presente y sus incertidumbres. In: FACAL, José (Org.). *Derecho del Turismo*. Montevideo: FCU, 2006, p. 256.

³ MARQUES, Claudia Lima. A proteção do consumidor: aspectos de direito privado regional e geral. XXVII Curso de Derecho Internacional-OEA/CIJ. Washington D.C.: OAS, 2001, pp. 263-307.

the 1950s to 1.5 billion in 2019, according to the Madrid-based United Nations World Travel Organization (UNWTO).⁴

Places of destinations have also been shifting. If in 1950 tourism destinations were concentrated in industrialized countries in Europe and North America, presently, world tourism has developing countries as a destination⁵. Arrivals in this type of countries increased from 30% in 1980 to 45% in 2014, and are expected to reach 57% by 2030, what is equivalent to more than 1 billion international tourist arrivals in emergent economies, creating a new mass of cross-borders tourist-consumers.⁶ In order to illustrate it, for instance, in 2016, China received more international tourists than Italy, Thailand and Mexico, and it received almost the same number of international tourists as Germany and the United Kingdom; Turkey received more tourists than Austria; India and Indonesia received more tourists than Portugal; Vietnam and Saudi Arabia received more tourists than Switzerland and Poland; Brazil welcomed more visitors than Belgium – and the list goes on.⁷

However, the fact that tourist's destinations are in emergent economies today also represent a new post-modern problem that is the inability of nations to properly inform, assist and help consumers in order for them to “have access to justice, ADR and other channels to solve their problems quick and inexpensively”.⁸ After all, besides of the fact that the consumer of the future will be a tourist due to its constant mobility and the continuing expansion of the activities considered to be touristic, as alerted Bauman still in the 1990s⁹, these States of destination are not usually well equipped to deal with the kind of problems international tourists normally face – especially mass-tourism.

⁴ See UNWTO. International tourism growth continues to outpace the global economy. Madrid, 2020. Available at: <https://www.unwto.org/international-tourism-growth-continues-to-outpace-the-economy>. Accessed on: 05 abr. 2020.

⁵ The specific data is: International tourism arrivals in 2017: 1,322 million (growth of 7% in relation to 2016); Advanced economies arrivals in 2017: 724 million (54,8%); Emerging economies arrivals in 2017: 597 million (45,2%) (UNWTO. UNWTO Tourism Highlights. Madrid, 2017. Available at: <https://www.e-unwto.org/doi/pdf/10.18111/9789284419029>. Accessed on: 05 abr. 2020).

⁶ Numbers that can be affected by the Covid-19 pandemic, despite of the fact that the tendency remains the same. UNWTO. World Tourism Barometer. Madrid, v. 16, n. 1, 2018. Available at: http://cf.cdn.unwto.org/sites/all/files/pdf/unwto_barom18_01_january_excerpt_hr.pdf. Accessed on: 05 abr. 2020.

⁷ See UNWTO. UNWTO Tourism Highlights. Madrid, 2017. Available at: <http://www2.unwto.org/publication/unwto-tourism-highlights-2017>. Accessed on: 15 mar. 2020.

⁸ Letter from the *Foro Iberoamericano de las Agencias Gubernamentales de Protección al Consumidor* (FIAGC) to the HCCH: “*Vivimos en un tiempo de creciente diversificación de destinos y países generadores del turismo internacional, así como la auto-reserva de servicios turísticos. Hoy el 45% de los destinos turísticos son economías emergentes (puntos destacados de la OMT 2017), que no siempre están bien equipados para informar, ayudar y ayudar a los turistas a tener acceso a Justicia, ADR y otros canales para resolver sus problemas de manera rápida y económica. Sabemos que su institución está estudiando canales para ayudar a llenar este vacío de instrumentos internacionales o esquemas cooperativos para ayudar a los consumidores que enfrentan problemas en el extranjero en los países visitados. En la actualidad, 1.300 millones de personas que realizan turismo transfronterizo y la proyección de la OMT es que en 2030 habrá 1,8 millones: la mayoría de los destinos turísticos internacionales serán economías emergentes (57%). Este turista debería tener sus derechos respetados en todo el mundo*” (FIAGC. Letter to the Hague Conference's Secretary-General. The Hague, sept. 3 2018).

⁹ BAUMAN, Zygmunt. *Globalização: As consequências humanas*. Rio de Janeiro: Zahar, 1999, p. 85.

Consumer law scholars¹⁰ point that the challenges presented by mass-tourism to the Law do not derive only from technological progress¹¹ (electronic booking, maps and information about tourism services in foreign places, reservation at a distance, thus, with less involvement of travel agencies) or from the complexities and diversity range of current tourism contracts (package tours, time-sharing, adventure tourism, youth educational tourism, tourism for conferences, professional, language and religious training, etc.), but are also connected with changes on the profile of international tourists, as said, now encompassing all social classes. Besides, next to a true mass tourism, a new elite tourism industry is also blooming (global network alliances of the transport industry, new commercial agreements to ‘code sharing’ and global chains of travel packages/tours expertise, specialization of national travel agencies etc.), fomenting changes in the tourism industry itself as to the legal responsibility of such nets or even where to act against them if needed.

Other challenges emerge from peculiar situations, as those imposed by the Sars-CoV-2 pandemic outbreak that has impacted hard on international tourism since the beginning of 2020. “The technological revolution that brought us closer together by making travel and tourism easy and affordable [...] is helpless in halting a virus”¹², which poses many problems to international tourist consumers as they find themselves disassited before a number of unprecedented situations either at home or abroad. After all,

[i]n many otherwise popular tourist destinations, hotels have been deserted and restaurants, bars, tourist attractions, theme parks and museums closed. Trade fairs, congresses and cultural events have been cancelled or postponed. Sporting events, such as the Euro 2020 football championship and the Olympic Games, have been postponed until 2021. Ski resorts have ended the winter season early. Major cruise companies have halted operations; cruise ships have been stranded at sea, as more and more ports have temporarily refused them entry. Many countries have reintroduced border controls or banned certain travellers from entering their territory, leaving them struggling to return home.¹³

Hence, tickets to shows, museums, concerts, passes and games; airfare, hotels and car rental bookings, and even being unable to return home are just a few of the problems international tourist consumers are now facing everywhere, with no legal binding solution to harmoniously address them – only soft ones, as the United Nations Guidelines on Consumer Protection

¹⁰ MARQUES, Claudia Lima, The Need for a Global Cooperation Network to Protect Foreign Tourists/Consumers and the comeback of Private International Law. *In: HCCCH. The permanent bureau of the Hague Conference on Private International Law: a Commitment to Private International Law - Essays in honor of Hans van Loon.* Cambridge: Intersentia, 2013b, p. 3-4; TONNER, Klaus. Consumer protection and environmental protection: Contradictions and suggested steps towards integration. *Journal of Consumer Policy*, v. 23, n. 1, pp. 63-78, 2000; POZHODZHUK, R. Internationalization of consumer law and consumer protection. *Приватне право і підприємництво*, n. 18, pp. 209-212, 2018.

¹¹ See TONNER, Klaus. Electronic Commerce and Travel Law. *In: WILHELMSSON, Thomas; TUOMINEN, Salla (Edts.). Consumer Law in the Information Society.* Alphen aan den Rijn/NE: Kluwer, 2000, p. 205; TONNER, Klaus. European law and tourism with special regard to consumer policy. *In: LASTENOUSE-BURY, Jacquelin. La Unión Europea en los albores de un nuevo siglo.* Madrid: Euroius Editorial Juridica, 1997, p. 321-333.

¹² BECKER, Elizabeth. How hard will the coronavirus hit the travel industry? *National Geographic*, 2 apr. 2020. Available at: <<https://www.nationalgeographic.com/travel/2020/04/how-coronavirus-is-impacting-the-travel-industry/>>. Accessed on: 18 mai. 2020.

¹³ EUROPEAN PARLIAMENT. COVID-19 and the tourism sector. Bruxelles, 202. Available at: <[https://www.europarl.europa.eu/RegData/etudes/ATAG/2020/649368/EPRS_ATA\(2020\)649368_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/ATAG/2020/649368/EPRS_ATA(2020)649368_EN.pdf)>> Accessed on: 18 mai. 2020.

(UNGCP) from 1985, revised in 1999 and 2015¹⁴, and the Sofia Declaration on the Development of International Principles on Consumer Protection of 2012¹⁵.

Thus, it is clear that changes at the global mass tourism could be calling for newer private international law solutions¹⁶, precisely, a “renewal of international instruments on tourism” to encompass practical and more effective protection of cross-border tourist consumers.¹⁷ After all, as the Latin-American doctrine shows¹⁸, consumer relations are “a new field of particular interest of private international law”, in which the protection of tourist is right at its center. And the first step is, indeed, to define, uniformly, the subject of protection – work already done by the UNWTO, who understands that those that should be protected are the visitors or travelers who stay longer than 24 hours (an overnight stay) but less than one year in one country or place visited.¹⁹

Beyond that, in light of the growing market and the expansion of the tourism sector worldwide, national legislations should also consider some changes in order to protect international tourist-consumers within their territory, especially recognizing their vulnerability²⁰. Such task, however, could not be left only to some states, demanding regional and global efforts towards their protection. Other steps such as the harmonization of procedural aspects to overcome difficulties commonly faced by international tourist-consumers to exercise

¹⁴ “In celebrating its 30th anniversary, the UN General Assembly approved on December 22nd, 2015, the revision of the Guidelines for Consumer Protection of 1985 [...] bringing important suggestions to address the newest issues of the consumer society, such as [...] protection of the hypervulnerable consumers, [...] tourism and mass transportations, [...] and international consumption” (MARQUES, Claudia Lima. 25 years to celebrate: horizons reached by the 1990 Brazilian Consumer Protection Code and horizons to come, especially on the international protection of consumers. In: MARQUES, Claudia Lima; WEI, Dan (Edts.). *Consumer Law and Socioeconomic Development: national and international Dimensions*. Basel: Springer, 2017, p. 105-106). For the full document, see UNCTAD. *United Nations Guidelines for Consumer Protection*. Geneva, 2015. Available at: <https://unctad.org/en/PublicationsLibrary/ditceplpmisc2016d1_en.pdf>. Accessed on: 18 mai. 2020.

¹⁵ “In 2012, the International Law Association, gathered in Sofia, made its first resolution on consumer protection (ILA Resolution 4/2012, London), which suggested five principles that must guide international law development: [...] vulnerability principle; [...] most favorable protection principle; [...] fairness principle; [...] responsible lending principle; [...] active participation on the regulation principle” (MARQUES, op. cit. [2017], p. 125). For the full document, see ASADIP. *Notícia sobre a Declaração de Sofia de Princípios Internacionais de Proteção do Consumidor*. Asunción, 2012. Available at: <<https://socioip.files.wordpress.com/2013/12/lima-marques-y-valverde-santana-consumidor.pdf>>. Accessed on: 18 mai. 2020.

¹⁶ MARQUES, Claudia Lima. *Consumer Protection in Private International Law Rules: the need for an Interamerican Convention on the law applicable to some consumer contracts and consumer transactions*. In: BOURGOIGNIE, Thierry (Dir.). *Regards croisés sur les enjeux contemporains du droit de la consommation*. Cowansville-Qc: Éd. Yvon Blais, 2006, p. 145; HOWELLS, Geraint; RAMSAY, Iain; WILHELMSSON, Thomas. *Consumer law and its international dimension*. In: HOWELLS, Geraint; RAMSAY, Iain; WILHELMSSON, Thomas. *Handbook of Research on International Consumer Law*. Camberley-UK: Edward Elgar Publishing, 2010

¹⁷ TUDELA, op. cit, p. 251.

¹⁸ DÍAZ LABRANO, Roberto Ruíz. *Derecho Internacional Privado*. Asunción: La Ley Paraguaya, 2010, p. 735.

¹⁹ “2.9. A visitor is a traveler taking a trip to a main destination outside his/her usual environment, for less than a year, for any main purpose (business, leisure or other personal purpose) other than to be employed by a resident entity in the country or place visited. These trips taken by visitors qualify as tourism trips. Tourism refers to the activity of visitors. 2.13. A visitor (domestic, inbound or outbound) is classified as a tourist (or overnight visitor), if his/her trip includes an overnight stay, or as a same-day visitor (or excursionist) otherwise”. See UN STATISTICAL COMMISSION. *2008 International Recommendations for Tourism Statistics*. [s.l.]. Available at: <http://unstats.un.org/unsd/statcom/doc08/BG-TourismStats.pdf>. Accessed on: 12 Feb. 2020.

²⁰ In Latin American Private International Law, one of the pioneers to speak about consumer protection in the conflict of laws norms was the Argentine professor Antonio Boggiano, with the suggestion of a law more favorable to the consumer in adhesion contracts. See BOGGIANO, Antonio. *International Standard Contracts*. *Recueil de Cours de l'Académie de Droit International*. The Hague/BRILL, v. 170, t. I, 1982, p. 138.

their right of access to justice when seeking for redress for any sort of damages he incurred abroad, along with the provision of simple information regarding their rights and mechanisms made available to them when facing problems abroad are also imperative to occur.

And focusing on this matter, it is the objective of this study to address the improvements of national (Brazilian) and regional (Mercosur) normative schemes erected to help tourist-consumers, and also to highlight the development carried out before the Hague Conference on Private International Law since 2013, as it acknowledged the importance to establish a worldwide network intended to assist international tourists in the country of visit by providing ex ante information in an attempt to reduce the number of cross-border litigation ex post facto. This way, it is our goal to assess which one – if the regional or the international level – is contributing more to the establishment of a more effective assistance to international tourists.

II. Improvements of national (Brazilian) and regional (Mercosur) normative protection schemes directed to tourist-consumers

In a globalized and interconnected world, consumers are definitely key players²¹, but it is not easy to create binding rules for the protection of consumers in the global level – especially if they are not residing within the state (as tourists do).²² Thus the rules on consumer protection remain largely restricted to the domestic sphere²³ since, only in some recent cases, regional protection is legally prescribed.²⁴

A. The Brazilian approach to the protection of international tourist consumers

In the Americas, Brazil is a very positive example of advancement in terms of protecting tourist consumers.²⁵ First, in regard to conflict of laws, it noted the need to include specific provisions on the Brazilian Consumer Code in 2012 because of the paradigmatic *Panasonic case*, in which a Brazilian tourist that bought a video camera with a ‘global warranty’ in Miami could not enforce it in Brazil, since the Brazilian Panasonic subsidiary did not recognize the warranty given by the parent company in Japan.²⁶ As a result, the Brazilian Superior Court of Justice used

²¹ IAIN, Ramsey. Consumer protection in the Era of Informational Capitalism. *In*: WILHELMSSON, Thomas; TUOMINEN, Salla (Edts.). *Consumer Law in the Information Society*. Alphen aan den Rijn: Kluwer, 2000, p. 45.

²² TWIGG-FLESNER, Christian; MICKLITZ, Hans. Think global - Towards International Consumer Law. *Journal of Consumer Policy*, v. 33, n. 3, pp. 201-207, sept. 2010.

²³ FERNÁNDEZ ARROYO, Diego. General Report. *In*: FERNANDO ARROYO, Diego (Ed.). *Consumer protection in International Private Relations*. Assunción: Ceped, 2010, p. 659.

²⁴ See POILLOT, Elise; VAREILLES-SOMMIÈRES, Pascal de. *Droit Européen de la consommation et uniformisation du droit des contrats*. Paris: LGDJ, 2006, p. 87 *et seq.*; and, in general, BOURGOIGNIE, Thierry. (Dir.). *L'intégration économique et la protection du consommateur*. Cowansville-Qc: Éd. Yvon Blais, 2009.

²⁵ The general legal overview of tourism in Brazil is, as follows: tourism is a competence shared with the States (art. 24 of the Federal Constitution of 1988) and the promotion of the general principle of economic activity (Art. 180 of the Federal Constitution of 1988) is regulated by the Law n. 11.771 of 2008, which created the National Tourism System and a National Tourism Plan as part of a tourism policy (arts. 4-14) and promotion (arts. 15-20). The so-called ‘Tourism Law’ also governs the provision of tourist services in general (Accommodation, Tourism agencies, tourist carriers, event organizers, theme parks, tourist camps, arts. 21-32) on duties, rights and their supervision. Brazil has a special law on travel agencies (Law n. 12.974 of 2014); transportation contracts and time-sharing are typified in the Civil Code (Law n. 10.406 of 2002); tourism package contracts and on these activities the Consumer Protection Code (Law n. 8.078 of 1990) applies.

²⁶ The Panasonic Case is BRASIL. Superior tribunal de Justiça Recurso Especial nº 63.981-SP. 4ª Turma. Rel. Min. Aldir Passarinho Junior. Julgado em 11.04.2000. Publicado no DJ em 20.11.2000, p. 296. An analysis of it

all rules of the Consumer Code as overriding mandatory rules, calling for special prescriptions for the international protection of consumers.²⁷

Not only that, despite of the fact that Brazilian Small Claim Courts cannot adjudge and declare on matters of Private International Law as it considers it a theme of higher complexity and, thus, falling out of the scope of these tribunals, Brazil seems to note the importance of positive feedback when it comes to the attention provided to tourist-consumers in order for them to return²⁸, creating special ways of addressing their needs and problems, such as providing *ex ante* information through the publication of consumer guides that highlight international tourists rights and how they may *ex post facto* ask for help at consumer agencies (particularly through the Superintendence of Consumer Protection – PROCONs), if needed.

Examples of these actions can be found at PROCON Rio de Janeiro, who created in 2012 the before-mentioned guide to international tourists²⁹; in 2014, another type of guide was built in English, now regarding the kind of taxis and transportation services available within the province³⁰. At the same token, a fast-track conciliation for Brazilian tourists and a *QR Code* linked to a consumer guide and the Brazilian consumer code in English, Spanish and Portuguese (and ‘Libras’ – the Brazilian language for the hearing-impaired) was built in 2016³¹.

In 2019, both PROCON Rio de Janeiro and PROCON Rio Grande do Sul, created a new multilingual *complaint form* was used at the ‘Copa America Cup’, and in 12th of August 2019 an Tourist ‘app’– called *PROCONTUR* –, available in English, French, Spanish, German and Italian, was created especially directed to receive complains of international tourists^{32/33}. The PROCONTUR App is a version of the App ‘PROCON/RJ’, which exists since March 2019 (available in Portuguese, English, French and Spanish) has already received 2.500 complaints (of many subjects, including from Brazilian Tourists), with a 79% success rate at the conciliation rounds promoted by this consumer agency to solve the appointed problems between consumers and service providers. In the App, consumers can send photos and videos

may be found in: MARQUES, Cláudia Lima; BENJAMIN, Antônio H.; MIRAGEM, Bruno. Comentários ao Código de Defesa do Consumidor. São Paulo: RT, 2019, p. 116-117.

²⁷ See KLAUSNER, Eduardo Antônio. Direito Internacional do Consumidor. Curitiba: Juruá, 2012, p. 141 *et seq.*

²⁸ It is high the fidelity level of tourists who visit Brazil: 95,4% manifested the will of returning” in 2018 – annual average that has been maintained since 2014. Besides, 68,6% of tourists have already visited Brazil other times, showing an evolution when compared to the numbers of previous years (in 2014 it was 65,4%) (BRASIL. Ministério do Turismo. Estudo da Demanda Turística Internacional Brasil – 2018. Brasília: MT, 2018, p. 40. Available at: http://www.dadosefatos.turismo.gov.br/2016-02-04-11-54-03/demanda-tur%C3%ADstica-internacional/item/download/964_616b0e66c036db_76857f828354967e04.html. Accessed on: 28 out. 2019).

²⁹ PROCON/RJ. O guia do Turista. Rio de Janeiro, 2012. Available at: www.procon.rj.gov.br/index.php/foto_foto/detalhe/19. Accessed on: 22 apr. 2020

³⁰ PROCON/RJ. Turista ganha manual do Táxi. Rio de Janeiro, 04 jun. 2014. Available at: www.procon.rj.gov.br/index.php/clipping/detalhar/190. Accessed on: 22 abr. 2020.

³¹ PROCON/RJ. Acesso facilitado ao CDC para turistas e pessoas com deficiência. Rio de Janeiro, 04 set. 2016. Available at: www.procon.rj.gov.br/index.php/publicacao/detalhar/2836. Accessed on: 22 abr. 2020.

³² Find it in the Apple store at: <https://apps.apple.com/br/app/procon-rj/id1452569376?l=en>. Accessed on: 23 mar. 2020.

³³ PROCON/RJ. Procon Estadual lança aplicativo de atendimento para turistas. Rio de Janeiro, 13 ago. 2019. Available at: www.procon.rj.gov.br/index.php/publicacao/detalhar/4328. Accessed on: 18 abr. 2020; GOVERNO DO ESTADO DO RS. Procon RS cria serviço para solucionar problemas de consumo dos estrangeiros na capital. Porto Alegre, 19 jun. 2019. Available at: <https://estado.rs.gov.br/procon-rs-cria-servico-para-solucionar-problemas-de-consumo-dos-estrangeiros-na-capital>. Accessed on: 18 abr. 2020.

or documents (bills, offers, prospects etc.), what it is an asset for solving problems in a short period of time.³⁴

Besides this, as it is highly visited, the city of Rio de Janeiro has erected other alternative dispute resolutions schemes, as ‘*Expressinho*’, which is a fast track station to conciliate cases involving foreign tourists claims regarding hotels (about 150 hotels of the city are represented by an Union, which is present at the mentioned station) and restaurants (11.000 bars and restaurants are linked to this fast track service), being open, for the first type of claims, from Monday to Friday, from 1p.m. to 5p.m., and regarding the second, on Wednesdays, from 10a.m. to 2:30p.m., on five languages (English, French, Spanish, German and Portuguese), in order to facilitate the communication, thus, recognizing the aggravated vulnerability this type of consumers have.³⁵

Another innovation in Brazil for dispute resolution that may be used in tourism-consumer matters is the *consumidor.gov.br* platform, an Alternative Dispute Resolution (ADR) tool that intends to solve disputes between consumers and goods/service providers directly. Through the platform erected by the National Division of Consumer at the Ministry of Justice (SENACON), in which 535 companies are registered, consumers register their complaint, the company then replies to it, and after that the consumer may register its satisfaction towards it. Although there are no intermediaries (not even any governmental authority), this platform solves an average of 80% of its cases, normally, in a 10-day period, leaving the parties free to transact, promoting, thus, not only transparency, but also citizen empowerment.³⁶ Besides, each case costs less than R\$1,00 (one BRL) for the Treasury – a lot less when compared to the total costs to the State of regular suits in the country, which is around R\$ 6.000 (six thousand BRL)³⁷.

Therefore, the website has been considered a good alternative to traditional methods due to costs (no direct or indirect fees for the parties and for the State itself), type of participation (online, that is, not requiring physical presence) and duration (30-days at the most) to solve tourists’ issues. Nonetheless, even though there is no restriction regarding nationality, it should be highlighted that such platform is only available in Portuguese, which may impair the participation of international tourists who do not speak the language. On the other hand, in 2019 the Brazilian government not only mentioned the possibility of making it available in Spanish too in the following years, but also ceded the rights of the platform to another Mercosur country, more specifically, to Argentina³⁸.

³⁴ PROCON/RJ, op. cit. (2019), *loc. cit.*

³⁵ PROCON/RJ, op. cit. (2019), *loc. cit.*

³⁶ SENACON. Apresentação: Consumidor.gov.br. Brasília, s/d. Available at: <https://www.consumidor.gov.br/Guia-UsuarioConsumidor.pdf>. Accessed on: 15 abr. 2020; MATSUURA, Lilian. Consumidor.gov.br oferece respostas em 10 dias e 80% de acordos. Consultor Jurídico, São Paulo, 4 nov. 2015. Available at: <https://www.conjur.com.br/2015-nov-04/consumidorgovbr-oferece-respostas-10-dias-80-acordos>. Accessed on: 21 abr. 2020.

³⁷ TIMM, Luciano Benneti. Covid-19 e a crise no transporte aéreo (*live*). Porto Velho/RO, 20 abr. 2020. Facebook: Euma Tourinho. Available at: https://www.facebook.com/euma_tourinho/videos/2577168632499340/?t=33. Accessed on: 20 abr. 2020.

³⁸ See BRASIL. Ministério da Justiça e Segurança Pública. Brasil transfere tecnologia da plataforma Consumidor.gov para Argentina. Brasília, 10 set. 2019. Available at: <https://www.justica.gov.br/news/collective-nitf-content-1568127030.18>. Accessed on: 22 abr, 2020.