

ICLN NEWSLETTER

By Cristianne Zarzur, Jackson Ferreira and Clara Bauer

THE RECENT TECHNICAL COOPERATION AGREEMENT BETWEEN CADE AND ANAC IN BRAZIL'S AIRLINE SECTOR – AN OVERVIEW

The cooperation agreement between CADE and ANAC

As a rule, the purpose of a technical cooperation agreement proposed by CADE (“Administrative Council for Economic Defense” – the Brazilian antitrust authority) with regulatory agencies is to promote technical and operational cooperation related to the best outcome in reviewing cases related to competition issues. These agreements increase CADE's capacity to interact with experts in regulated sectors and more efficiently detect and inhibit competition offenses.

Under a regulatory scenario that must favor cooperation, in 2024, a Technical Cooperation Agreement¹ was executed between National Civil Aviation Agency (“ANAC”) and CADE seeking at formalizing the institutions' efforts, promoting good investigative practices and enhance the speed and effectiveness of cracking down competition infractions.

There is a history behind this relationship. In 2009, CADE and ANAC already formalized an incipient collaboration agreement².

In this context, the 2024 technical cooperation agreement is a step (or two) forward: while the 2009 agreement focused on the exchange of information and mutual

¹ SEI/CADE - 1399896 - Technical Cooperation Agreement. Available at: <https://sei.cade.gov.br/sei/modulos/pesquisa/md_pesq_documento_consulta_externa.php?HJ7F4wnIPj2Y8B7Bj80h1lskj7ohC8yMfhLoDBLddZciLh8lCCYJdy6m7LE4RQa7ZSt3AZA4F9G-jPg0TisDvrQKL2ucZJaEGAeacYUc7c6sLfe2pjh84xbfc4R0de0>. Accessed on: October 02, 2024.

² ADMINISTRATIVE COUNCIL FOR ECONOMIC DEFENSE NATIONAL CIVIL AVIATION AGENCY ANAC ca TECHNICAL COOPERATION AGREEMENT BETWEEN THE NATIONAL CIVIL AVIATION AGENCY - ANAC AND THE ADMINISTRATIVE COUNCIL FOR ECONOMIC DEFENSE -CADE. [s.l: s.n.]. Available at: <<https://cdn.cade.gov.br/Portal/acesso-a-informacao/convenios-e-transferencias/acordos-nacionais/Anos%20anteriores/Anac%20-%20Acordo%20de%20Coopera%C3%A7%C3%A3o.pdf>>. Accessed on: October 2, 2024.

technical advice for the investigation of mergers and anticompetitive conducts in the civil aviation sector, the 2024 agreement broadens the scope. It also covers the promotion of seminars, staff exchanges, production of studies, and the establishment of study groups to promote competition in the sector.

Competition challenges in the aviation sector

The aviation sector faces a complex array of regulatory and economic challenges on a global scale, driven by both market dynamics and evolving regulatory frameworks. Economically, the industry is grappling with fluctuating fuel prices, labor shortages, and the rising costs of infrastructure, all of which strain profitability. The lasting impacts of the COVID-19 pandemic, including regional disparities in demand recovery, further complicate the financial landscape.

On the regulatory front, the pressure to meet stringent environmental targets is intensifying as governments and international organizations push for carbon neutrality. This global push for sustainability requires airlines to make significant investments in green technologies and more efficient aircraft and sustainable fuels. At the same time, safety regulations continue to evolve, imposing additional compliance costs. Together, these economic and regulatory pressures demand strategic adaptations from airlines and airport operators to remain competitive in an increasingly uncertain and highly regulated environment, where sustainability and safety are paramount.

Nevertheless, it is unquestionable that the civil aviation sector plays a fundamental role in the economic development and national integration of any country. Within this context the recent cooperation agreement between ANAC and CADE highlights the importance of effective regulation and healthy competitive practices in promoting the development of this strategic sector.

In recent years, the Brazilian market for passenger and cargo air transport has undergone significant changes, including structuring further regulation and reformulation of public management in the sector, the entry of private airport

administrators, and the establishment of strategic alliances, including joint ventures and joint business agreements. At the same time, the sector has experienced a continuous cycle of technological development, operational improvements, and increased safety standards. These combined factors have contributed to the modernization and increased competitiveness of the national air market.

Moreover, mergers and acquisitions among airlines have played a crucial role in reshaping the sector. In the past four years, several relevant transactions were structured, involving major players in the sector. Among them, it's worth highlighting the merger between LATAM and Passaredo³ (Voepass), the strategic agreements between LATAM and Delta⁴ (2020 and 2023), as well as the partnership between American Airlines and Gol. Additionally, Azul entered into a transaction with Two Taxi Aéreo⁵, signaling a trend towards diversification in partnerships and acquisitions within the sector.

These transactions reflect the complexity and dynamism of the Brazilian (and global) aviation sector, where regulation and competition play crucial roles in ensuring a competitive and balanced environment. Therefore, the decisions of the regulatory body are essential to maintaining the sector's competitiveness, ensuring that operations result in efficiencies and benefits for the market as a whole.

With the entry of new players and the evolution of strategic alliances, the aviation sector remains one of the most dynamic and fundamental for Brazil's economic growth, requiring careful balancing between regulation and innovation to ensure its long-term sustainability.

Conclusion

The airline industry plays a significant role in the nation's economy and its relevance to competition law. As a constantly evolving sector, it will remain a central focus of

³ Concentration Act No. 08700.001578/2024-83 – LATAM/Passaredo

⁴ Concentration Act No. 08700.009140/2023-62 and Concentration Act No. 08700.003258/2020-34 – Latam/Delta

⁵ Concentration Act No. 08700.001133/2020-70 Azul/Two Taxi Aéreo

CADE's oversight, which consistently justifies and values the cooperation agreement between CADE and ANAC.