

ICLN NEWSLETTER

Antitrust in Brazil: highlights of CADE's activity in 2024 and what to expect in 2025

Introduction

2024 started off as a transformative year for the Brazilian Administrative Council for Economic Defense (CADE), highlighted by the introduction of four new commissioners who had taken office between December 2023 and January 2024: Carlos Jacques, Diogo Thomson, José Levi, and Camila Pires-Alves. Additionally, in June 2024, Alexandre Barreto was reappointed as head of CADE's General Superintendence for another two years¹. During this period, CADE engaged in the development of decisional practice on several key issues, such as technology, labor markets and gun jumping, among others. CADE also took part in legislative debates tending to reshape the antitrust landscape regarding digital markets. In July 2025, a new CADE President will be appointed, which may bring about changes of approach and stance towards current and future cases. Certainly, a change to be closely monitored.

Below we highlight some examples of relevant developments of antitrust in Brazil which have taken place in 2024 and are expected to unfold in 2025 and years to come.

Technology and Digital Markets

In October 2024, the Brazilian Ministry of Finance released a report supporting legislative changes aimed at expanding CADE's jurisdiction and implementing *ex-ante* regulation of key digital platforms (which CADE could designate as 'systemically relevant'). It is expected that a bill of law based on such report be proposed to the Brazilian Congress in 2025. If passed into law, the statute would subject those digital platforms to obligations such as prior notification of mergers and acquisitions,

¹ Carlos Jacques is a lawyer and served as economic law consultant for the Federal Senate. Diogo Thomson, also a lawyer, was a federal prosecutor and has been working at Cade since 2007. José Levi, a lawyer and National Treasury prosecutor since 2000. Camila Pires-Alves, an economist, was the chief economist at Cade in 2013. Alexandre Barreto is a specialist in Public Administration and served as the President of the Administrative Council for Economic Defense (CADE) from 2017 to 2021.

transparency rules for end users and professionals, prohibition against self-preferencing, and compulsory interoperability.

Another expected change is the establishment of a specialized unit within CADE focused on digital markets

As a practical measure adopted by CADE in view of a growing number of investigations into digital ecosystems in Brazil -- that mirror similar investigations conducted in the US, Europe and other jurisdictions --, in February 2025 the agency hosted a public hearing to discuss competition aspects regarding operating systems for mobile devices. It is expected that the discussions be reflected in a final report to be published on CADE's website. Digital markets and competition remain a priority for 2025, and the debates over digital platforms and competition highlight CADE's ongoing efforts to address abuses of market power/dominance in the technology sector.

Labor/Human Resources and exchange of information

The theme of labor markets has been thoroughly discussed by competition authorities worldwide in recent years. In 2019, CADE initiated the first investigation in Brazil focusing on alleged exchanges of competitively sensitive information involving HR departments of companies in the healthcare sector, the so called "Medtech case".²

This topic remained on CADE's radar in 2024. In August, CADE's General Superintendence initiated two new administrative inquiries, which in October were converted into formal administrative proceedings to investigate the alleged exchange of competitively sensitive information regarding salaries and employee benefits between over thirty companies in the consumer goods sector, most of them multinational organizations. The debate involving the appropriateness or not of tackling HR information in the realm of antitrust and, if so, the standard of analysis to be adopted is expected to develop even more in 2025 as the cases continue under review by CADE.

Gun Jumping

² Administrative Proceeding No. 08700.004548/2019-61.

In 2024, CADE's Tribunal reviewed several cases involving allegedly premature completion (totally or partially) of transactions before antitrust clearance ("gun jumping") and solidified its case law on critical matters, including the criteria for determining fines, concept of control and economic group.

One of the key developments was the establishment of a clearer framework for penalty limits, ensuring that fines do not exceed 20% of the transaction value, except in cases involving willful misconduct.³

Another key decision (rendered by reporting commissioner Victor Oliveira Fernandes) aimed at systematizing CADE's decision-making practice regarding the concept of an economic group and common control.⁴ According to said decision, in assessing whether minority shareholders hold 'control' of a given company and thus fall within the definition of economic group under CADE's perspective, the parties must evaluate whether their rights under governing documents (such as shareholders agreement and articles of association) are designed for investment protection or else imply a shared control. Shared control may stem from specific voting or veto rights over strategic and competitive issues. For purposes of mandatory merger filing, the definition of economic group includes 'the parties directly involved in the transaction' that simultaneously (a) control, and (b) hold at least a 20% stake. As a result, CADE has moved away from the assumption that holding a 20% stake automatically implies the existence of an economic group.

This debate is still going on in 2025. In the first trial session of the year, in February, CADE's Tribunal analyzed a similar case involving the alleged early consummation of a transaction, but Commissioner Diogo Thomson de Andrade concluded that the transaction did not alter the existing shared control scenario over the target company and, therefore, was not subject to mandatory notification in the first place. The assessment of "shared control" followed the lines of the previous ruling of commissioner Victor Oliveira Fernandes, and the case was dismissed.⁵

Real Estate Acquisitions

³ Proceeding No. 08700.005463/2019-09.

⁴ Proceeding No. 08700.000641/2023-83.

⁵ Proceeding No. 08700.008330/2022-81.

Another ongoing debate within CADE refers to the notification of real estate asset acquisitions. In a recent development, in February 2025, CADE's Tribunal issued a decision addressing a consultation regarding the need to notify CADE of a transfer of piece of real estate (a non-operational building which used to be a supermarket) to a real estate developer⁶. The question was whether the transaction should be characterized as a "concentration act",⁷ in the form of an asset or part of a company sale. According to the opinion of Commissioner Gustavo Augusto, the acquisition of a piece of real estate alone is not sufficient for the immediate exercise of a business activity and, therefore, could not impact the market dynamics. Under the Commissioner's view (followed by the full CADE Tribunal), the acquisition of an empty property that has no activities, employees, revenues should be deemed organic growth, and, therefore, not a "concentration act" subject to a CADE filing and clearance prior to the sale.

CADE's Tribunal noted that, in any case, acquisitions of real estate assets involving players within the real estate sector would be subject to mandatory filing. This ruling is expected to provide further guidance on real estate acquisitions, although further questions will certainly arise and demand additional clarifications from CADE.

CADE's online merger filing platform

The "E-Notifica" platform, developed by CADE, allows the electronic/online submission of concentration acts. Its first "draft" version was launched in December 2023, resulting from collaboration between CADE and the private sector, particularly the Brazilian Institute for Competition, Consumer, and International Trade Studies (IBRAC), which participated in the evaluation and testing of the system. The main goal of the tool is to streamline and expedite the review process of merger cases, reducing bureaucracy and ensuring greater efficiency.

In 2024, 21 concentration acts were submitted via E-Notifica, with an average review time of 9 days, compared to 14 days for traditional notifications. The E-Notifica system is part of CADE's broader efforts to modernize its review processes.

⁶ Consultation No. 08700.007814/2024-75.

⁷ Under Law No. 12,529 of 2011 (the Brazilian Competition Act), transactions that constitute a concentration act are mergers, acquisitions of sole or shared control, certain assets acquisitions, incorporations, joint ventures, consortia, and associative agreements.

Conclusion

Year 2024 and the start of 2025 were characterized by significant developments in antitrust issues related to technology, labor markets, real state acquisitions, gun jumping, and a new system for electronic filings – just to mention a few areas where CADE has been especially active. As CADE continues to navigate these complex issues and other topics, more impactful developments are expected to take place in 2025 and following years with relevant implications to both national and international players doing business in Brazil.