

ICLN NEWSLETTER

Antitrust and Technology in Brazil: highlights from CADE's recent activity and what to expect next

I. Introduction

Competition law and regulation of digital markets have increasingly come into focus – not only for Brazil's antitrust authority (*Conselho Administrativo de Defesa Econômica* - CADE) but also for the country's lawmakers.

Over the past year, CADE has taken an active role in investigating digital markets, issuing preventive measures (a type of “injunction”) in some of its investigations. This proactive stance was further underscored by a public hearing held by the agency on February 19, 2025, which focused on the competitive dynamics of digital ecosystems related to mobile operating systems and involved several relevant local and international players and stakeholders¹.

Meanwhile, the Ministry of Finance has proposed the introduction of an *ex ante* regulation – to be enforced by CADE – for certain digital platforms in Brazil, with a bill of law expected to be submitted to Congress later in 2025. Additionally, Bill No. 2338/2023 (“AI Bill”) seeks to establish a legal framework for the use of artificial intelligence in Brazil and may grant CADE oversight responsibilities for AI platforms, given their potential impact on competition.

¹ The following entities participated in the hearing: (i) Apple Inc., (ii) Google Inc., (iii) Epic Games Inc., (iv) Match Group Inc., (v) Zetta, (vi) Coalition for App Fairness, (vii) Brazilian Internet Association (Associação Brasileira de Internet) – ABRANET, (viii) FS Security, (ix) Rights on the Network Coalition (Coalizão Direitos na Rede – CDR)/Right to Communication and Democracy (Direito à Comunicação e Democracia – DiraCom), (x) Article 19 NGO, (xi) Proteste | Euroconsumers Brazil – Brazilian Association for Consumer Defense (Associação Brasileira de Defesa do Consumidor), (xii) Consumer Defense Institute (Instituto de Defesa de Consumidores – IDEC), (xiii) Data Privacy, (xiv) Sleeping Giants Brazil; (xv) European Commission, Research Centre, and the University of Glasgow; and (xvi) FGV Direito Rio – E-Commerce Studies Group and Society and Technology Center (Núcleo de Estudos E-Commerce e Centro de Tecnologia e Sociedade). Apple's and Google's statements focused on supporting their business models as drivers of innovation, security, and economic development, as well as producers of pro-competitive effects. On the other hand, companies such as Epic Games and Match Group, and associations/organizations such as Zetta, Coalition for App Fairness, IDEC and others made statements focusing more on alleged barriers to third-party systems with potential effects to consumers, and thus advocated for the adoption of *ex ante* antitrust regulations of digital platforms. The recording of the hearing is available at <https://www.youtube.com/live/ehpGbk8reA>. Written contributions to the public hearing are available at https://sei.cade.gov.br/sei/modulos/pesquisa/md_pesq_processo_exibir.php?1MQnTNkPQ_sX_bghfgNtnzTLgP9Ehbk5UOJmzyesnbE-Rf6Pd6hBcedDS_xdwMQMK6_PgwPd2GFLIjH0OLyFSzrJWUjr8p3CSEvhBwwGAhxH921TTtR5AHaqeCwBNLY.

In this feature, we provide an overview of CADE's recent approach to digital markets and, in light of potential legislative changes, discuss what to expect from antitrust enforcement in the years ahead.

II. Examples of CADE's recent rulings in connection with digital markets – overview

Scraping Case. In April 2025, at the request of one of the commissioners of CADE's Tribunal (Ms. Camila Alves), CADE began to reassess an investigation against Google regarding allegations that Google had engaged in "scraping" of journalistic content, potentially harming competition in the online news segment.

The original investigation dated back to 2013² and was shelved by CADE's Tribunal in 2019, due to a lack of sufficient evidence that the conduct had generated actual or even potential anticompetitive effects in the Brazilian market. In that same year, upon the Tribunal's request, CADE's General Superintendence ("GS") had launched a related inquiry³ which ended up also being shelved at the end of 2024 as CADE's General Superintendence declared it had found no evidence that Google had intentionally diverted or retained traffic in its own benefit. Commissioner Camila Alves then recalled the case by stating that it would merit a deeper analysis by CADE also in view of the alleged complexity of the issues involved, which have also been discussed internationally.

The case was later brought before CADE's Tribunal and, in July 2025, Reporting Commissioner Gustavo Augusto issued a vote in favor of closing the investigation as he found that the display of *snippets* (small descriptions of content/search results) from authorized websites, with an available *opt-out* mechanism, would not amount to anticompetitive behavior, but rather could benefit news outlets, emphasizing that the core of the competition lies in the race for users attention. It is worth noting that the judgment was suspended following a request for review by Commissioner Diogo Thomson de Andrade, who is currently reviewing the case files to issue his vote on the case. Final decision is therefore pending.

² Administrative Proceeding No. 08700.009082/2013-03.

³ Administrative Inquiry No. 08700.003498/2019-03.

CADE's Tribunal interest in reviewing a matter which had already been shelved twice in the past demonstrates that CADE is willing to deepen its analysis of digital markets and the dynamism of technology by continually monitoring market moves and strategies and any claims associated with them.

App Tracking Transparency and In-App Purchases Cases. On February 14, 2025, the GS launched an administrative inquiry,⁴ following a complaint filed by Meta, into Apple's App Tracking Transparency ("ATT") policy, which required *opt-in* consent for tracking users' data. According to Meta, such a policy could discourage user acceptance and limit third-party access to certain data for ad personalization and ad campaigns while Apple allegedly exempted itself from the same policy and could secure competitive advantage.

The discussion in the inquiry is ongoing and encompasses arguments in connection with protection of users' data privacy, among others. The investigation is relevant as it has the potential to address current antitrust topics such as how self-preferencing stipulations could be legally established, the intersection of competition law and data protection, and the weight to be given to similar analyses of antitrust agencies in other jurisdictions. It could also help deepen the discussions on how to define relevant markets for purposes of market power assessment, which continues to be a challenge in digital markets cases.

In a separate matter, in late 2024, the GS issued a preventive measure against Apple requiring the company to allow developers and iOS users to choose alternative distribution channels and payment processing systems for in-app purchases. The decision is being litigated before the courts as CADE's investigation (which had been initiated in 2022 following a complaint from Ebazar and Mercado Livre) continues.⁵

5G technology licensing case. In May 2024, Motorola Mobility and Lenovo filed a complaint before CADE against Ericsson, alleging abuse of dominant position in connection with the licensing of standard essential patents (SEPs) related to 5G technology. The GS launched a confidential inquiry on the matter⁶ and, in December 2024, rejected the request for a preventive measure against Ericsson.

⁴ Administrative Inquiry No. 08700.000693/2025-11. See GS's Opinion No. 585/2024, issued on November 11, 2025, SEI 1470165.

⁵ Administrative Proceeding No. 08700.009082/2013-03.

⁶ Confidential Inquiry No. 08700.003442/2024-16.

The complainants then appealed to CADE's Tribunal⁷ sustaining that Ericsson had allegedly refused to license patents on fair, reasonable, and non-discriminatory (FRAND) terms solely in Brazil, conditioning access to the technology to the execution of a global agreement and to the withdrawal of ongoing judicial disputes in other jurisdictions. They further claimed that such conduct by the respondent rendered the commercialization of their products in the Brazilian market unfeasible, resulting in negative impacts on competition and consumers. Ericsson, for its part, defended the lawfulness of its practices, asserting that the dispute concerned private matters over royalties rather than competition issues.

During the proceedings, the parties reached a global settlement and Motorola/Lenovo formally requested the withdrawal of the appeal. The Reporting Commissioner, Gustavo Augusto, granted the request but stated that a private settlement would not terminate or preclude CADE's jurisdiction over the conduct. Accordingly, the Reporting Commissioner sustained that even if a settlement was reached between the parties, the public interest in pursuing investigations would remain, both in relation to past conducts and potential harm to third parties or to the market. In this context, the Commissioner concluded, on a *prima facie* basis, that there were sufficient elements to warrant further investigation and proposed that the case be referred to the GS for the potential launch of an *ex officio* investigation. The current outcome shows that CADE is willing to look into potential practices regardless of private parties' initiative or their continued interest, which further confirms that companies should beware not only of being targeted in inquiries, but also of giving rise to investigations which might later take their own course.

Investigation into alleged use of personal data for training of AI-tools. Following a representation filed by the Brazilian Institute for Consumer Protection (IDEC) against Meta, CADE opened a preparatory proceeding⁸ to investigate an alleged use of personal data collected through Facebook and Instagram for the training of generative artificial intelligence tools, which, according to IDEC, could amount to abuse of dominant position. Meta sustained the absence of anticompetitive effects or harm to rivals, and that the use of publicly available data was standard and that the generative AI sector is characterized by dynamism and possibility of entry.

⁷ Voluntary Appeal No. 08700.010219/2024-17.

⁸ Preparatory Proceeding No. 08700.004482/2024-77.

The GS demonstrated institutional openness to consider competition concerns arising from data-driven business models and recognized the importance of assessing the conduct within broader digital ecosystems. Nevertheless, it concluded that the case record lacked sufficient evidence of antitrust infringement to justify proceeding with the investigation (it also noted that the data protection and consumer rights issues were already being addressed by other competent authorities). In this context, CADE ended up reaffirming that interventions in highly innovative and rapidly evolving markets must require heightened caution, as misguided or premature enforcement could suppress technological dynamism and chill incentives for innovation.

Dynamic pricing software case. In February 2021, the GS launched an administrative inquiry – which was converted into a formal administrative proceeding⁹ in November 2024 – against software company Intelprice (Aprix) and Minaspetro Labor Union, in order to investigate alleged anticompetitive practices in the fuel retail market, focusing on the use of pricing algorithms (enabled by the “Aprix” software) by gas stations. The software would allegedly have collected data from thousands of gas stations and used machine learning to suggest profit-maximizing prices. After assessing factual and economic information, CADE’s Department of Economic Studies concluded that the use of Aprix’s system would have led to measurable price increases and facilitation of strategic price alignment.

Although the case is still in the investigative (fact-finding) phase, the investigation is a clear indication that CADE is willing to step into cutting edge discussions related to potential algorithmic collusion, including novel theories of harm, sending a signal to private agents on the lawful limits of technological developments in the AI era.

Online grocery delivery merger case. One interesting merger case in the digital platform sector – showing CADE’s attention to the dynamism of technology markets – involved the acquisition by iFood of a minority stake in Shopper.¹⁰ On November 8, 2024, the GS issued an unconditional clearance decision, under the fast-track procedure, concluding that, based on the estimated market shares of the parties in the affected markets (overlapping markets for the provision of online grocery and pet

⁹ Administrative Proceeding No. 08700.006280/2024-60.

¹⁰ Merger Review No. 08700.008386/2024-06.

product sales, and vertically related market for employee benefits), the transaction did not have the potential to generate competitive harm.

However, the case was recalled by CADE's Tribunal for further analysis, and the merger review was converted into a non-fast track one. In early 2025, the Reporting Commissioner José Levi Mello do Amaral Júnior issued his vote for the unconditional approval of the case – which was affirmed by CADE's Tribunal. He recognized the inherent challenges of defining relevant markets in digital environments and emphasized that market definition should be understood as a flexible analytical tool rather than an end in itself. Without fixing a single definition, the decision adopted a pragmatic approach, evaluating possible segmentations based on product type, business model, and geography, particularly considering competitive pressures between online and offline channels.

In highlighting the importance of methodological refinement in the competitive assessment of digital markets, the decision reinforced CADE's evolving approach toward more sophisticated and contextual analyses of merger cases in the digital economy, marked by constant innovation and still-developing competitive dynamics. Although numerous other merger review cases have also involved digital markets, this case exemplifies CADE's increasingly active and forward-looking stance in the review of transactions in digital sectors, even in fast-track merger cases.

III. Bills of law under discussion in connection with digital markets

CADE's increasingly active role and heightened scrutiny of digital markets cases is to be seen considering major anticipated changes in the legislative landscape, which may grant the agency additional oversight powers.

Bill on ex ante regulation of digital platforms. The Brazilian Ministry of Finance is soon to propose a bill aimed at expanding CADE's jurisdiction and implementing *ex-ante* regulation of key digital platforms. In October 2024, the Ministry of Finance released a report supporting legislative changes that would empower CADE to designate 'systemically relevant' digital platforms (to certain extent along the lines of the European Digital Markets Act – DMA) and subject them to obligations including prior notification of mergers and acquisitions, transparency rules for end users and

professionals (at CADE's discretion); prohibition against self-preferencing, and compulsory interoperability, among others.

Among legislative changes is the setup of a specialized unit within CADE focused on digital markets – a key change that has been recurrently reaffirmed by CADE's top officials.¹¹ CADE had contributed to the public consultation held by the Ministry of Finance in connection with the proposed bill and supported the initiative.¹²

The AI Bill. Bill No. 2338/2023 (the "AI Bill") is currently under discussion at the Brazilian Congress and aims to establish a legal framework for the use of artificial intelligence in the country. Free competition is identified as a core principle of the proposed regime, and CADE is named as the relevant authority for addressing anticompetitive conduct involving AI. This legislative initiative has reignited important discussions regarding the role of CADE in overseeing digital platforms, as there is also the possibility that CADE be formally included in the National System for the Regulation and Governance of Artificial Intelligence (*Sistema Nacional de Regulação e Governança de Inteligência Artificial – SIA*), suggesting a future additional institutional role for the agency in overseeing AI-related issues.

Noting the risk of using algorithms to fix prices and abuse dominant position, in March 2024, CADE published its contributions to the AI Bill.¹³ The suggestions included (i) establishing guidelines for remote access (by authorities of the SIA) to data and source codes used in high-risk AI training, (ii) cooperation between authorities to conduct joint investigations, and (ii) duty of the SIA authorities to report potential anticompetitive practices to CADE. To avoid excessive regulation, CADE also suggested the establishment of more flexible and simplified procedures for small companies and startups, and the creation of sandboxes to test their innovations in a controlled environment.

Although the AI Bill remains under legislative review and final wording and potential amendments remain uncertain, CADE's proactive participation in the debates around

¹¹ For example, see CADE's General Superintendent Alexandre Barreto's interview to Valor Econômico on June 24, 2025: <https://valor.globo.com/wall-concurrence/?next=https://valor.globo.com/brasil/noticia/2025/06/24/veja-os-planos-do-cade-para-cuidar-das-big-techs.ghtml>.

¹² See <https://www.gov.br/cade/pt-br/assuntos/noticias/nota-sobre-a-coletiva-de-imprensa-da-secretaria-de-reformas-economicas-do-ministerio-da-fazenda>

¹³ See <https://www.gov.br/cade/pt-br/assuntos/noticias/cade-apresenta-contribuicoes-ao-projeto-de-lei-que-trata-de-inteligencia-artificial> and https://cdn.cade.gov.br/Portal/assuntos/noticias/2024/Contribui%c3%a7%c3%a3o%20CADE%20PL%202338_fi nal.pdf

the future statute, combined with its increasingly active enforcement involving digital markets, indicates that future antitrust scrutiny of transactions and business practices in general will likely be deepened in this area with a potential increase in investigations and inquiries.

Conclusion

Considering the developments discussed, it is clear that CADE has adopted a progressively assertive approach toward the oversight of digital markets. The authority's growing engagement is manifested both in its merger control activities and in its investigations of unilateral conduct by digital platforms. This trend reflects not only CADE's recognition of the complexities and rapid evolution of the digital economy but also its willingness to refine traditional analytical tools to address novel challenges.

Looking ahead, the potential enactment of the bill on *ex ante* regulation of digital platforms as well as of the AI Bill may further reshape Brazil's regulatory landscape. If approved, they could significantly expand CADE's mandate by equipping the authority with new tools to investigate and assess competitive dynamics in increasingly data-driven markets. This would enhance CADE's ability to respond to new market dynamics, algorithmic conduct, and commercial behavior rooted in the use of big data and automated decision-making.

In this evolving context, 2026 is expected to be a pivotal year for competition enforcement in digital markets in Brazil. Technology companies should be prepared for a more vigilant stance from CADE. As the digital economy continues to evolve, the agency will certainly play a more prominent role in shaping the competitive landscape.

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