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Brazil issues chargesheet against banks in fintech probe

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Brazil's competition authority has formally accused four of the country's largest banks of discriminating against a digital credit card operator by restricting its customers from using direct debit payments.

Brazil's Administrative Council for Economic Defence, known as CADE, said this week that it had wrapped up a preliminary abuse of dominance probe into the country's five largest banks and now initiated formal proceedings against four of them.

The probe follows a complaint by Brazilian fintech company and digital credit card operator Nubank. The company alleged in May 2017 that the country's five largest banks – Bradesco, Santander, Caixa Econômica

Federal, Banco do Brasil and Itaú Unibanco – prevented its customers from paying bills by direct debit that they accrued when using its digital credit card.

CADE began a confidential investigation into the five banks before [opening](#) a preliminary probe in March 2018. The enforcer said at the time that the banks were jointly dominant because they collectively held up to 85% of the country's banking market.

The agency said this week that it had dropped its probe into Itaú Unibanco based on the explanations the bank provided during the preliminary investigation.

But CADE has accused the other four banks of restricting Nubank's customers from setting up direct debits to pay credit card bills accrued when using the digital credit card. The agency said the major banks cancelled automatic debit contracts with Nubank and imposed above-normal service costs on the fintech company.

This behaviour could have made it more difficult for the fintech company to maintain or attract customers, the authority said.

Nubank had also alleged that Itaú Unibanco had cancelled its automatic debit contract with the company without justification, but the authority determined that there was an economic rationale for the cancellation, because the agreement did not generate enough income.

The authority also rejected Nubank's previous claim that the five banks acted anticompetitively by withholding information about the identity of depositors or senders of funds.

When CADE launched its preliminary enquiry, Nubank said it was set to lose 340 million reais (€83 million) by the end of 2018 from customers who were unable to use the direct debit function.

Nubank declined to say this week what that final loss was, but it said it believes a free and competitive market gives consumers the ability to make choices suited to their needs, rather than those imposed on them.

Banco do Brasil told *GCR* that it had provided all information requested by the authority. Bradesco, Santander and Caixa Econômica Federal did not respond to requests for comment.

Daniel Oliveira Andreoli, a partner at Demarest Advogados in São Paulo, whose firm acts for Santander, said the agency's preliminary investigation was quicker than usual.

"Normally, an investigation with this complexity involving unilateral conducts has a longer duration until a formal proceeding," he said. It is possible that the probe's focus on digital and financial markets increased the authority's interest in the case, he added.

Andreoli said he didn't foresee the probe having a broader effect because the case is a "very specific claim, for a service that is not essential in the financial service market."

No hard evidence exists to show that the banks' conduct was improper, he added, nor does the existence of the investigation itself prove that the banks are shutting out fintech companies.

He said the authority's argument that the banks share joint dominance in the market is "a very concerning position" that is far removed from other investigations related to unilateral conduct.

The four banks now have 30 days to issue a defence, after which the enforcer will decide whether to refer the case to its administrative court for a final decision – although it has no deadline to conclude the investigation.

If the administrative court determines that there was anticompetitive conduct, it could fine the banks between 0.1% and 20% of their annual gross revenue in 2017.

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