

## Na Mídia

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### **Wabco/ZF follow precedent in Brazil market segmentation, lawyers say**

Deal entails no horizontal overlaps in Brazil – parties

CADE only declines fast-track reviews if market tests are needed – lawyers

SG taking longer to conclude merger reviews since loss of quorum

ZF Friedrichshafen and Wabco's [NYSE:WBC] proposed market segmentation aligns with precedents used by Brazil's competition authority CADE, said two antitrust lawyers.

The German and US auto parts manufacturers announced plans for a USD 7bn merger in March and filed under CADE's fast-track procedure on 26 August. The Department of Justice issued a second request for an extended antitrust review in the US in July. The companies have said they expect the deal to close by early 2020.

"CADE has segmented the market in the same manner as the merging parties," said André Ferraz, an associate at VMCA Advogados. The parties' market segmentation is in line with CADE's precedents inasmuch as it distinguishes between auto parts for original equipment manufacturers and suppliers (OEM and OES) and the independent aftermarket (IAM), and between light and heavy vehicles, said Ferraz and **Bruno Drago, a partner at Demarest Advogados.**

When applying these distinctions to the groups of products manufactured by Wabco and ZF in Brazil, there are no horizontal overlaps between their operations and a single vertical integration between Wabco's supply of automated manual transmission controllers and ZF's production of automated manual transmissions, the parties said in the filing.

The groups of products thus analyzed by the parties are steering products, vehicle frames, drivelines, brakes, fleet management solutions, and diagnostic and testing equipment, according to the filing.

Wabco is a global supplier of braking solutions for medium and heavy commercial vehicles, while ZF has no operations in this segment, which makes the transaction a “logical combination”, the parties argued in the filing.

A separate General Superintendent’s Office (SG) filing in February, made in connection with the unconditional approval of an auto parts merger between Magnetti Marelli and CK Holdings, corroborates that CADE has traditionally segmented auto parts markets into markets for specific auto parts. The market is further divided into whether the parts are intended for OEM/OES or the IAM, and for heavy or light vehicles. Auto parts markets are national in their geographic scope, the SG said.

As for the timing of the merger review, Drago and Leonardo Duarte, a partner at Veirano Advogados, said that CADE usually accepts fast-track filings, but can switch to a longer review if the agency decides a market test is needed.

CADE will normally opt for a fast-track procedure “if the market is well-known by the agency, if there are case precedents, if the parties submit correct definitions and have joint market shares below the thresholds established by Law [for fast-track procedures],” Drago said. When parties do not submit reliable market estimates and CADE has doubts about the relevant markets involved, CADE usually opts to conduct a market test to verify the information on the deal, Duarte said.

Ferraz noted that, in mergers involving auto parts, CADE’s verification of the information submitted by the parties is “facilitated” by the fact that companies’ product portfolios are usually publicly available.

In addition, “the fact that CADE’s summary of the deal in the Federal Register is based on the merger filing is a good sign that the agency has considered the information submitted by the parties to be adequate,” Ferraz said. The projected closing of the deal by early 2020 is “feasible,” he added.

“Generally speaking, there have not been many merger cases with large concentrations in auto parts markets in Brazil,” Duarte said, adding that most of these markets are usually fragmented in the country. **Drago likewise said that, as a general rule, Brazilian parts markets are highly fragmented and with low concentration levels.**

Since the enactment of Brazil’s 2011/2012 competition law, Ferraz identified a single transaction in the auto parts sector that was submitted by the SG to CADE’s tribunal: Continental Aktiengesellschaft’s acquisition of Veyance Technologies, which was approved by the tribunal conditional on structural remedies in January 2015.

A spokesperson for CADE declined to provide an estimate of when the SG would issue its final ruling on the Wabco merger, but said that in the first half of 2019 the agency took an average of 14 days to review fast-track mergers.

Since CADE lost its required quorum of a minimum of four tribunal members, however, lawyers have complained that the SG has been taking longer to conclude its merger reviews, as reported.

Under CADE’s Resolution 16/2016, the SG must issue its final ruling on fast track mergers within 30 days.

Wabco and ZF declined to comment.

by Camila Pavanelli de Lorenzi in São Paulo