



## Na Mídia

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### **Brazil imposes interim measures on food delivery app**

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Brazil's antitrust watchdog has imposed interim measures on a leading domestic food delivery application to stop it including exclusivity clauses in its contracts with partner restaurants, marking the first time the agency has issued such an order against a digital platform.

The Administrative Council for Economic Defence (CADE) confirmed its decision to impose interim measures on iFood on Wednesday. The order follows a complaint by rival Rappi Brazil in September, which accused the

company of abusing its dominant position in the market for digital delivery platforms by signing exclusive contracts with partner restaurants.

The interim measures prevent iFood from entering into new contracts that contain exclusivity agreements, while also prohibiting the company from altering any existing contracts, including those that don't include exclusivity clauses or any other restrictive provisions.

Until CADE has issued a final decision on its wider probe into iFood, the company will only be able to renew expired contracts that contain the same exclusivity clauses for a period of one year, so long as they are in the interest of both parties, the agency said.

A pair of Brazilian bar and restaurant associations – Associação Brasileira de Bares e Restaurantes (Abrasel) and Associação Nacional de Restaurantes (ANR) – also filed complaints against iFood, alleging that it controls roughly 86% of the market for digital delivery platforms.

Uber Eats applied to intervene as a third party, backing the complainants' claims that iFood's policy of entering into long-term exclusive agreements created barriers to entry in the market.

The complainants argued that iFood's dominance meant restaurants felt obligated to adhere to its restrictive business model, which makes it harder for competing platforms. Since the beginning of the covid-19 pandemic, online food ordering apps have become a crucial sales avenue for bars and restaurants and those establishments have become dependent on iFood's services, the complainants noted.

iFood argued that the online food delivery market is "extremely dynamic" and the signing of exclusive agreements with restaurants creates incentives for platforms to invest in their partners. The company said that there have also been many successful new entrants in the market for digital delivery platforms in recent years.

However, CADE concluded that immediate intervention was necessary to restore the competitive conditions of the market and to avoid irreparable harm. It said iFood has a dominant position in the market, but the extent of this power needs further analysis.

Mudrovitsch partner Victor Santos Rufino in São Paulo, who is counsel to Rappi, told GCR that CADE's decision "represents a milestone for digital markets in Brazil" as it is the first time the agency has imposed interim measures on a digital platform

The decision confirms the antitrust authority's mission to ensure fair competition in a market that has been deeply affected by the economic crisis and has gained significant importance amid the covid-19 pandemic, Rufino said.

A spokesperson for Uber said that the decision is the first step toward reaching "a fairer and more transparent competition environment in Brazil."

The spokesperson said it hopes CADE's decision "will help restaurants have more autonomy to make the best decisions about their business without fear of suffering any kind of retaliation."

Counsel to Abrasel and ANR declined to comment. iFood could not be reached for comment.

Unilateral conduct hurdles

Vinícius Marques de Carvalho partner Eduardo Frade in São Paulo, who was formerly CADE's general superintendent, said the enforcer has been expanding its use of interim measures since 2017.

Between 2012 and 2017, CADE imposed interim measures in just two cases, but since then, it has done so nearly 10 times, Frade noted.

A handful of its recent interim measure decisions occurred in the early stages of abuse of dominance investigations, which are usually tough cases that involve a lot of debate, Frade said.

Marcel Medon Santos, a partner at TozziniFreire Advogados in São Paulo, said that CADE's interim measures prevent the company from entering into new future exclusive contracts, but the decision still preserves the status quo of iFood's current exclusivity agreements.

CADE likely did this to preserve the case's factual background so that it can analyse the exclusivity clauses' effects on the market, while also trying to prevent the presumed negative effects from becoming worse, Santos said.

He said it will likely be difficult for the authority to reach a decision in this case because unilateral conduct matters demand lengthy and complex analyses, while digital markets tend to be dynamic and the conditions that may be applicable one day could have changed by the next.

**Demarest partner Bruno Drago in São Paulo noted that CADE took six months to render its interim measures decision, which he said “clearly suggests” there were difficulties when it came to balancing the alleged benefits generated for iFood's clients against the alleged increase in its rivals' costs.**

Another relevant fact, which was probably considered by the authority in its assessment, is the risk of having false positive results, particularly when factoring in the effect of the covid-19 pandemic, Drago said.

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