



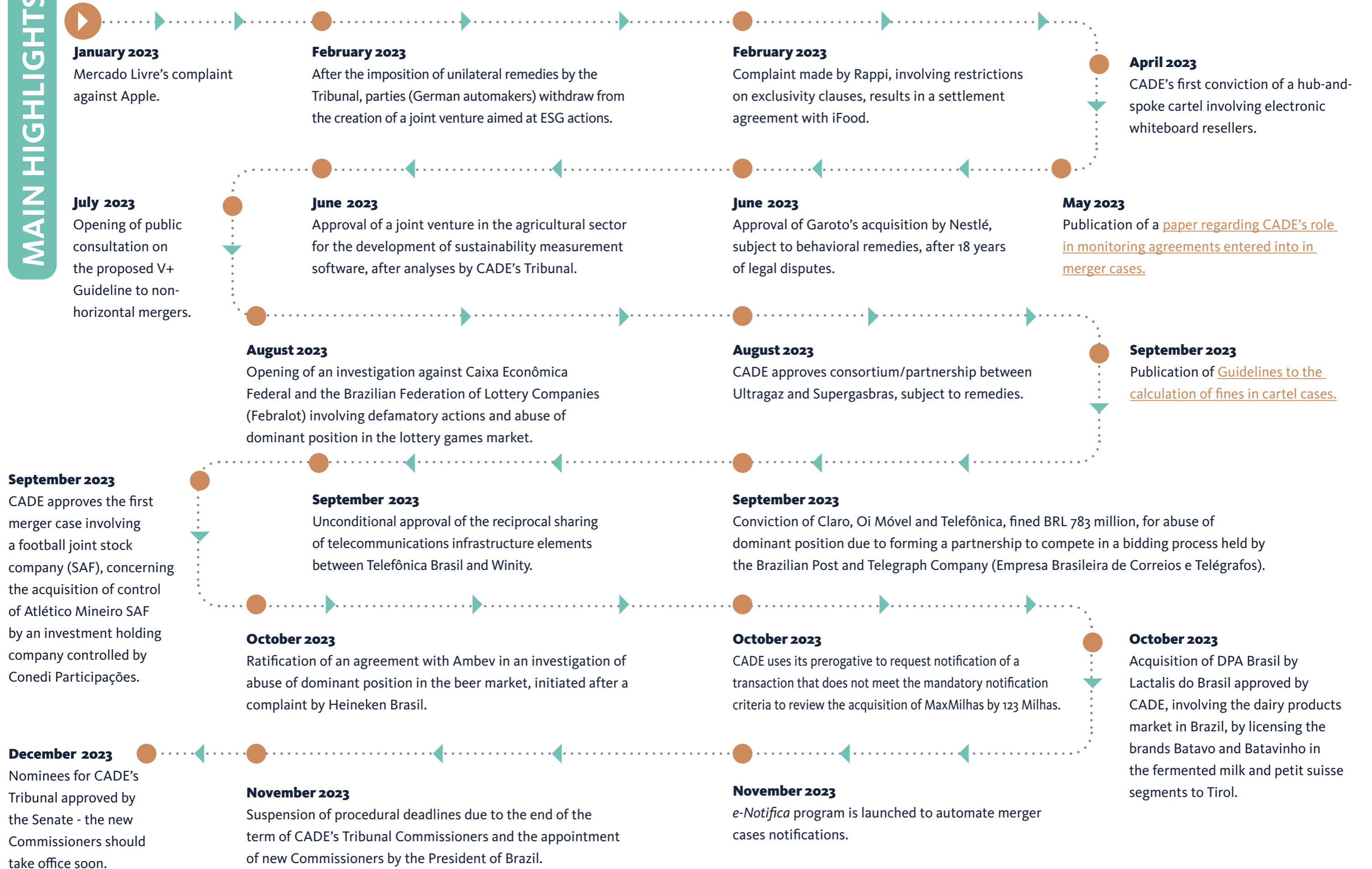
2023

COMPETITION

OVERVIEW

DEMAREST

MAIN HIGHLIGHTS



YEAR OVERVIEW

AS OF DECEMBER 15, 2023, CADE HAS REVIEWED A TOTAL OF 557 MERGER CASES.

As of December 15, 2023, CADE has reviewed a total of **557 merger cases**, which is relatively lower than in 2022, when **669 transactions were analyzed**.¹ However, CADE has seen significant improvement in the time it takes to review transactions. According to CADE’s performance report for the first half of the year, the average time taken to review merger transactions between January and June of 2023 was 26.2 days, while in 2022, during the same period, it was 41.6 days. Although there is still no official data for 2023, during the 29th Seminar on Competition Policy organized by the Brazilian Institute of Studies on Competition, Consumer Affairs and International Trade (“IBRAC”), the General Superintendent, Alexandre Barreto, confirmed that the time taken for review was significantly reduced in 2023, reaching a total time of 18.7 days.

As for merger cases, 538 cases were unconditionally approved, while 5 were approved subject to a Merger Control Agreement (“ACC”), and 1 was blocked.

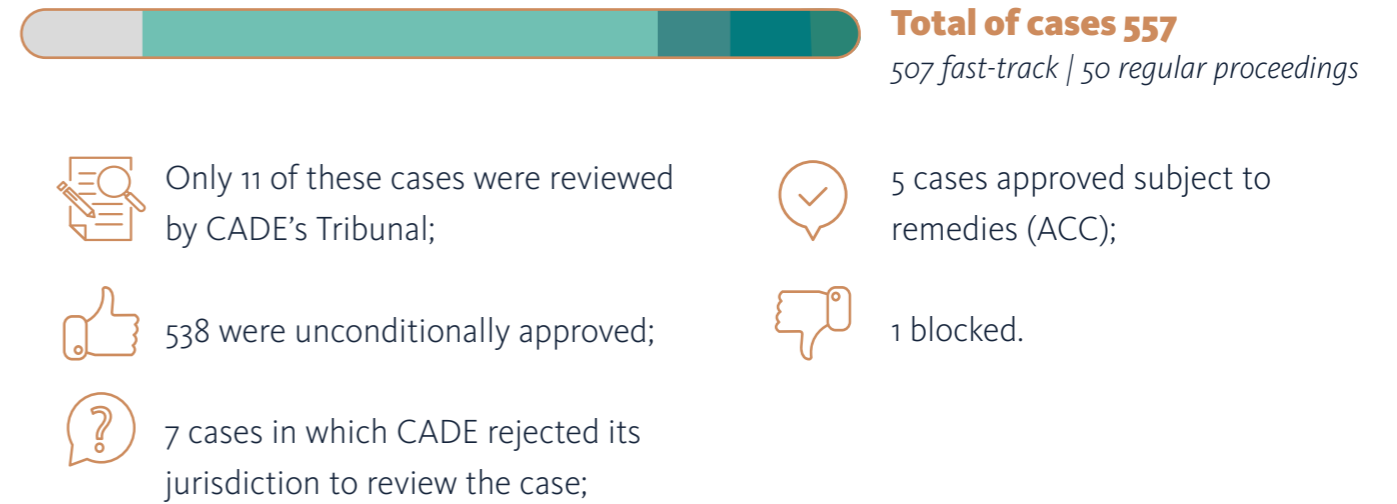
There has been a significant increase in the number of real estate transactions reviewed and approved by CADE involving:

-  creation of special-purpose companies to develop ventures;
-  acquisition of shares in real estate companies; and
-  buying and selling of real estate for development;
-  sale and leaseback transactions.

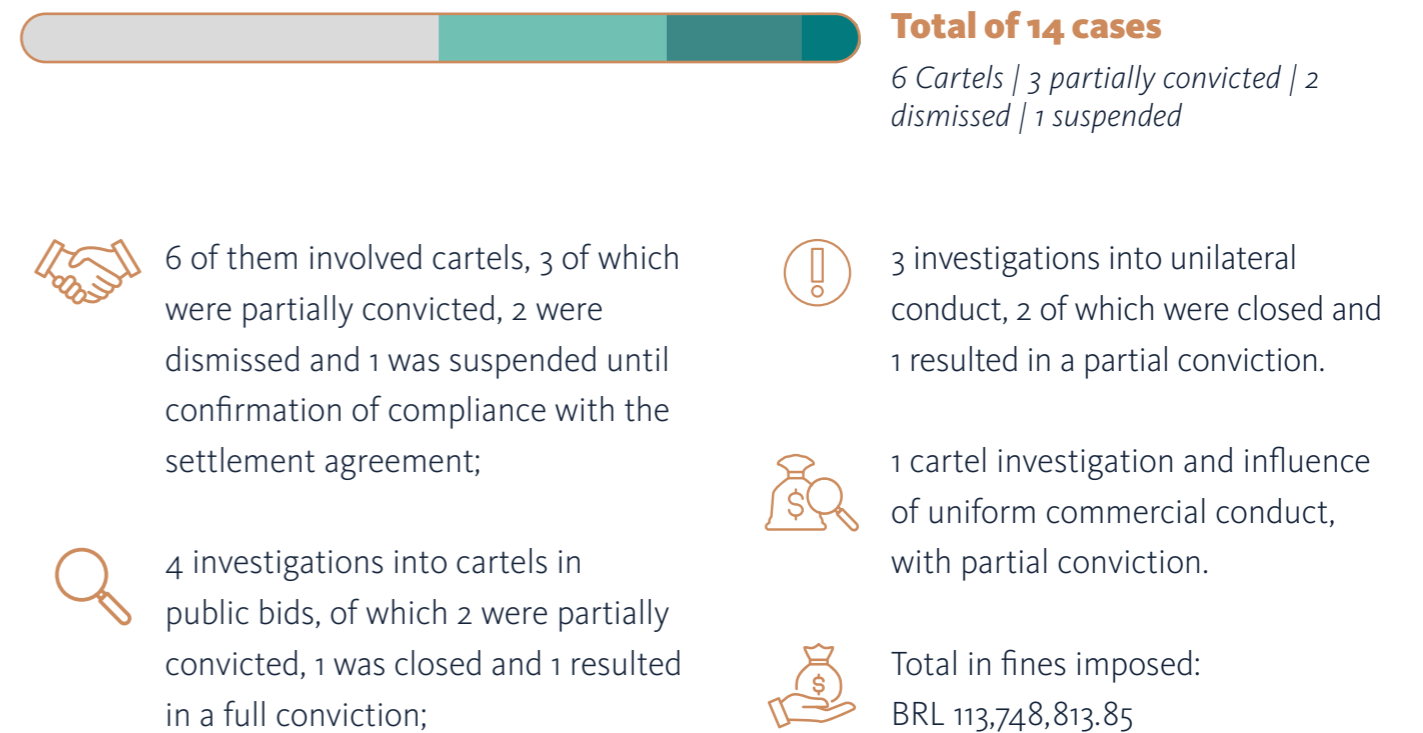
CADE’s operation reinforces its commitment to maintaining rivalry and fostering a healthy competition environment in the real estate sector, thus consolidating its importance in the Brazilian economy.

¹ Source: Cade em Números database. Available at: <https://cadenumeros.cade.gov.br/QvAJAXZfc/opendoc.htm?document=Painel%2F-CADE%20em%20N%C3%BAmeros.qvw&host=QVS%40srvo04q6774&anonymous=true>

MERGER CASES



ADMINISTRATIVE PROCEEDINGS



YEAR OVERVIEW

NEW INVESTIGATIONS INITIATED BY CADE



25 preliminary inquiries – 11 shelved and 14 in progress;



1 administrative inquiry (Caixa Econômica Federal); and



11 administrative proceedings – 2 resulting from leniency agreements entered into with CADE.

SETTLEMENT AGREEMENTS (“TCC”)



6 settlement agreements executed in 2023;



Total settlement amounts: BRL 88,051,285.47.

ADMINISTRATIVE PROCEEDING FOR INVESTIGATION OF MERGER CASES (“APAC”)

Total of 7 APACs initiated in 2023:



5 settled with CADE;



2 were notified for CADE’s review after the Tribunal’s decision.

NEWS AND TRENDS

NEWS AND TRENDS

SECTORS UNDER THE SPOTLIGHT



Oil and gas



Plant protection products



Financial services



Real estate



Health and pharmaceuticals



Energy



Fertilizers



Digital markets

CARTELS

Throughout the last five years, a significant number of leniency agreements has not become investigations. New cartel cases may arise from such agreements in the upcoming years.



INCREASE IN CASES OF ABUSE OF DOMINANT POSITION AND UNILATERAL CONDUCT

Through the new unit for investigating cases of unilateral conduct, CADE seeks to demonstrate its action to address cases of abuse of dominant position, which CADE prefers to settle rather than pursue investigations.

DAMAGE CLAIMS

The importance of actions to repair competition damages has increased due to new Law No. 14,470/2022, sanctioned in November 2022.



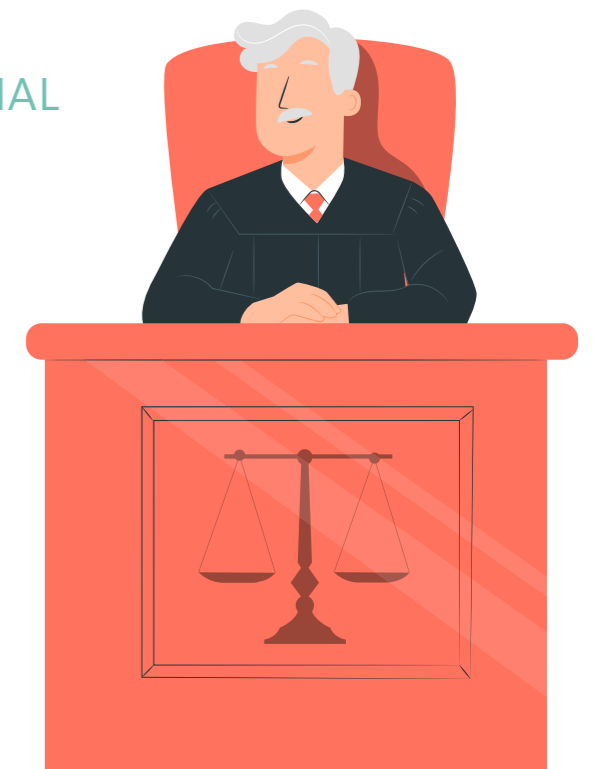
IMPORTANT DECISION ON AGREEMENT BETWEEN COMPETITORS TO ACHIEVE SUSTAINABILITY GOALS

(Cargill, Louis Dreyfus, ADM Case).

RENEWAL OF THE LINEUP OF COMMISSIONERS OF CADE'S TRIBUNAL

Commissioners Lenisa Rodrigues Prado's, Sergio Costa Ravagnani's, Luis Henrique Bertolino Braido's and Luiz Augusto Hoffmann's terms of office ended.

The four new Commissioners should take office soon: José Levi, former Minister of the Attorney General's Office in the Jair Bolsonaro's government; Camila Cabral, former chief economist at CADE; Diogo Thomson de Andrade, current Deputy Superintendent of CADE; and Carlos Jacques, a consultant to the Senate.



NEWS AND TRENDS

BILL NO. 2,768/2022 AND THE BIG TECHS



Prominent within the Brazilian legislative landscape, Bill No. 2,768/2022, an initiative by representative João Maia (PL-RN), is currently under analysis by the Brazilian House of Representatives (in Portuguese, *Câmara dos Deputados*). Aimed at regulating digital platforms in Brazil, the bill proposes that the Brazilian National Telecommunications Agency (ANATEL) be responsible for supervising and sanctioning over-the-top applications, maintaining their classification as a Value-Added Service (VAS).

The project is based on the premise that large technology companies have considerable

market power, expanding their operations into adjacent sectors by practicing *self-preferencing* and *gatekeeping*.

The proposal gives ANATEL the power to impose sanctions, such as warnings and fines of up to 2% of the economic group's turnover in Brazil and introduces the creation of the Digital Platforms Inspection Fund (FisDigi), aimed at developing digital innovation in states and municipalities, financed by the digital platforms' inspection fees, appropriations from the federal budget, special credits and various transfers. It should be noted that CADE's jurisdiction in the review of merger cases involving digital platforms remains unchanged.

The bill, presented to the Brazilian House of Representatives on November 10, 2022, is currently under analysis by the House's Economic Development Commission.

COOPERATION AGREEMENTS BETWEEN COMPETITORS: CASE INVOLVING CARGILL AND CATENA X (SUSTAINABILITY AGREEMENTS BIAS)

In June of 2023, CADE made a surprising decision by approving a transaction involving sustainability aspects – a topic that had not yet been thoroughly reviewed until then.

The transaction, involving SustainIt, Cargill, Louis Dreyfus and ADM International, consisted in the creation of a joint venture to operate a global B2B data platform ([public case records page](#)). This initiative, designed to track and standardize the measurement of sustainability in agricultural supply chains, aims to facilitate the collection, organization and management of data relating to the sustainable performance of suppliers. The scope of the joint venture would include crucial aspects such as water use, deforestation and working conditions, consolidating a joint commitment between the companies to adopt sustainable practices throughout the production chain.

In CADE's Tribunal ruling on the transaction, Commissioner Sérgio Ravagnani, recognizing the timeliness of the matter, noted that the precedent could be applied more often by the Tribunal. In assessing the context of the transaction, the Commissioners also recognized the growing challenges for agribusiness stakeholders to obtain sustainable information in the production chain, especially in light of the procedures required by new legal frameworks, such as the European Union's Deforestation Regulation.

With regard to the risks associated with the exchange of competitively sensitive information, CADE positively evaluated the data security solutions and the comprehensive antitrust protocol presented by the parties, which ensure that users' access to sustainability data is limited to their own supply chains and that employees of the joint venture have limited access to

NEWS AND TRENDS

competitively sensitive information. In addition, in analyzing the transaction and addressing the importance of CADE's monitoring of ESG practices, Gustavo Augusto pointed out that failure to comply with these conditions could result in a review of the transaction by the Tribunal.

The case relates to the Catena-X initiative ([public case records page](#)), a never-formed joint venture that also aimed to exchange data for sustainability purposes and involved the Volkswagen, Mercedes-Benz, BMW, BASF Group, Henkel, Bosch, SAP, Schaeffler, Siemens, T-Systems and ZF groups.

CADE's position in the Cargill case approval differed in particular from certain aspects of the cooperation in the Catena-X project, focusing on the scope of possibilities for information exchange through a comprehensive data pooling mechanism. CADE pointed to the lack of a clearly defined scope in Catena-X regarding the data to be collected and exchanged, as well as the specific applications of that data. In contrast, CADE was more receptive of the narrower scope of the Agribusiness Joint Venture, which more precisely outlines the scope and recipients of the proposed data sharing.

In a nutshell, CADE's decision-making indicates that even though the sustainability agreements reviewed by CADE involved the creation of joint ventures, the authority has remained committed to the conventional assessment of cooperation between competitors, with no apparent flexibility regarding sustainability goals.

DIGITAL FILING FORM

In November 2023, CADE announced the launch of an electronic system for the submission of merger cases (*e-Notifica*), which aims to automate the notification of transactions to CADE.

The system should be available to users by the end of 2023 and will concurrently with the traditional system for notifying transaction. From next year, CADE's intention is that fast-track cases be notified exclusively through the *e-Notifica* platform.

The use of digital tools to facilitate the progress of cases has been consistently adopted by CADE in recent years. Recently, CADE launched the "Digital Questionnaire", a tool designed support the analysis of cases through by sending and receiving information online.



GUIDELINE TO CARTEL FINES

In September 2023, CADE released its new Guideline to Cartel Fines, developed based on an analysis of the fines imposed by CADE in cartel cases from January 2012 to December 2022, with the aim of ensuring greater transparency to CADE's actions and decisions.

The guide is organized into five sections. Among them, one specifically provides for the steps used by CADE to calculate fines for companies, associations, unions and individuals convicted of cartel activities. In addition, there is a section that provides information on alternative penalties that extend beyond the monetary fines provided for in the Brazilian antitrust law, including measures such as prohibition to participate on bids.



NEWS AND TRENDS

The guideline is not an official regulation. In other words, it does not amend provisions of CADE's Internal Regulations, Resolution No. 3/2012 or Law No. 12,529/2011, and the practices and procedures presented can be altered depending on the circumstances of each case.

V+ GUIDELINE

In November 2023, CADE released its draft Guideline to the Analysis of Non-Horizontal Mergers, known as the "V+ Guideline".

The guide aims to:

- Organize the existing decision-making practice;
- Provide guidelines for the analysis of mergers that result in non-horizontal effects; and
- Guide the public authorities and help the market understand CADE's decision-making criteria, making the analysis process more transparent.

The V+ Guideline is not binding, and its purpose is to record the institutional memory acquired by CADE, as well as to provide interpretation of existing rules and serve as a reference for the analysis of non-horizontal effects.

MERGER CASES

MAIN MERGER CASES REVIEWED BY CADE IN 2023




PARTIES WITHDRAW FROM AUTOMOTIVE JOINT VENTURE WITH ESG PRACTICES AFTER CADE'S TRIBUNAL IMPOSES UNILATERAL REMEDIES

In February 2023, CADE concluded the analysis of the creation of a joint venture between BASF, BMW, Henkel, Mercedes-Benz, Robert Bosch, SAP, Schaeffler, Siemens, T-Systems, Volkswagen and ZF, focused on ESG practices, with the aim of creating a digital platform to enable data exchange in the automotive production chain.

Although the creation of the joint venture had been unconditionally approved by CADE'S General Superintendence, the case was referred to CADE'S Tribunal, which raised concerns regarding the exchange of competitively sensitive information and the increase in the coordinated power of the participating companies.

After rejecting the parties' proposal for remedies, the Tribunal, in an unusual decision, unilaterally imposed remedies as a condition for approving the transaction, which were not accepted by the parties.

After CADE's final ruling, the parties involved expressed their decision to abandon the operation in Brazil, excluding the country from the scope of the agreement. After CADE became aware of the launch of the joint venture abroad, the Tribunal ordered the General Superintendence to investigate possible gun jumping and deception. The investigation by the General Superintendence has not yet been disclosed.

MERGER BETWEEN FLEURY AND INSTITUTO HERMES PARDINI UNCONDITIONALLY CLEARED BY CADE

In April 2023, CADE was notified of the proposed merger between Fleury and Instituto Hermes Pardini, involving several horizontal overlaps in the market for diagnostic medicine support services and other related services, as well as vertical relations between the parties' activities.

After review by CADE'S Tribunal due to a request for review made by former Commissioner Lenisa Prado, the merger between Fleury and Instituto Hermes Pardini was unconditionally cleared. During the Tribunal's analysis, Commissioner Gustavo Lima stated that Fleury had already submitted 16 transactions to CADE in recent years, expressing his concern about the consolidation activities of large corporations in the health sector.



NESTLÉ'S PURCHASE OF GAROTO APPROVED AFTER 18-YEAR COURT BATTLE

After 18-year court battle, CADE approved, with restrictions, Nestlé's purchase of Garoto, which had been notified in 2002 and blocked in 2004. The administrative decision was challenged after the filing of an annulment action in 2005.²

CADE'S General Superintendence noted that there had been a significant change in the levels of rivalry within the chocolate market in Brazil in recent years, which would justify the review of the original decision.

Approval was conditioned to the signing of a Merger Control Agreement that provides for behavioral remedies, including a ban on the acquisition of assets that cumulatively represent a market share of 5% or more, among other conditions.

² Annulment action 0015018-08.2005.4.01.3400.

MAIN MERGER CASES REVIEWED BY CADE IN 2023

ultragaz **SUPERGASBRAS** CONSORTIUM BETWEEN ULTRAGAZ AND SUPERGASBRAS APPROVED WITH RESTRICTIONS

In August 2023, the creation of a consortium between the companies Companhia Ultragaz, Bahiana Distribuidora de Gás, Supergasbras and Minagás was approved, subject to the adoption of certain measures, for the sharing of operational structures to produce LPG.

Although two members of CADE’s Tribunal voted to block the transaction, the majority of the council voted to approve it, subject to, among other measures:

- Exclusion of the provision for sharing of bases and operational activities in the states of Espírito Santo, Rio de Janeiro, and Paraná; and
- Prohibition of maintaining any favored treatment or carrying out operations between these states.

CADE’s Tribunal also ordered that the duration of the agreement be reduced from 35 to 13 years.



FIRST TRANSACTION INVOLVING SAF SUBMITTED TO CADE APPROVED

In September, Demarest represented Conedi Participações, Banco Inter’s investment holding company, in the acquisition of control of Atlético Mineiro SAF, which was unconditionally approved by CADE’s General Superintendence.

The markets for advertising rights, sponsorship, and marketing of sporting events in general and professional soccer at national and state level were analyzed.

This was the first transaction notified to CADE involving a soccer joint-stock company.



SHARING OF TELECOM INFRASTRUCTURES BETWEEN TELEFÔNICA BRASIL AND WINITY IS UNCONDITIONALLY CLEARED

The telecommunications sector was also the subject of extensive analysis by Cade within the context of the transaction between Telefônica Brasil and Winity.

The transaction was unconditionally cleared by the General Superintendence and upheld by CADE’S Tribunal, following an appeal by interested third parties.

The transaction was also reviewed by ANATEL, which corroborated CADE’s Tribunal final position that competition concerns could be mitigated through regulatory action.

BRL 700 MILLION ACQUISITION OF DPA BRASIL BY LACTALIS DO BRASIL APPROVED SUBJECT TO THE LICENSING OF CERTAIN BRANDS TO TIROL



Demarest represented Lactalis do Brasil, a French multinational company, in the acquisition of Dairy Partners Americas and Dairy Partners Americas Nordeste, which was approved subject to the licensing of the Batavo and Batavinho brands to Tirol, in the fermented milk and petit suisse segments.



After extensive analysis, CADE assessed that competition-related concerns were centered on a hypothetical loss of rivalry, only in the fermented milk and petit suisse markets, given that the brands involved in these markets play a central role in the relationship with consumers.

Another important point was the analysis of the competitive pressure exercised by private label brands, as well as the possibility of sharing common production processes for other products in the refrigerated dairy markets.

OTHER SIGNIFICANT DISCUSSIONS IN MERGER CASES



ACQUISITION OF 100% OF ATLÂNTICO SUL BY APM TERMINALS B.V APPROVED AND SUBSEQUENTLY THE SUBJECT OF A GUN-JUMPING INVESTIGATION

APM Terminals' acquisition of the entire share capital of Atlântico Sul, held by the Atlântico Sul Shipyard, was unconditionally approved by CADE's Tribunal in February 2023.

The acquisition was approved after analysis of the need for mandatory submission of the transaction to CADE, which used the criteria of:

- The essential nature of the acquirer's business; and
- Increase in production capacity.

Although the transaction did not raise competition concerns, former Commissioner Lenisa Prado pointed out that there could have been a division of the business between the companies, with a potential for exchange of sensitive information before the merger was approved, which could constitute gun jumping.

Therefore, CADE's General Superintendence opened a procedure to investigate the possibility of gun jumping.



ACQUISITION OF REAL ESTATE ASSETS BETWEEN BTG AND COCA-COLA STANDS OUT AS ONE OF THE DEALS INVOLVING THE REAL ESTATE MARKET REVIEWED BY CADE IN 2023

In August 2023, CADE's General Superintendence unconditionally approved the acquisition of BTG Pactual's real estate assets by Spal Indústria Brasileira de Bebidas S.A. (Spal), one of the distributors that are part of the Coca-Cola System.

Although the parties claimed that the transaction should not be subject to mandatory approval, given that it was an ancillary asset to Spal's business and would not result in an increase in the buyer's production capacity, the General Superintendence disagreed and concluded that the asset was indeed directly related to the economic activity carried out by the buyer and, therefore, the transaction should be subject to antitrust approval by CADE.

Throughout 2023, several transactions involving the acquisition of real estate assets were brought to the attention of the General Superintendence, which has resulted in case law consolidating the need to comply with the following criteria when reviewing these transactions:



Whether or not the asset is operational;



Its specific destination;



Its essential nature for the buyer's economic activity; and



The increase in production capacity.

ADMINISTRATIVE PROCEDURES FOR INVESTIGATING MERGERS AND ACQUISITIONS (APACS)

15 APACS WERE OPENED IN 2023 TO INVESTIGATE TRANSACTIONS IN THE AUTOMOTIVE SECTOR

The automakers targeted in the APACs were: Interalli; Grand Brasil; Mais Distribuidora de Veículos; Azurra Paris Veículos; Atlântica Automóveis; Grupo Águia Branca; Sulbra Veículos; Renault Veículos; Weicolo; Green Star; Amazonas Leste; DRM Comércio de Veículos; Ritmo Veículos; GWB Distribuidora de Veículos; and Sul Peças e Veículos.

The cases are under analysis by CADE's General Superintendence.



Based on a complaint filed in 2019, 15 APACs were opened in 2023 to investigate transactions executed by car dealerships involving the acquisition and transfer of assets and commercial establishments.



ACQUISITIONS OF DELIVERY HERO'S SHARES BY NASPERS SUBJECT TO APAC OPENED BY CADE IN 2018, RULED IN 2023

In 2018, CADE opened an APAC to investigate a series of transactions involving the acquisition of shares in Delivery Hero AG. by Naspers Limited that were allegedly not submitted to CADE's review.

The discussion held in 2023 reviewed whether or not all companies that hold control or are controlled in a percentage above 20% of the capital or voting stock should be considered as part of the same economic group.

According to CADE, they should. Therefore, CADE's Tribunal recognized the violation of early consummation of the transaction, fining the companies involved in the amount of BRL 718,554.00.



In August 2023, a procedure was initiated to investigate the merger between 123 Viagens e Turismo Ltda. and MM Turismo & Viagens S.A. (MaxMilhas).

The transaction, according to the parties, was not submitted to CADE's review, as the minimum revenue thresholds were not met. However, CADE's Tribunal decided that, even though the revenue criteria had not been met, the companies should have notified the transaction, considering their alleged dominant position in the markets involved.

Thus, CADE used the authority provided for in paragraph 7 of article 88 of Law No. 12,529/2011, to require that, one year after the closing of the transaction, whether or not case requires notification, that the transaction be submitted to CADE's analysis. This prerogative was only used in three other cases:



i) Acquisition by Guerbet of Mallinckrodt's contrast media and injection systems division;



ii) Acquisition of equity interest in All Chemistry do Brasil Ltda. by SM Empreendimentos Farmacêuticos Ltda.; and



iii) Acquisition of control of Sacel by Presegur Brasil Transportadora de Valores e Segurança S.A.

CADE USES ITS LEGAL AUTHORITY TO ANALYZE THE POST-CLOSING TRANSACTION BETWEEN 123 MILHAS AND MAXMILHAS

UNILATERAL CONDUCT

UNILATERAL CONDUCT

In 2023, three investigations involving unilateral conduct were concluded, of which only one resulted in a conviction.

CRO/MG

The investigation involved a complaint made by Odontocompany, in May 2020, against the Regional Council of Dentistry of Minas Gerais (“CRO/MG”) and the Federal Council of Dentistry (“CFO”), for hindering the use of discount cards in services offered by dentists.

cfo CONSELHO FEDERAL DE ODONTOLOGIA

In August 2022, CADE’s General Superintendence had granted an unfavorable interim measure to CRO/MG to cease any type of action that would invalidate the acceptance of discount cards by accredited clinics. An agreement was proposed, and CADE’s Tribunal approved the settlement agreement with CRO/MG upon the payment of a settlement amount of BRL 255,000.00, in addition to fining the CFO in BRL 752,700.00.

CAIXA

NEW INVESTIGATION INTO THE LOTTERY GAMING MARKET

FEBRALOT
FEDERAÇÃO BRASILEIRA DAS EMPRESAS LOTÉRICAS

The year of 2023 was also marked by the opening of an investigation against Caixa Econômica Federal (“CEF”) and the Brazilian Federation of Lottery Companies (“FEBRALOT”) based on a complaint filed by the Association of Digital Intermediaries of Lottery Games (“AIDIGLOT”).

AIDIGLOT
Associação dos Intermediários Digitais de Jogos Lotéricos

Aidiglot alleges that CEF had been abusing its dominant position in the lottery gaming market by preventing lotteries from maintaining a commercial relationship with online intermediation platforms, in addition to promoting defamatory campaigns against online intermediation platforms, as a way to hinder the development of their activities.

In addition to the investigation, the General Superintendence imposed an interim measure, confirmed by CADE’s Tribunal, ruling that:

UNILATERAL CONDUCT

- CEF refrain from applying sanctions to the lotteries; and
- Both CEF and FEBRALOT stop making public statements attributing illegal activities to the platforms or suggesting that the activities carried out by the platforms are illegal, removing any statement in this regard from their websites.

The case is under investigation by CADE's General Superintendence.

INTERIM MEASURES

Interim measures have been widely used by CADE to suspend practices that can generate anticompetitive effects, especially in the case of unilateral conduct.

FIRST FINE FOR NON-COMPLIANCE WITH AN INTERIM MEASURE APPLIED THIS YEAR

In April 2023, CADE fined the Union of Artists and Technicians of Amusement Shows of the State of São Paulo ("SATED") in BRL 1,780,000.00 for failure to comply with an interim measure imposed by the General Superintendence in December 2021, which had prohibited SATED from entering into collective agreements or collective bargaining agreements that imposed remuneration or payment amounts to self-employed workers, specifically dubbing actors and directors.

INTERIM MEASURE AGAINST CAIXA ECONÔMICA FEDERAL IMPOSED BY GENERAL SUPERINTENDENCE TO THE ASSOCIATION OF HIGH COMPLEXITY HOSPITALS OF THE STATE OF GOIÁS

In addition to the interim measure against Caixa Econômica Federal in the investigation into the lottery gaming market (public case records page), another important interim measure was imposed by the General Superintendence to the Association of High Complexity Hospitals of the State of Goiás ("AHPACEG") to cease collective price negotiations with health insurance providers, within the context of an investigation initiated due to a complaint filed by Unimed Goiânia.

SETTLEMENT AGREEMENTS IN EXCLUSIVITY CASES

Investigations involving exclusivity agreements have also been recurrent at CADE. Two of them have resulted in significant agreements:

IFOOD

In February 2023, CADE executed a settlement agreement with iFood within the context of an investigation regarding the imposition of exclusivity clauses to restaurants registered on the iFood platform. The agreement prohibits exclusivity with restaurant chains with more than 30 branches and, in the case of chains with less than 30 branches, it limits the number of exclusivity clauses to 25% of the total businesses registered on the platform at a national level, in addition to other provisions.



AMBEV

Similarly, in October 2023, CADE executed a settlement agreement with Ambev within the context of an investigation into the imposition of exclusivity clauses to cold customer acquisition in points of sale (bars, restaurants and concert halls). Among the obligations imposed to Ambev is the duty to limit exclusivity clauses to 12% and 20% of the volume sold under exclusivity agreements at state and municipal levels, respectively, in addition to other obligations undertaken by the investigated company.

INVESTIGATIONS INVOLVING BIG TECHS

As a recurrent topic in the Brazilian and worldwide competition agenda, certain big techs were also the target of investigations in 2023:

MERCADO LIVRE VS. APPLE



In January 2023, the General Superintendence opened an investigation against Apple due to a complaint of abuse of dominant position filed by Mercado Livre based on practices such as:

- i) Prohibiting app developers from offering digital services used outside of their own app, seeking to limit the entry of competitors; and
- ii) Obliging developers to use only Apple's payment processing system.

The case is under investigation by CADE's General Superintendence.

ABBT VS. IFOOD BENEFÍCIOS

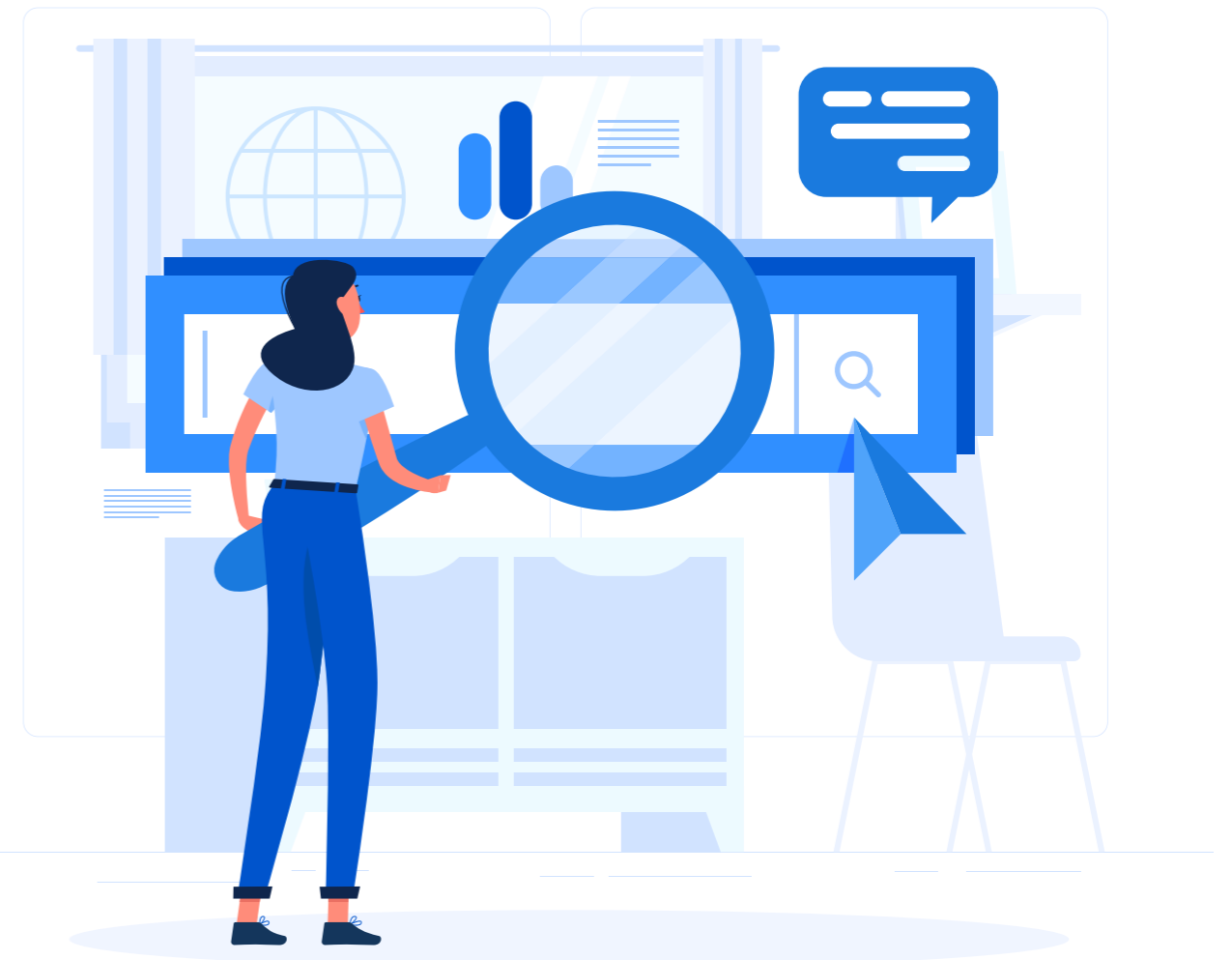


In March 2023, a new investigation was initiated by CADE's General Superintendence against iFood Benefícios, based on a complaint filed by the Brazilian Association of Worker Benefits Companies (ABBT) involving anticompetitive practices against competitors of iFood Benefícios in the meal voucher market. The case is under investigation by the General Superintendence.

NEW INVESTIGATION AGAINST GOOGLE AND META:



In May 2023, the General Superintendence initiated a new preliminary inquiry against Google and Meta for allegedly abusing their dominant position by using their platforms to campaign against the Brazilian fake news bill. Subsequently, Telegram was also included. The case is under investigation by the General Superintendence.



COLLUSIVE CONDUCTS

COLLUSIVE CONDUCTS

In 2023, there were interesting discussions at CADE regarding collusive conduct.

HUB-AND-SPOKE CARTEL

Among the cases involving these types of conduct, the case that should be highlighted is the one that resulted in the conviction of a cartel in the digital whiteboard market.³ In this case, the collusive structure investigated by CADE focused on a distributor of interactive whiteboards (hub). After receiving proposals from resellers (spokes), the distributor established higher reference values to the other resellers to defraud the competitive nature of public and private bids.

This case was the first conviction by CADE of a hub-and-spoke cartel; conduct characterized by verticalization, in which a certain economic agent acts as a focal point (hub) for the sharing of sensitive information among competitors (spokes), enabling coordination among them.

³ Administrative Inquiry No. 08012.007043/2010-79.

COLLUSIVE CONDUCTS

INVESTIGATIONS INVOLVING INFLUENCE TO ADOPT HOMOGENEOUS BEHAVIOR

In 2023, CADE investigated a case of influence of uniform commercial conduct, represented by invitation to cartelization. Such collusive conduct does not require the execution of an agreement, but is enough for an economic agent to request that competitors follow a similar conduct in the market. In 2023, this discussion was present in more than one case.



The first investigation, dismissed while still in the preliminary inquiry phase, was initiated based on a statement made by Latam's CEO,⁴ when he allegedly declared: "Latam will not reduce prices to gain market share." The dismissal of the inquiry was due to the position of the General Superintendence that such a statement would be out of context, merely addressing generic information about the company's strategy.



The second case, opened against Telefônica Brasil,⁵ was based on statements made by its CEO in a conference call, informing that Vivo would readjust prices and pass on inflationary losses in prepaid prices, and allegedly stating that the company expected the market to follow the trend. In this case, the General Superintendence continued the investigations, considering that there would be sufficient evidence for the establishment of an administrative inquiry.



The third investigation concerned an administrative proceeding in the fuel sector.⁶ While dismissing the case, Commissioner Luiz Hoffmann indicated different methods through which the influence on adopting an uniform commercial conduct can be represented:

- i) recommendation to competitors;
- ii) unilateral disclosure of competitively sensitive information; and
- iii) invitation to cartelization.

In view of this, CADE's efforts to delve deeper into the issue are evident.

⁴ Preliminary Inquiry No. 08700.001819/2023-11.

⁵ Administrative Inquiry No. 08700.003498/2023-81.

⁶ Administrative Proceeding No. 08700.005636/2020-14.



CADE AND THE JUDICIARY BRANCH

Administrative and judicial decisions, although independent of each other, are closely related. Below are some of the many examples in which this relationship was clearly evident in 2023:



CADE'S WILLINGNESS TO ACCEPT SETTLEMENT AGREEMENTS

The solution of settling in lawsuits, as occurred in the Nestlé/Garoto case, gained prominence and was suggested as something to be encouraged, as said in a speech by CADE's chief prosecutor, Juliana Domingues. In her view, the number of settlements signed in lawsuits involving antitrust cases is still low: only 37 settlement agreements signed between 2018 and 2022 in a sample space of 3,000 lawsuits in progress. For Domingues, there should be closer dialogue between CADE and the Judiciary Branch; she highlighted that CADE has employed a feasibility study on possible consensual resolutions in litigation.

CADE AND THE JUDICIARY BRANCH



SUPERIOR COURT OF JUSTICE'S DECISION ABOUT THE RULES OF THE STATUTE OF LIMITATION WITHIN ANTITRUST DAMAGE CLAIMS:

2023 was also marked by an important decision by the Superior Court of Justice ("STJ") regarding the statute of limitations for antitrust damage claims. In his vote as reporting judge within Special Appeal No. 2.095.107/SP (regarding the industrial gases cartel), Justice Ricardo Cueva established guidelines to the initial term of the statute of limitations, as well as its triggering event and suspensive causes.

Following the majority of STJ's case law, the initial term, both for standalone claims (which are claims that do not depend on an administrative condemnatory decision) and for follow-on claims (preceded by a final decision that recognizes the practice of illegal conduct), the statute of limitations would be triggered by the unequivocal knowledge of the illegal conduct.

The Justice also pointed out the need to suspend the statute of limitations while an investigation or administrative proceeding is pending before CADE. This aspect arises from an analogous provision contained in the Brazilian Civil Code, that determines the suspension of the limitation period until final judgment of related proceedings within criminal courts. This decision seeks to mitigate the uncertainties about the statute of limitations, which still constitute obstacles to the effective compensation of damages.

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