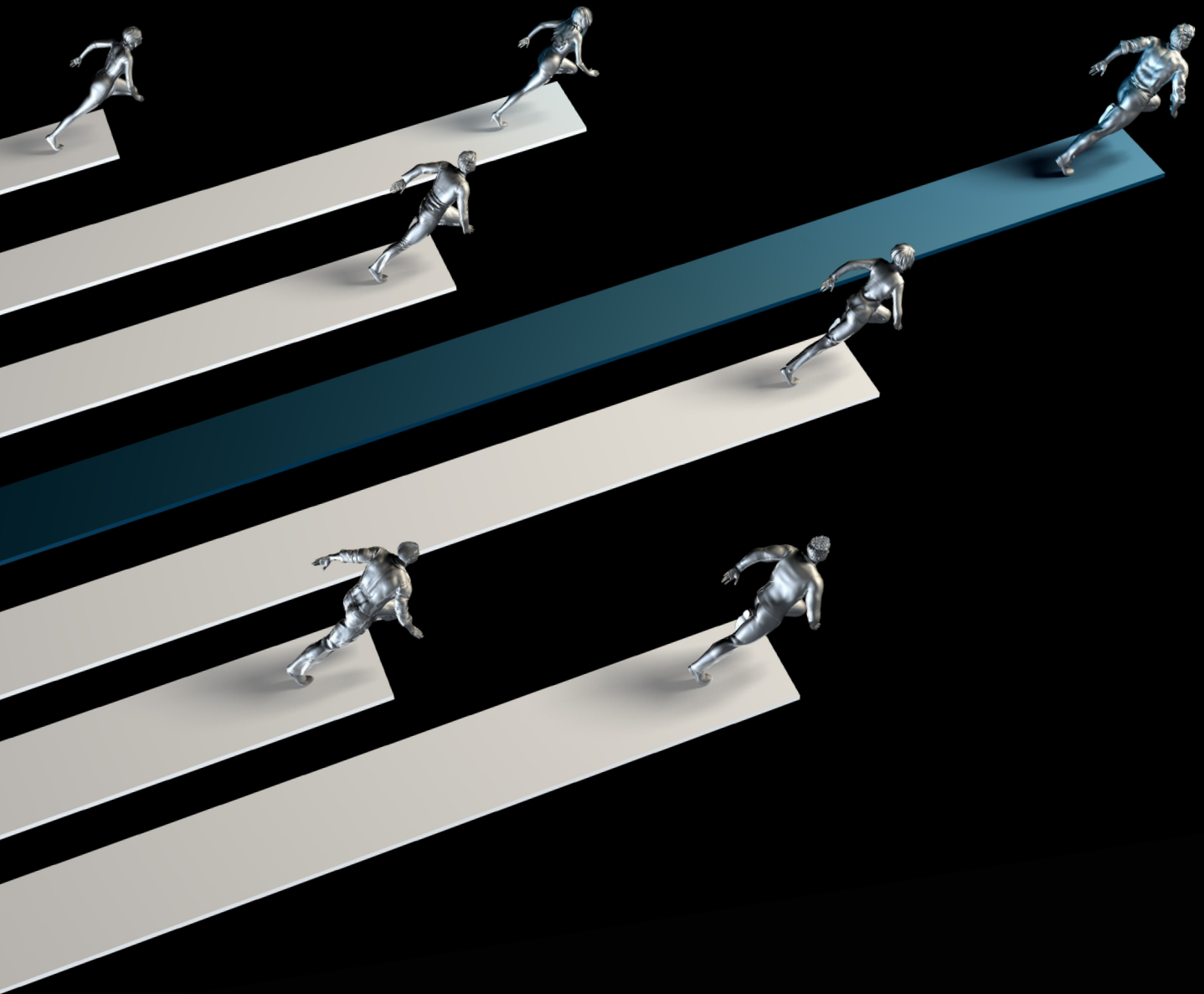


Tozzini Freire.

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Antitrust Newsletter

Highlights from CADE | 2023 First Quarter

Highlights from CADE

2023 First Quarter

This newsletter aims to provide an overview of the highlights of the activities of CADE (Brazilian Antitrust Authority) in each quarter, including:

- discussions and trends;
 - major numbers of merger filings and investigations analysis;
 - high-profile events; and
 - the most important decisions.
-

01

2022 analysis and relevant numbers for the first quarter of 2023:

CADE's 2022 Yearbook demonstrates record number of notified merger filings, an increase in the average time for review, and an increase in fines in conduct cases.

02

Attention before closing transactions: higher risk of gun jumping investigations

CADE has determined the launching of investigations to evaluate early consummation of transactions (gun jumping), which can result in fines of up to BRL 60 million, reinforcing the need for attention in the agreements and communications between companies.

03

Exclusivity cases on CADE's radar

An agreement was executed to prevent or limit exclusivity requirements by the iFood app, following two other relevant cases on the subject (i.e. Heineken and Gympass), which demonstrates a trend towards greater scrutiny of these commercial relationships.

04

Standard of proof in cartel cases - trend towards greater rigor

CADE discusses in detail and sets a stricter understanding of the level of evidence that is considered sufficient for condemnation, which may have repercussions and guide the judgment of relevant cases such as those related to Car Wash Operation (Operação Lava Jato), many based on unilateral reports of settlement signatories and indirect evidence.

05

Perspectives for the coming months:

Trend of increasing number of damage claims boosted by Law No. 14,470/2022.

01 2022 analysis and relevant numbers for the first quarter of 2023.

Release of CADE's 2022 yearbook

660 notified merger filings, which means 5% more than in 2021. **TozziniFreire is among the top 10 firms in number of submitted merger filings;**

Main sectors involved in merger filings: electric power, real estate, fertilizers/agrochemicals, oil and natural gas;

Average time for analysis: 21.4 days in fast-track cases and **125.6 days in non-fast-track cases** (about 7.5% more than in 2021 for both cases);

Launching of 9 investigations into gun jumping practices

103 investigations of anti-competitive conducts: 27 cartels, 62 unilateral conducts, and 14 uniform commercial conducts;

1 leniency agreement was executed.

Relevant numbers for the first quarter of 2023

123

Merger filings submitted to analysis
(base date: March 31, 2023)

- Average time for analysis in fast-track cases: 18 days
- Average time for analysis in non-fast-track cases: 66 days

07

administrative proceedings launched, with emphasis on a hub-and-spoke cartel case (involving distribution network);

02

leniency agreements signed and 1 adhesion
(base date: March 1, 2023).

Releases

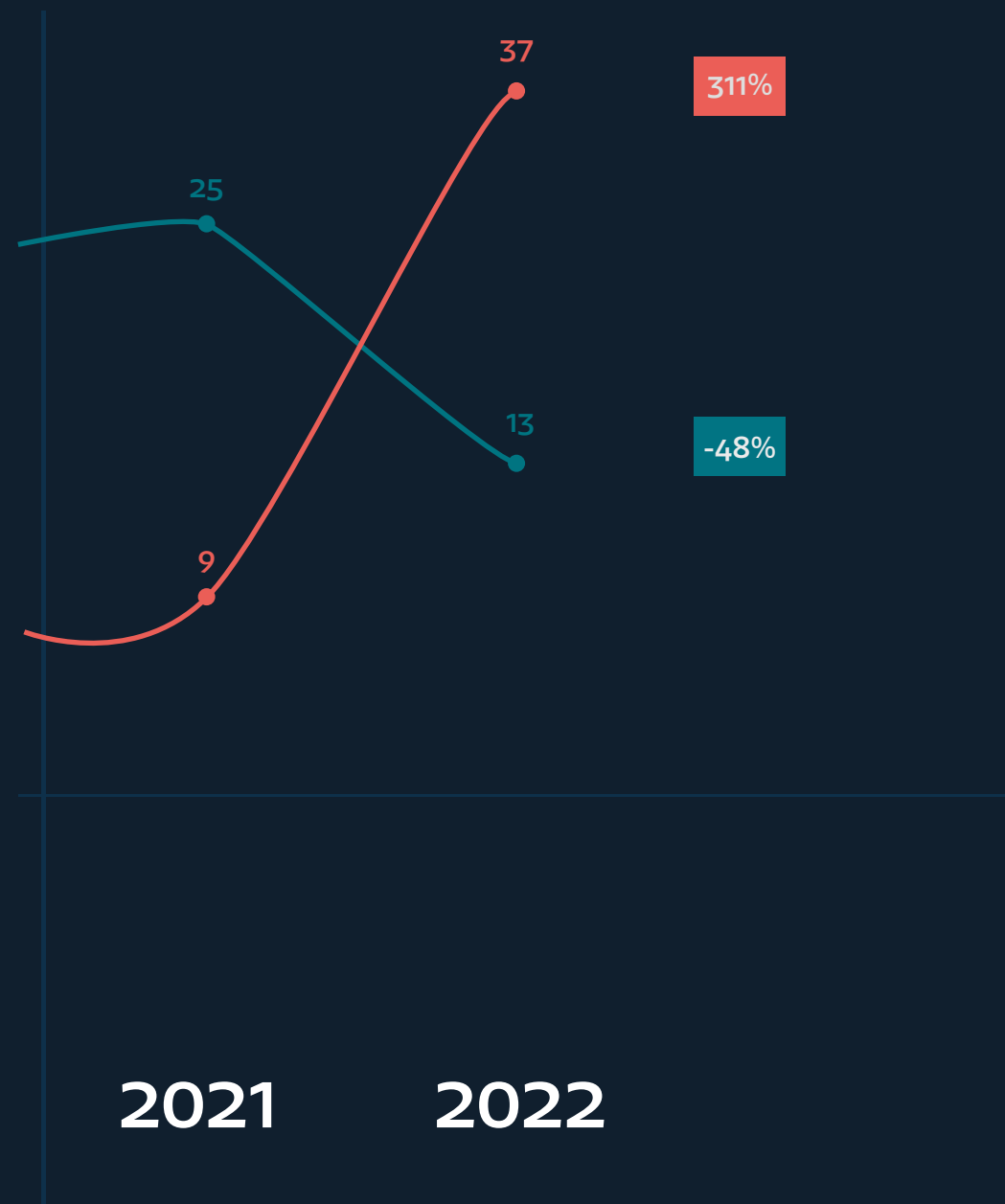
Publication of study by the Department of Economic Studies (DEE): benefits of CADE's activities in 2022 estimated in BRL 12.46 billion.

Events

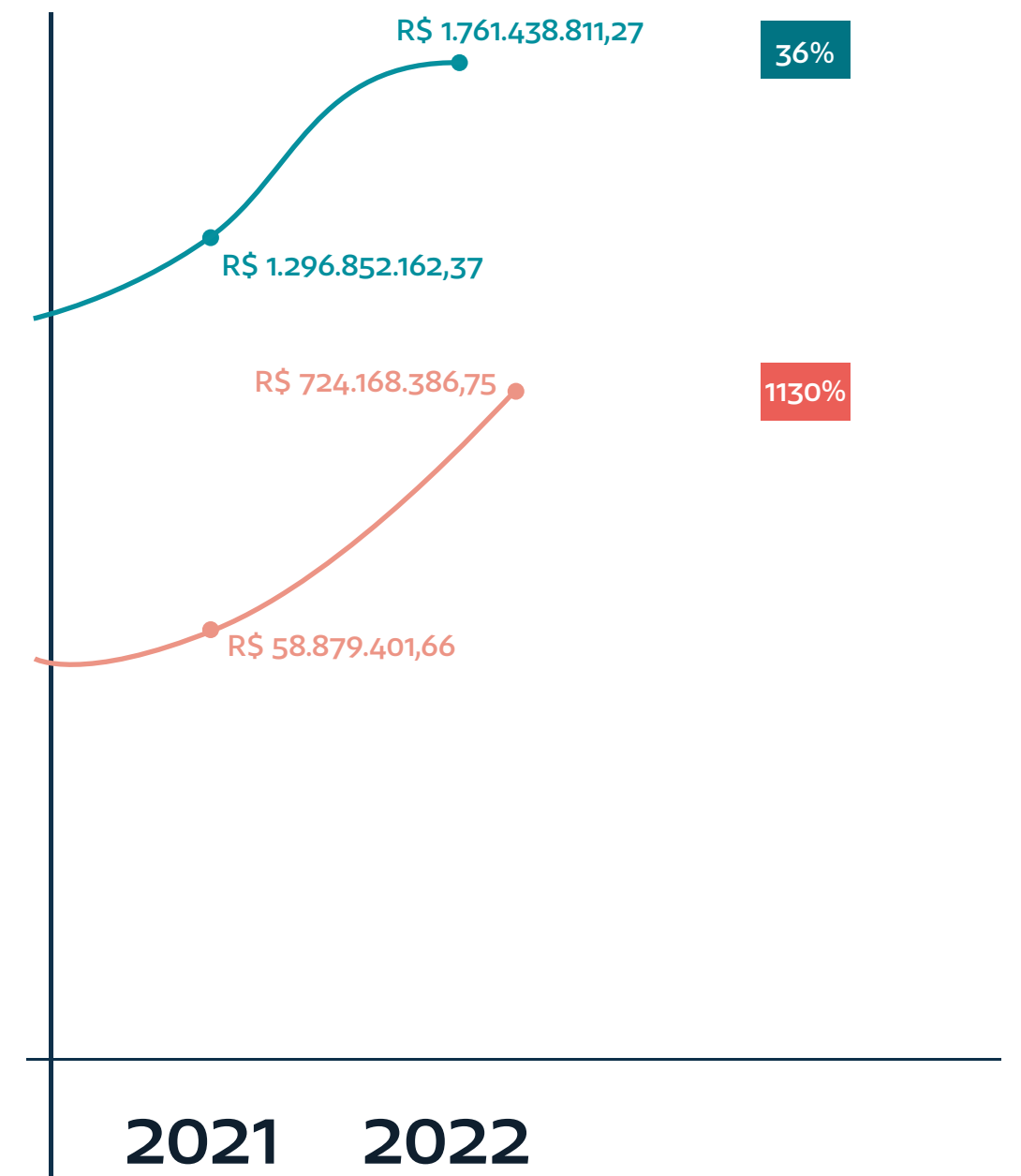
CADE was chosen to host the annual conference of the International Competition Network (ICN) in 2024.



Comparison of cases ruled between 2022 and 2021



● Total Fines
 ● Fines in Settlement Cases



● Administrative Proceedings
 ● Approved Settlement Agreements in conduct cases

CADE ordered the launching of gun jumping investigations (early consummation of the transaction).

Two investigations show that CADE is vigilant to practices that may constitute early consummation of transactions without antitrust authorization.

Case APM Terminals/Atlântico Sul:

The transaction: acquisition, by APM Terminals B.V., of Atlântico Sul Empreendimentos e Participações Ltda.;

CADE's decision: unanimously, the Tribunal approved the transaction and ordered the launching of a proceeding to investigate possible gun jumping;


Gun jumping concerns: due to the fact that the transaction occurred in the context of an auction organized by the judge in charge of the target's bankruptcy process, there could have been **exchange of information between the involved parties**.

Case CatenaX:

The transaction: joint venture between certain German companies for the creation of a platform in the automotive sector, notified and approved in several countries;

CADE's decision: at the end of 2022, CADE conditioned its approval on the companies' adherence to unilaterally imposed obligations;

Gun jumping concerns: the companies withdrew from the transaction, claiming that the obligations imposed by CADE were not feasible. However, after news that they had created another similar company carving out Brazil (called "Cofinity-X"), CADE's Tribunal ordered the launching of **investigations of gun jumping and anti-competitive conducts**, assessment of possible launch of cartel investigation and recommendation to communicate sister authorities that reviewed the case.

A delivery rider wearing an orange jacket and helmet is riding a bicycle with two orange delivery bags on the back. The rider is on a city street at night, with buildings and trees in the background. The scene is dimly lit, with some lights visible in the distance.

CADE entered into an agreement to prevent or limit iFood app exclusivity requirements.

Context: following the investigation of anti-competitive conducts of exclusivity practices, as in the recent Heineken and Gympass cases (which occurred in less than a year), CADE entered into an agreement with iFood;

Investigation's objective: the investigation concerned allegations of **abuse of the dominant position** (the app would have 80% of the market share in the online food delivery market), by **imposing exclusivity on restaurants registered on the platform**, and other practices that would have the same purpose;

Potential anti-competitive effects: such conducts would be raising barriers to entry related to new competitors in the market and would have **exclusionary effects** (market foreclosure);

Scope of the agreement: **clauses preventing or limiting exclusivity requirements** in contracts signed by the platform with partner restaurants were agreed upon;

Agreement duration and monitoring: it will last 54 months (4 and a half years), and the monitoring of the compliance with the obligations will be made by a trustee;

Attention! This is another case that demonstrates the need for cautious analysis of exclusivity practices by companies that hold a relevant market share.

03



Standard of proof is the heart the of debate on CADE's tribunal trial day.

On March 8, two cases were ruled in which the standard of proof required for conviction based solely on indirect evidence was the heart of the debate.

Alleged cartel in the market of thermal systems (Administrative Proceeding No. 08700.010323/2012-78):

CADE's President Alexandre Cordeiro presented his vote reinforcing the need for robust evidence of the cartel's existence and that implies the individualized involvement of the defendants, allowing to **overcoming the reasonable doubt** for purposes of supporting a conviction decision. In this sense, (i) reports of internal conversations mentioning the involvement of another company and scheduling meetings between competitors mentioning individuals are not considered sufficient evidence; (ii) one cannot infer anti-competitive content from records of telephone calls without knowing their content, and (iii) leniency agreements are a means of obtaining evidence but require documents supporting their version of the facts.

Alleged cartel in the public bidding market for contracting engineering works and services in school units in Juazeiro do Norte/CE (Administrative Proceeding No. 08700.000269/2018-48):

CADE's Tribunal considered that there was a **multiplicity of indirect evidence**, ratified by independent witnesses, capable of supporting a conviction, among which are (i) documents with the same visual identity and/or identical formatting; (ii) documents with the same clerical errors; (iii) same value of proposals for listed items; (iv) family relationship between partners of different companies, and (v) rotation strategy.

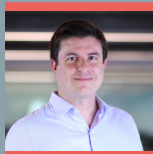
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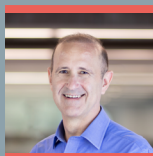
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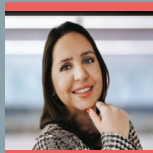
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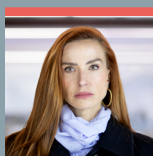
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