

ANTITRUST NEWSLETTER

HIGHLIGHTS FROM CADE | 2024 First Quarter

Check out the relevant numbers of the 1st quarter of 2024, the high-profile events, and the most important decisions for the period.

1 RELEVANT NUMBERS

The figures below reflect data relating to the 1st Quarter of 2024, in comparison with the 1st Quarter of 2023 (see [Antitrust Newsletter released on April 19, 2023](#)) and with the official data released by CADE for the whole year of 2023 (see [CADE's 2023 Yearbook](#)).

FIRST AXIS: MERGER REVIEW

The data indicates an upward trend in the number of merger reviews submitted.

Merger Review	1 st Q/2024	1 st Q/2023	2023 (whole year)
Merger filings submitted	140	123	611
Fast-track proceedings	126	N/A	N/A
Non-fast track proceedings	14	N/A	N/A
Average time of analysis	20.1 days	N/A	21.5 days
Fast-track proceedings	19.6 days	18 days	12.6 days
Non-fast track proceedings	51.5 days	66 days	116.7 days

SECOND AXIS: CONDUCTS & INVESTIGATIONS

The data indicates a downward trend in the number of administrative proceedings launched. Two of the three new cases resulted from the Car Wash Operation (Operação Lava Jato).

Conducts	1 st Q/2024	1 st Q/2023	2023 (whole year)
Proceedings launched	3	7	14

2 HIGH-PROFILE EVENTS

CADE NEWS

- Launching e-Notifica platform: a tool to simplify the submission of transactions;
- Study by CADE's Department of Economic Studies: benefits of CADE's actions in 2023 estimated at R\$ 16.3 billion;
- New Resolution No. 35/2024 addresses the procedure for monitoring the compliance with decisions and agreements approved by CADE's Tribunal;
- Public consultation held on CADE's plenary deliberative circuit;
- Launching the report called BRICs in the Digital Economy: Competition Policy in Practice (2nd Report).

MAIN EVENTS AND RELEASES

- Launching the book called *Fusões Verticais e Conglomerats: sob a lente antitruste* (Vertical Mergers and Conglomerates: under the antitrust lens), organized by Adriana Perez and partner Vivian Fraga;
- Launching the working paper called *Competition and Sustainability: proposal of guidelines for the analysis of environmental sustainability agreements by CADE*, by the ICC Brazil Competition Commission, in which partner Tatiana Lins Cruz is vice-chairman;
- IBRADEMP event relating to New Theories of Damage in Merger Reviews, in which partner Vivian Fraga was a speaker;
- Event relating to Hot topics on distribution contracts in the pharmaceutical industry, in which partner Guilherme Ribas was a speaker.

3 HIGHLIGHTS OF CADE'S DECISIONS

3.1. DIGESTO/JUSBRASIL CASE REVIEWS ITS UNDERSTANDING OF PARAMETERS FOR THE DEFINITION OF ECONOMIC GROUPS IN CASES INVOLVING INVESTMENT FUNDS

- CADE reviews its understanding of the concept of shared control and the configuration of economic groups for the analysis of criteria involving merger reviews notification in transactions related to investment funds and proposes a revision of the current regulation.
- The authority unanimously acknowledged a gun jumping violation involving Digesto and Jusbrasil (APAC No. 08700.000641/2023-83), but did not impose a fine, given the "reasonable controversy over the criteria for notifying the merger review" in the specific case.
- Although Digesto's shareholder fund held a stake of 20% or more, it was unclear whether it had control of the company. CADE rejected an understanding that automatically considers a company in which an investment fund holds a stake of 20% or more to be part of the economic group, without the necessary prior verification of the existence of common control over the company involved in the transaction.
- The vote also provided a broad review of the case law, pointing out three main approaches to identifying shared control:
 - (i) concrete verification of the exercise of power of control (through the functioning of decision-making bodies);
 - (ii) presumption of control based on rights granted to minority shareholders in a shareholders' agreement; and
 - (iii) presumption of control based on merely holding 20% or more of the shareholding.
- It established a position based on item (ii) above and listed the minority shareholders' special rights that do and do not confer power of shared control. In the case, the vote identified special rights attributed to minority shareholders that "go beyond mere investment protection and constitute shared control;"
- CADE concluded that there is a need to reformulate the current requirements for mandatory notification of merger reviews relating to the power of control of investment funds, "especially in view of the emergence of new and complex corporate structures with dispersed and pulverized shareholding."

3.2. PRECEDENT ESTABLISHES GREATER STANDARD OF EVIDENCE FOR LAUNCHING PROCEEDINGS

Subject: investigation (Administrative Inquiry No. 08700.003510/2021-96) dealing with cartel in public tenders promoted in the context of the Program of Environmental Sanitation of Manaus' Igarapés (PROSAMIM) for the provision of environmental recovery and urban requalification services;

Procedure aspects: after closed, by CADE's General Superintendence, the procedure was called up by CADE's Tribunal;

Decision: confirmation of closure in relation to some defendants, who had been named as participants in the conduct by the leniency agreement signatories, and order to launch the proceeding in relation to others;

Merits and relevance of the precedent: CADE decided to require a stricter standard of proof to authorize the launching of administrative proceedings. Requiring documentary evidence to confirm the version presented in a leniency agreement (which is already customary for convictions), CADE recognized that statements made by signatories of leniency agreements may not be sufficient evidence, even for the launching of a formal proceeding, if they are not accompanied by supporting documents.

3.3. CADE'S TRIBUNAL HIGHLIGHTS THE IMPORTANCE OF THE CONSULTATION PRINCIPLE

Subject: consultation submitted by Buser Brasil Tecnologia Ltda. (Consultation No. 08700.007327/2023-21), regarding the lawfulness of a business strategy planned by the company consisting of entering the market of Interstate and International Passenger Road Transport (TRIP);

Decision: conclusion that the consultation should not be received, as it does not truly contain a discussion of acts, agreements and business strategies;

Relevant indication: some Commissioners expressed concerns in their votes about the principle of consultation and its applicability – in particular, Commissioner Diogo Thomson pointed out that the consultation has been underused, both by CADE and the market, and raised the discussion of how to encourage its use and improvement.

3.4. CADE ATTENTIVE TO GUN JUMPING VIOLATIONS

In the four Trial Sessions held in the first quarter of 2024, CADE gave special focus on gun jumping investigations, with an emphasis on the automotive and authorized car dealerships sectors.

The following cases should be noted:

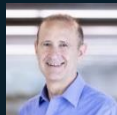
APAC No. 08700.003447/2020-15: acknowledgement of a gun jumping violation and order to notify the transactions related to the transfer of an automotive resale concession involving the Dahruj Group, setting a daily fine of BRL 10,000 in the event of non-compliance. There are other similar investigations conducted by CADE in the sector of authorized car dealerships.

APAC No. 08700.003705/2023-06: acknowledgement of a gun jumping violation and order to notify the transaction related to the full incorporation, by Cocamar Cooperativa Agroindustrial, of the assets and liabilities related to the activities of Cooperativa Agropecuária Norte Paranaense (Coanorp). Commissioners stated that there is no legal exemption applicable to cooperatives and that, insofar as they act commercially, they should be considered as parties in economic transactions.

4 OUR TEAM



GUILHERME RIBAS
gribas@tozzinifreire.com.br



MARCELO CALLIARI
mcalliari@tozzinifreire.com.br



MARCEL SANTOS
mmsantos@tozzinifreire.com.br



PATRICIA CARVALHO
pcarvalho@tozzinifreire.com.br



TATIANA LINS
tlins@tozzinifreire.com.br



VIVIAN FRAGA
vfraga@tozzinifreire.com.br