

Numbers of 2023 and perspectives for 2024

Check out the relevant numbers of 2023, the highlighted cases, and the perspectives for 2024 at CADE







FIRST AXIS Merger Review

The 2023 numbers indicate: (i) slight decrease of 9% in the total number of cases analyzed by CADE; (ii) reduction in the average time for analysis; (iii) increase in the number of cases challenged by CADE's Tribunal (from 1 to 3); (iv) increase in the number of blocked cases (from 0 to 2); and (v) significant reduction in the number of non-mandatory notification cases (from 21 to 8). The electric power generation sector continues to be the economic sector most analyzed by CADE.

Merger analysis at CADE	2023	2022	Cases reviewed by CADE's Tribunal	2023	2022
TOTAL	612 (100%)	669 (100%)	TOTAL	11 (100%)	14 (100%)
Approved without restrictions	593 (97%)	640 (96%)	Challenged by the General-Superintendence (GS)	3 (27%)	7 (50%)
Blocked	2 (0.3%)	0 (0%)	Challenged by third-party (appeal)	5 (45%)	6 (43%)
Approved with restrictions (remedies)	5 (0.8%)	6 (0.9%)	Challenged by CADE's Tribunal (call-back)	3 (27%)	1 (7%)
Non-mandatory notification	8 (1.3%)	21 (3.1%)	Average time for analysis (days)*	2023	2022
Closed due to loss of object / lack of information	4 (0.7%)	2 (0.3%)	Fast-track	16	21
			Non-fast track	77	126

* The 2023 numbers are internal estimates, based on public information, and the 2022 numbers reflect data published by CADE in its annual report. The average time does not consider, for example, the time for possible information requests from CADE before the clock starts and/or the mandatory waiting-period.

MAIN ANALYZED SECTORS

-  Electric power generation (13.4%)
-  Real estate developments (7.6%)
-  Extraction of oil and natural gas (3.2%)
-  Retail sale of new cars, vans and utility vehicles (2.0%)
-  Retail sale of general merchandise/food (1.5%)
-  Development and licensing of customizable computer programs (1.5%)

* Source: TozziniFreire estimates based on published notices.

HIGHLIGHTS OF 2023 & TRENDS FOR 2024:




- **Cooperation among competitors through sustainability platforms (ESG) was subject of further scrutiny by CADE:**
 - approval of platform among SustainIt, Cargill, Louis Dreyfus and ADM; and
 - unilateral imposition of remedies / block in the Catena-X case.
- **Transactions related to digital platforms are (and shall remain) under CADE's radar, e.g.:**
 - approval with restrictions of digital platform between Viação Águia Branca and JCA;
 - determination that the purchase of MaxMilhas by 123Milhas should be submitted for CADE's analysis, even though the transaction did not meet the mandatory notification thresholds; and
 - in-depth scrutiny by CADE's Tribunal of the sustainability platforms (ESG) mentioned above.
- Increase in the number of agreements reached with CADE following the initiation of gun-jumping proceedings (APAC).
- The submission of mergers (initially under the fast-track proceeding) can now be made via an electronic platform launched by CADE (e-Notifica).

SECOND AXIS CONDUCTS & INVESTIGATIONS

The 2023 numbers indicate a certain stability in CADE's analysis (when compared to 2022), with a slight decrease in the number of ruled cases, which was probably due to the lack of minimum quorum in CADE's Tribunal during the end of the year. The total amount of fines and settlements decreased significantly.

Administrative Proceedings - Launched	2023	2022	Judged cases	2023	2022
TOTAL	14 (100%)	11 (100%)	TOTAL	12 (100%)	17 (100%)
Cartel	5 (36%)	5 (46%)	Collusive conducts	10 (83%)	12 (71%)
Unilateral conducts	5 (36%)	2 (18%)	Unilateral conducts	2 (17%)	3 (18%)
Influence of uniform behavior	4 (28%)	4 (36%)	Influence of uniform behavior	0 (0%)	2 (12%)

Main investigated sectors (launched proceedings) :

-  Education (27%)
-  Information Technology (18%)
-  Fuels (18%)

Values of fines and settlements

	2023	2022
TOTAL	BRL 215,253,313 (~USD 44MM) (100%)	BRL 1,901,555,441 (~USD 388,5MM) (100%)
Administrative Proceedings (fines and others)	BRL 116,552,922 (~USD 23,8MM) (54%)	BRL 1,111,832,015 (~USD 227,2MM) (59%)
Settlement agreements	BRL 92,224,742 (~USD 18,8MM) (43%)	BRL 724,168,387 (~USD 147,9MM) (38%)
Gun-jumping cases	BRL 6,475,649 (~USD 1,3MM) (3%)	BRL 65,555,040 (~USD 13,3MM) (3%)

HIGHLIGHTS OF 2023 & TRENDS FOR 2024:

Collusive conduct:

- CADE's first conviction of a hub-and-spoke cartel, in a case involving digital whiteboard market. Launching of a new investigation related to hub-and-spoke cartel in the business intelligence market, involving a supplier and its resellers.
- First trials at CADE involving cases related to Operation Carwash (*Lava-Jato*) are expected for 2024.
- Strengthening of CADE's activities in cartel enforcement, especially in public tenders.
- Red flag remains for possible cases of "non-traditional cartel", e.g.: algorithms, exchange of sensitive information, and labor market (HR).

Unilateral conduct:

- Settlement agreements in investigations involving alleged abuse of dominant positions on digital platforms (iFood and Buser cases).
- Settlement agreement in an investigation involving exclusivity clauses by AMBEV.
- Red flag remains for possible cases involving digital platforms. Strengthening of CADE's unit dedicated to unilateral conduct investigations.

New commissioners of CADE's Tribunal

Check below who are the new approved commissioners expected to serve at CADE's Tribunal for the next 4 years.

CAMILA CABRAL PIRES ALVES



- Economist
- Professor at Federal University of Rio de Janeiro (UFRJ)
- Former chief-economist at CADE's Department of Economic Studies (DEE)

DIOGO THOMSON DE ANDRADE



- Lawyer
- Federal Prosecutor
- Former Deputy General-Superintendent at CADE

CARLOS JACQUES VIEIRA GOMES



- Lawyer
- Consultant to the Federal Senate
- Worked at CADE between 1998 and 2000

JOSÉ LEVI MELLO DO AMARAL JÚNIOR



- Lawyer
- Counsel for the Federal Treasury
- Professor of Constitutional Law at University of São Paulo (USP) and UniCEUB

TozziniFreire Highlights for the 4th quarter of 2023

IBRAC – 29th International Seminar on Competition Policy: TozziniFreire was one of the sponsors of the traditional event. Partner Guilherme Ribas (Competition Director) was one of the organizers and partner Patricia Carvalho moderated the panel on Leniency Agreements, which included participants from CADE, the Brazilian Office of the Federal Controller General (CGU), as well as international guests.



Partner Guilherme Ribas at the opening of the event

Partner Patricia Carvalho as moderator of the panel on Leniency Agreements



04 Our team



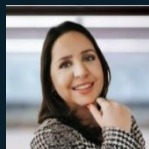
GUILHERME RIBAS
gribas@tozzinifreire.com.br



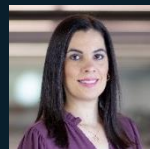
MARCELO CALLIARI
mcalliari@tozzinifreire.com.br



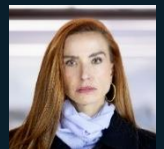
MARCEL SANTOS
mmsantos@tozzinifreire.com.br



PATRICIA CARVALHO
pcarvalho@tozzinifreire.com.br



TATIANA LINS
tlins@tozzinifreire.com.br



VIVIAN FRAGA
vfraga@tozzinifreire.com.br