

ANTITRUST NEWSLETTER

HIGHLIGHTS FROM CADE | 2024 Third Quarter

Overview & Trends

In this edition of the Antitrust Newsletter, we examine the key decisions and activities carried out by the Brazilian Competition Agency (CADE) **from July to September 2024**.

For **merger reviews**, we highlight the following trends: **(i)** increase in the number of ruled cases; **(ii)** continued enforcement against non-notified transactions, and **(iii)** concern over transactions conducted by major tech companies.

For **conducts and investigations**, the main highlights include: **(i)** new proceedings initiated from leniency agreements; **(ii)** strong scrutiny against price-fixing proposed by unions, and **(iii)** rejection of a settlement proposal in the investigation concerning exchange of information on salaries and benefits.

We remain available to provide clarifications on any topic.

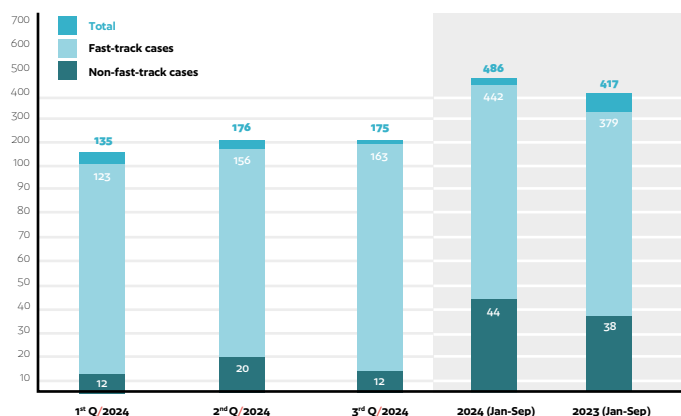
1. Merger Reviews

The data indicate a growing trend (**17%**) in the number of merger cases ruled by CADE, compared to the same period last year.

Average analysis time:

21.5 days (overall) | 12.6 days (fast-track cases) | 116.7 days (non-fast-track cases)

* CADE's official data for 2023



★ Highlights & Trends

Gun-jumping remains under the radar in Brazil: CADE executed new settlement agreements with companies investigated on the subject: *(i)* agreement with agricultural cooperatives (BRL 2.4 million or USD 442K); *(ii)* agreement with a group of car dealers (BRL 6 million or USD 1.2M); and *(iii)* agreement with companies in the animal health market (Biogénesis/BI) (BRK 375K or USD 68K).

Investigations into acquisitions of AI startups by big techs: new preliminary investigations were launched to verify claims of possible transactions, not reported to CADE, involving acquisitions of Artificial Intelligence (AI) startups by Amazon, Microsoft and Google.

Minerva/Marfrig deal is approved with restrictions unilaterally imposed by CADE: the transaction in the livestock sector was approved subject to the adoption of remedies unilaterally imposed by CADE, considering the absence of agreement with the applicants. The remedies include *(i)* adjustments to the scope of the non-compete clause, and *(ii)* sale of an industrial plant.

CADE closes merger review in the O&G market, without analysis of merits, after debate on the legitimacy of the notifying parties: the deal submitted by 3R Petroleum, for the acquisition of assets related to O&G exploration in Rio de Janeiro, was closed without analysis of merits. CADE considered that the other side of the transaction was not properly identified in the notification form.

2. Conducts & Investigations

The data indicate a trend of stability in the number of administrative proceedings launched and ruled by CADE, compared to the same period last year.

Conduct	1 st Q/2024	2 nd Q/2024	3 rd Q/2024	2024 (Jan-Sep)	2023 (Jan-Sep)
Proceedings launched	2	1	9	12	11
Proceedings ruled	1	6	6	13	14
Leniency agreements signed	-	-	-	4 (to date)	2 (full year)
Fines imposed	BRL 0	BRL 128,701,121	BRL 8,225,855	BRL 136,926,976	BRL 113,748,814
Settlement agreements	BRL 0	BRL 211,788	BRL 310,519	BRL 522,307	BRL 88,051,285

* The data on the launching of administrative proceedings reflect internal estimates, based on public information. Other information was obtained from CADE reports/statements

Highlights & Trends

CADE launches new investigations in the national markets for advertising rights in soccer championships and forklifts, after the execution of Leniency Agreements: the different conducts under investigation involve cartel, exchange of sensitive information and no-poach agreements.

CADE rejects settlement proposal in Human Resources (HR) case: CADE did not approve a Settlement Agreement (TCC) proposed in the “Medtech case”, the first case in Brazil exclusively related to anticompetitive conducts among HR departments, in the healthcare sector. The decision not to approve the settlement may be seen as “unusual” for the authority’s practice, and this episode may demonstrate a certain increase in the rigor of the authority’s assessment in similar cases.

Cases involving price-fixing by unions/associations reinforce competition concerns: in the same trial session, CADE analyzed two investigations related to price-fixing and required the respective defendants to pay fines. The debate reinforced the view that price-fixing by unions/associations is seen as an “anticompetitive practice by object”, considering the potential damage to competition, with room for possible arguments only when such fixing is not directed at end-consumers. The total fines imposed by CADE amounted to more than BRL 1.3 million (or USD 240K).

Individuals with no antitrust exemption in Brazil: CADE ruled a “split proceeding” derived from a cartel case in the electric power steering (EPS) market, in which only certain individuals were still pending judgment. One investigated manager was convicted and required to pay USD 20K, and the investigation was closed for two other individuals due to lack of evidence.

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