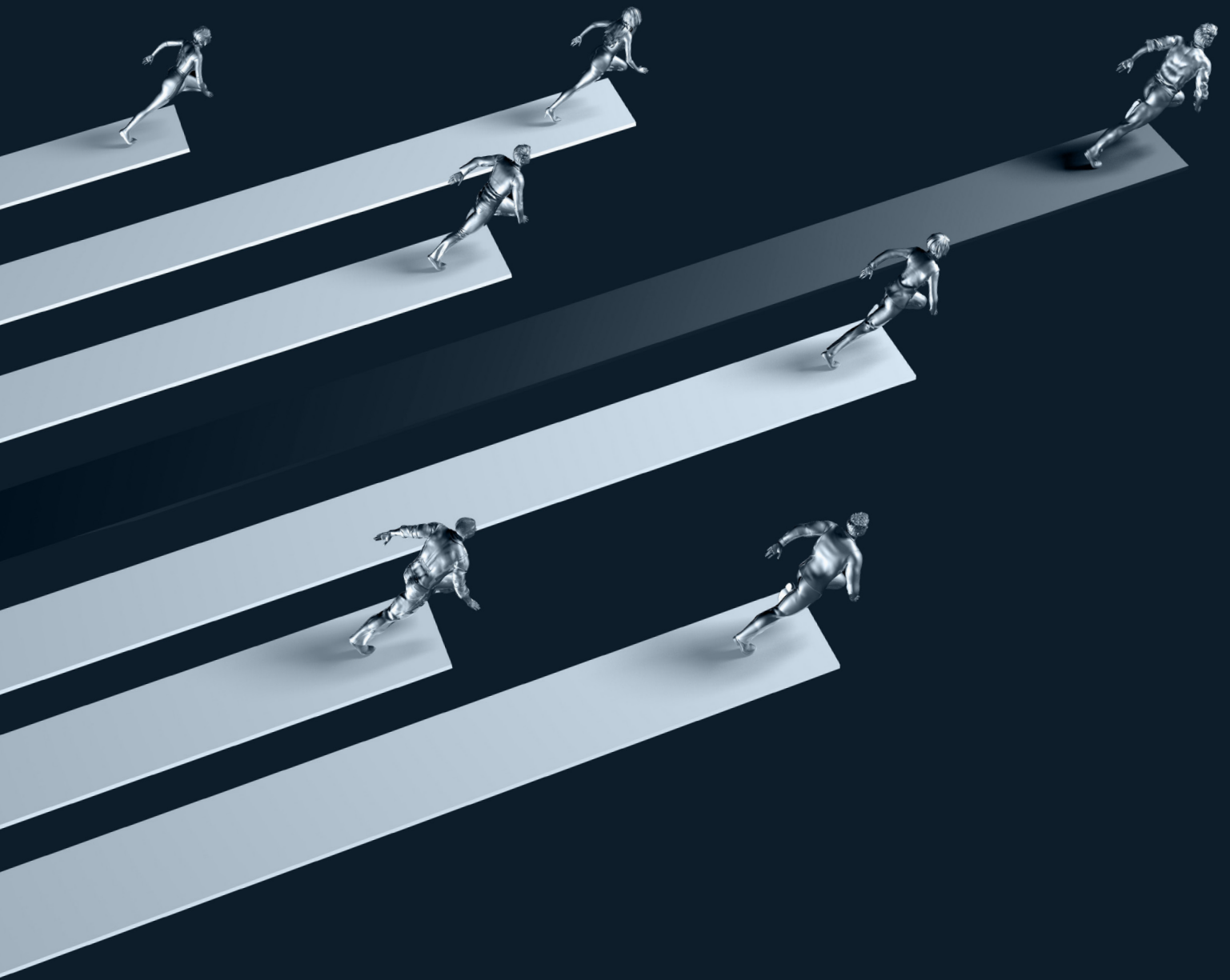


**Tozzini
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ADVOGADOS



Antitrust Newsletter

Highlights from CADE | 2023 Second Quarter

Highlights from CADE

Second Quarter of 2023

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.

ALERT FOR THE COMING MONTHS

01

Review of M&A transactions may be suspended if at least one new commissioner is not appointed by early November.

Given that four commissioners will leave by early November, CADE may have deadlines suspended and no new hearing sessions held if at least one commissioner does not take office.

02

Unprecedented case involving platform between competitors related to sustainability data.

CADE's Tribunal approved, with no restrictions, a joint venture between companies for the purpose of developing and operating a platform to make sustainability data available in the food and agriculture supply chain, in a case led by TozziniFreire Advogados.

03

Relevant numbers for the second quarter of 2023.

The data related to the second quarter shows consistency with the volume of transactions notified in the first quarter.

04

Transactions with real estate assets on CADE's radar.

The increasing number of transactions involving the acquisition of real estate assets reinforces the importance of a strategic and simultaneous analysis of M&A and Antitrust practices, in order to verify the rules applicable to the transactions.

05

Attention to indirect activities via distribution/retail channels: CADE condemns hub-and-spoke cartel.

Companies and individuals were convicted for practicing a "hub-and-spoke" cartel, which involves the distributor's coordination of its resale network in public bids and private contracts, which reinforces the level of attention required in structuring distribution policies.

06

New investigation against Google, Meta and Telegram in relation to the Fake News Bill.

CADE launched an investigation against Big Techs to investigate alleged abuse of dominant position in discussions about the Fake News Bill. Complaints point out that the companies would have improperly used their platforms to conduct campaigns against the bill.

1.

Alert for the coming months

Review of M&A transactions may be suspended if at least one new commissioner is not appointed by early November

By November, the mandates of commissioners Sérgio Ravagnani (Oct. 6), Lenisa Prado (Oct. 10), Luiz Hoffmann (Oct. 14) and Luis Braido (Nov. 4) will expire;

If at least one new commissioner does not take office by the last day, the tribunal will not have the minimum quorum (as occurred in 2019), which will result in no trial sessions being held and **the suspension of procedural deadlines and processing of cases before the tribunal, including fast-track merger filings, impacting the entire market;**

In order to minimize the exposure risk, it is **recommended that transactions in the pipeline be handled as early as possible**, avoiding that CADE's analyses occur in the possible shutdown period and, therefore, that the parties are unable to close deals

This means that fast-track cases must be submitted by September 19 (assuming they are not converted to non-fast track and there is no amendment);

The antitrust and the business communities hope that the sad history of 2019 will not be repeated.

2.

Unprecedented case involving platform between competitors related to sustainability data

The merger filing, conducted by **TozziniFreire Advogados**, dealt with a joint investment, by four trading companies, in a startup with the purpose of developing and operating a platform to facilitate (in a secure manner) access and visualization of sustainability data from agricultural and food supply chains (Merger Review No. 08700.009905/2022-83). By unanimous vote, CADE's tribunal approved the transaction with no restrictions.

The decision is relevant and innovative for cases involving platforms between competitors because, besides CADE considering **the antitrust safeguards provided in the transaction documents sufficient**, the decision made it clear that the **presentation of an Antitrust Protocol** is a necessary element for CADE's proper analysis.

Although the scope of the platform is the visualization of sustainability data, CADE clarified that the approval was given not because it involves such matter, but because there are no competition concerns arising from the transaction, which went through all the stages that could raise possible concerns from an antitrust standpoint.

3.

Relevant numbers for the second quarter and first half of 2023

SECOND QUARTER OF 2023

- **128** merger filings submitted to analysis;
- Average time for analysis in fast-track cases: 19.1 days
- **4** administrative proceedings launched;

FIRST HALF OF 2023

- **251** merger filings submitted to analysis;
- Average time for analysis in fast-track cases: 18.4 days
- Average time for analysis in non-fast-track cases: 80.1 days
- **11** administrative proceedings launched, with emphasis on a hub-and-spoke cartel case (involving distribution network);
- **2** leniency agreements signed and 1 adhesion (base date: March 1st, 2023).

RELEASES

- Publication of study by the Department of Economic Studies (DEE) with bibliographic analysis on the measurement of the market power and parameter of agents' conduct;
- Publication of study by the DEE analyzing antitrust aspects of the telecommunications sector, focusing on fixed and mobile telephony, broadband and infrastructure markets;
- Publication of study by the DEE evaluating CADE's performance on monitoring merger settlements (ACCs) between 2016 and 2021.

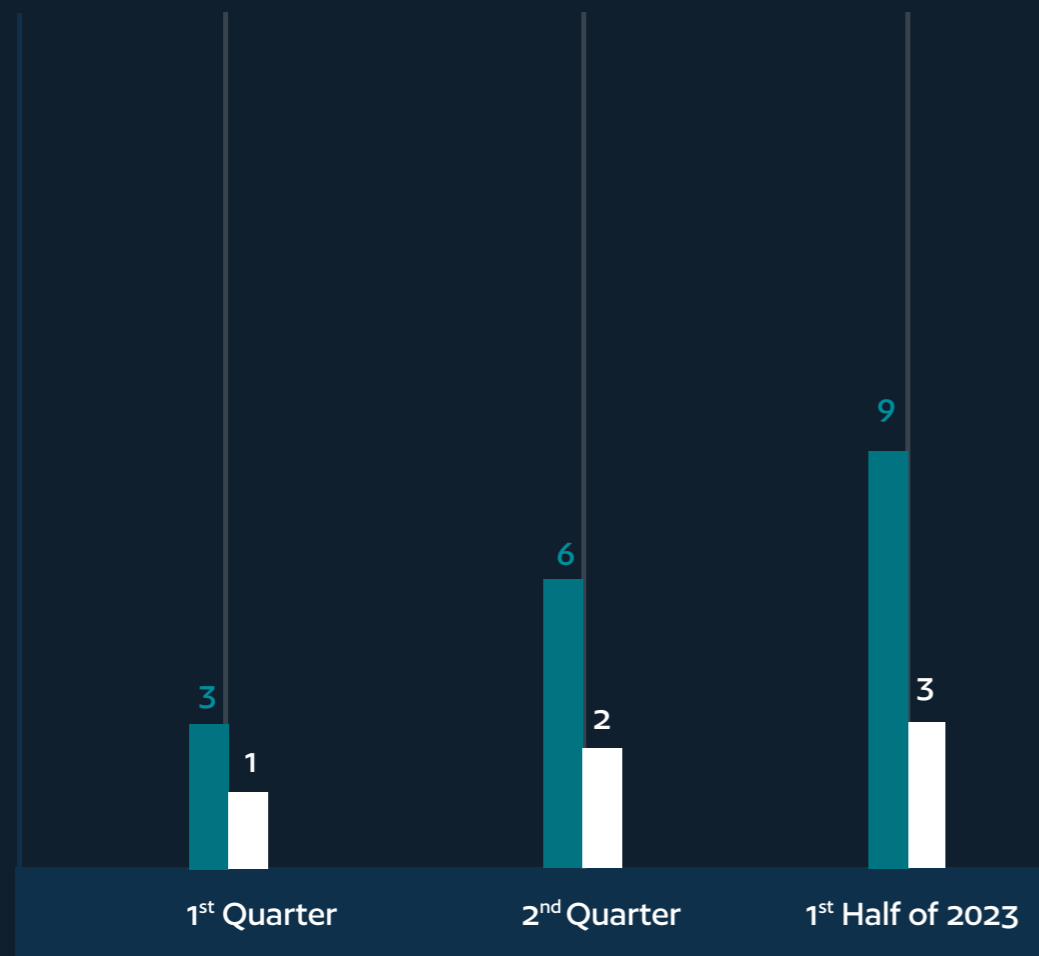
EVENTS

- 6th edition of Antitrust in the Americas: partner **Guilherme Ribas** spoke about discriminatory practices in an event promoted by the American Bar Association (ABA) and IBRAC, which took place in Rio de Janeiro;
- 17th Annual IBA Competition Mid-Year Conference: partner **Marcelo Calliari** spoke about the trends in global merger review in the panel "Are all mergers bad? Trends in global merger review" in the conference promoted by the International Bar Association (IBA);
- IBRACAST: partner **Vivian Fraga** participated in episode about career opportunities for practitioners in the antitrust arena.

Check out the graphics as follows:

Graphic 1.

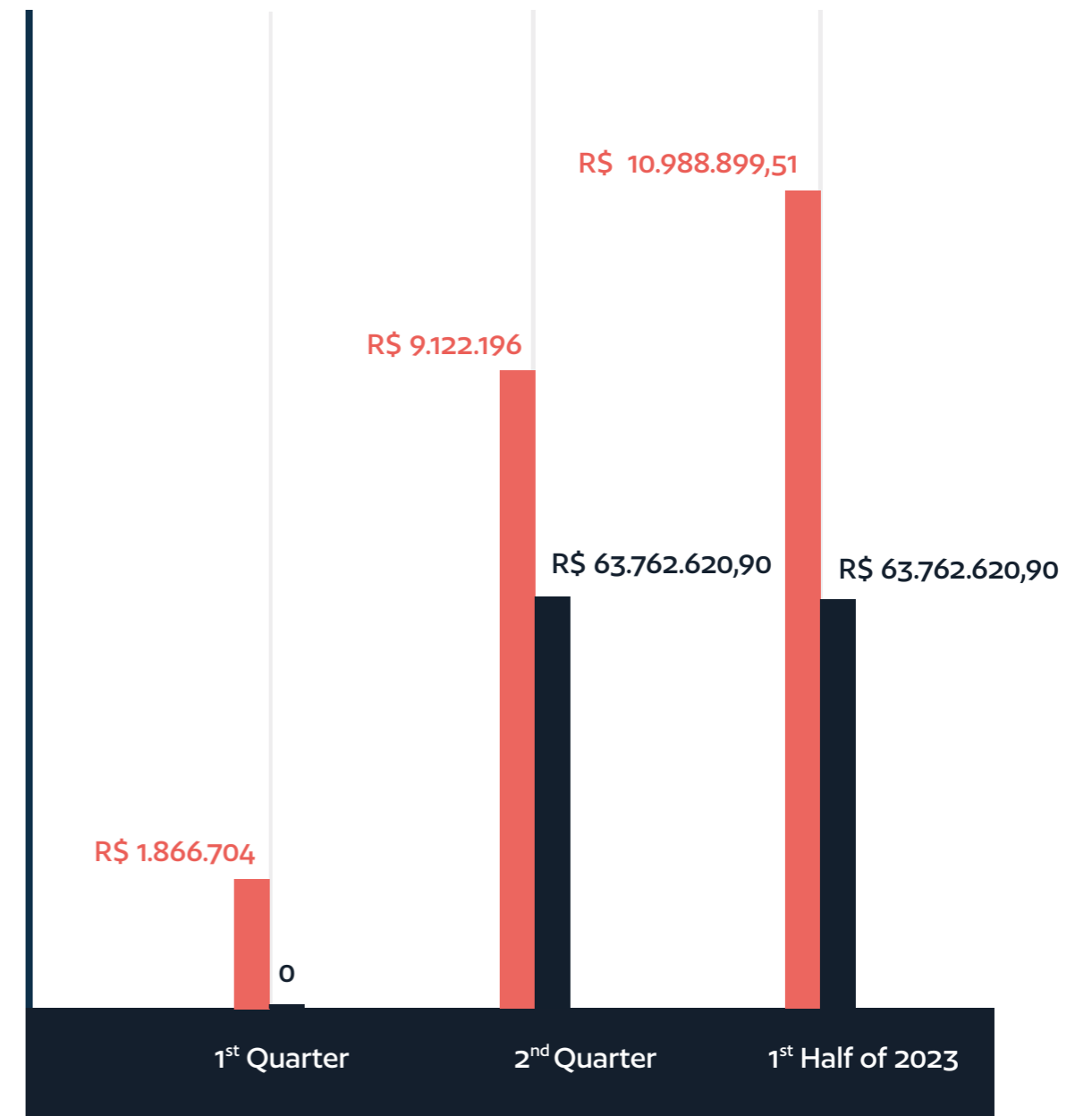
Graphic of cases ruled in the first and second quarters of 2023



● Administrative Proceedings ● Settlement Agreements in Conduct

Graphic 2.

Graphic of fines paid in the first and second quarters of 2023

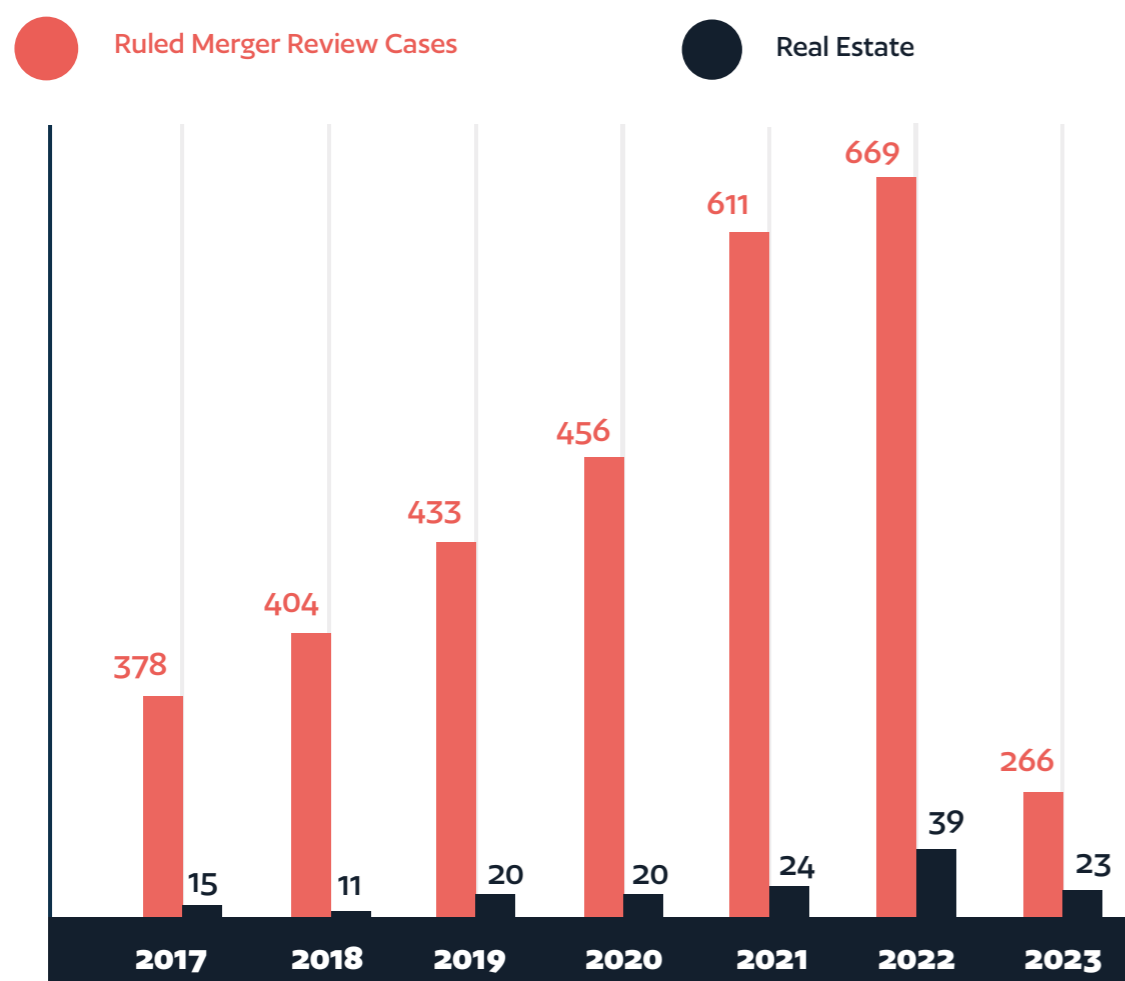


● Total Fines ● Fines in Settlement Cases

Transactions with real estate assets on CADE's radar

As the chart below shows, there is an increasing number of real estate transactions analyzed by CADE. They include the formation of SPEs (special purpose entities) for the development of real estate ventures, purchase and sale of real estate for real estate development, acquisition of an equity stake in a real estate holding company, sale and leaseback transactions etc.

Graphic 3. Merger Cases in Real Estate Development



Examples of relevant markets analyzed by CADE in this sector:

- **Real estate development:** precedents consider the following segmentation per product: residential or commercial real estate development market. The distinction between sale and lease of real estate is also considered. Under the geographical dimension, they consider the municipal dimension or, depending on the size of the municipality in question, the zone or neighborhood;
- **Warehouses and logistic warehouses:** this also includes transactions involving the acquisition of non-operating plants for the construction of logistics facilities for future sale or lease. Under the geographic dimension, the following relevant markets are considered: (i) municipality where the assets are located; (ii) 30 km radius from the city center where the assets are located; and (iii) 30 km radius from the center of the metropolitan region where the assets are located.

As CADE's case law becomes more assertive on the matter, **the real estate development sector needs to be even more attentive to the antitrust rules applicable to M&A transactions.** Fines for failure to notify may reach BRL 60 million.

5.

6.

Attention to indirect activities via distribution/retail channels: CADE condemns hub-and-spoke cartel

CADE concluded the judgment of a cartel that allegedly defrauded public bids and the acquisition, by private companies, of projectors and digital whiteboards. The conduct allegedly lasted from 2009 to 2011, with effects spread all over the country. CADE convicted 18 companies and 20 individuals, imposing fines of BRL 7.9 million.

This case involved the so-called **“hub and spoke” cartel**, in which a common supplier/distributor coordinates or facilitates the collusion of its distribution/retail channels in the market, in order to mitigate the level of competition among them.

According to the decision, one of the resellers identified a potential customer and reported it to the distributor, requesting “customer protection.” The distributor would then share the information with other dealers so that they could submit proposals for coverage.

This decision reinforces **the importance of creating a robust distribution policy that establishes clear** and objective criteria for activities via distribution and resale channels in order to mitigate competition risks.

New investigation against Google, Meta and Telegram in relation to the Fake News Bill

In May 2023, CADE launched a preliminary inquiry to investigate alleged abuse of dominant position by technology companies, in the context of discussions related to Bill No. 2630, known as the “Fake News Bill.”

The investigation was launched after allegations that Google and Meta were improperly using the Google, YouTube, Facebook, and Instagram platforms to run campaigns against the bill. Similarly, Telegram sent messages with similar content to its users.

The case shows that **digital markets remain under close scrutiny by CADE**, and that enforcers seek to act quickly in view of the sector’s dynamism.

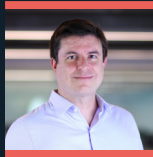
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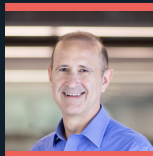
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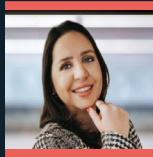
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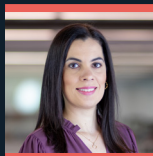
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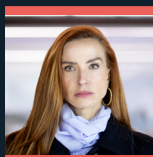
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