

Kluwer Competition Law Blog

Main Developments in Competition Law and Policy 2024 – Brazil

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In 2024, the new composition of the CADE's Tribunal—with four new commissioners—worked towards a more intense look at digital markets. In mergers case law, Minerva's acquisition of assets from Marfrig in the food sector was a case to highlight. Price fixing agreements by professional unions were another relevant topic on CADE's agenda.

Regarding soft law, CADE published a study on its experience using trustees and released the updated Guide V on the analysis of non-horizontal mergers. CADE's Leniency program was also subject to public consultation to make improvements. Still, CADE updated the notification system with the [E-Notifica platform](#), a step towards simplification, lower administrative costs, and a more efficient system.

After the composition changes in early 2024, the Tribunal's body remained stable throughout the year. Still, a change in the presidency will occur in 2025, and the possibility of legislative change in digital markets will probably drive next year's agenda.

Digital Markets

CADE increased the focus on digital markets in connection with the developments in the legislative debate regarding a new regulation on digital platforms. Interim measures were used to preserve competition during investigations in the administrative process against [Apple](#). Initiated in 2022 by Mercado Livre's complaint, CADE investigates allegations of dominant's abuse of position in the app distribution market. The alleged anticompetitive conduct arises from restrictions in the incumbent's Terms and Conditions. CADE verified the need for preventive measures to guarantee greater freedom of choice for iOS developers and users. These measures include the obligation to allow alternative payment methods in-app purchases by Apple, including the possibility to disclose openly such alternatives to users on medias or developer's own app. This implies changes in Apple's terms, which could result a daily fine of R\$250,000 (two hundred and fifty thousand reais) in the event of non-compliance. CADE also initiated a similar investigation on the Play Store terms and conditions. In addition, [other cases](#) are under investigations due to lack of notification for acquisitions of artificial intelligence (AI) startups by Amazon, Microsoft, and Google. These cases do not require mandatory notification by law, but may represent harm to

competition.

CADE's increased focus on digital markets aligns with the [report](#) on digital platforms recently published by the Ministry of Finance, suggesting CADE as the major regulator of digital markets. The report suggests two main measures. The first recommends a reform of the Brazilian Competition Law (Law nº 12529/2011), aiming to introduce new pro-competitive tools and create a specialized unit within CADE. These new tools would improve CADE's capacity to target digital market issues, and the new unit would grant CADE the capacity to impose specific obligations to designated agents. Ideally, the CADE's unit would cooperate with the National Data Protection Authority (ANPD) and the National Telecommunications Agency (ANATEL). The second group of measures seeks to update the application of Law 12529/2011 with an adaptation of procedures and the incorporation of new methodologies to make it more adequate to the digital reality.

Collusive Conducts

Regarding Cartels, the General Superintendence recommended [condemning pharmaceutical companies](#) involved in an international cartel, highlighting CADE's focus on tackling cross-border anti-competitive practices. Another typical focus of cartel enforcement in Brazil's public procurement remained relevant, including the conviction of a cartel on [bin bags](#), office and school supplies, and another in [urbanization](#).

On this matter, sharing of sensitive information between competitors was also an important topic since the General Superintendence issued opinions toward a more rigid approach even without recognition of concrete anticompetitive effects. Prior investigations on it were mainly focused on traditional markets, but since 2022 has been some change. Although, CADE signed a Cease and Desist Agreement in the Brazilian market of hired labor in the [healthcare industry](#) – which is a highlight – in 2024 CADE's concern with labor issues increased and probably will continue to be on radar for 2025. An example is a case about non-compete and non-poach agreements in the [IBM-SAG](#) operations; the General Superintendence approved the operation, and after the Tribunal scheduled a meeting to reopen the case, the companies voluntarily changed the terms.

Regarding professional unions, CADE convicted the real estate agents council for [price fixing](#), attracting attention to a previous procedure against the [Brazilian Bar Association \(OAB\)](#) for the same conduct that has not been decided and has no consensus in the Tribunal.

Gun Jumping

CADE considered several [Gun Jumping](#) cases, solidified parameters on the dosimetry of [fines](#), and established a limit of 20% of the updated transaction value, except in cases where the conduct is intentional or in transactions with derisory values.

Mergers and Acquisitions (M&A)

According to public numbers available on the platform, 2024 was a year with a slight increase in

M&A cases if compared to 2023, although below the levels of 2022. CADE dealt with several high-profile M&A cases, such as the acquisition of Tok&Stok by Mobly. Given the companies' substantial market share, this move will likely impact the furniture retail market in Brazil. Another major decision involved the approval, with restrictions, of [Minerva's acquisition](#) of assets from Marfrig.

During the year, the most significant transaction among all was between [Arezzo&Co and Grupo Soma](#). CADE approved this merger, which combined two giants of the Brazilian fashion retail market and substantially reshaped the competitive landscape in the sector.

The other case worth mentioning is the acquisition approval of Grupo CRM by Nestlé. The purchased company owns the Copenhagen and Brasil Cacau businesses. This is not as emblematic as Nestle's case with [Garoto](#), which took almost 20 years to complete, but it demonstrates the appetite of the Swiss company to continue expanding and modernizing. The new acquisitions do not breach the [commitment](#) made by Nestle in the Garoto case to refrain from acquiring assets that represent, cumulatively, a share of 5% or more of the national chocolate market for five years from the judicial approval.

Conversely, CADE rejected [Knauf's proposed acquisition](#) of Trevo, citing concerns over a potential reduction in competition in the construction materials market.

Petrobras TCC Agreement with CADE

In 2024, CADE and Petrobras signed [amendments](#) to the Cease and Desist Agreement ("TCC," as it stands for the acronym in Portuguese), initially established in 2019, which aimed to foster competition in the natural gas and refining sectors. Historically, Petrobras has held a dominant position in both markets, even after the market opening to private competition several years ago. In the original TCC, Petrobras committed to sell 50% of its refining capacity; in the other, to sell strategic assets in the gas area, reducing its verticalization. Specifically in the latter, the assets were the three largest Brazilian gas pipelines and its participation in Gaspetro, the holding through which Petrobras participated in the distribution of gas in Brazilian states. Gaspetro and two of the three gas pipelines were sold. In refining, progress was slower: only three of the eight refineries were sold. In 2024, the Repar (Paraná), Rnest (Pernambuco), Regap (Minas Gerais), Refap (Rio Grande do Sul) and Lubnor (Ceará) refineries were removed from the privatization agenda, along with the Bolivia-Brazil Gas Pipeline Transport Company, known as TBG, following the amendment signed with CADE. It's a change of direction regarding the vertical separation of Petrobras as a governmental goal and has been subject to [criticism](#). For this reason, the original TCC and the amendment were criticized for being politically influenced decisions. CADE justified the amendment due to the economic and geopolitical changes. The TCC amendments were exceptions to CADE's tradition, with future results to be seen.

Guidelines

In addition, CADE also published a study on its experience with the use of [trustees](#) and released the updated [Guide V](#) on the analysis of non-horizontal mergers. The first one compiles the effectiveness and challenges of using trustees (or similar, like monitors or independent auditors) by

antitrust authorities worldwide, highlighting the remedy's background and best practices. Trustees have been used as remedies since the early 2000s, but their incidence has become more intense in the last decade. Regarding Guide V, the document provides important insights into the assessment of vertical and conglomerate mergers to ensure transparency and consistency in analysis, but also advises CADE's members on the best practices and to help market players understand the steps, techniques, and criteria adopted in CADE's analyses.

Conclusion

The first year of the new composition of CADE was able to print a new dynamic in the Tribunal with a new understanding regarding gun jumping, a move towards a more restricted approach to sensitive information sharing between competitors, a look into labor markets, and a more direct and restrict position on digital market cases. The new proposition about digital markets regulation issued by the government is aligned with CADE and made possible a more open approach about the aspirations of CADE to keep inside the organization digital markets questions. The necessity to access the public budget for resources in creating a specialized unit and acquiring the institutional capacity for this new task is a risk to the effectiveness of the proposition. The amendment of Petrobras TCC is in line with the current government agenda, and renewed criticism points to political action by the Tribunal both in the first decision and in the amendment. The year of 2025 shall see increase on the debate about digital market regulation, that could point to a more direct and demanding intervention of CADE in digital cases. The matter of sustainability and labor markets, even with the change in US antitrust, could be also a hot topic on the agenda.

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