



NEWSLETTER

# KEY TRENDS IN ANTITRUST ENFORCEMENT

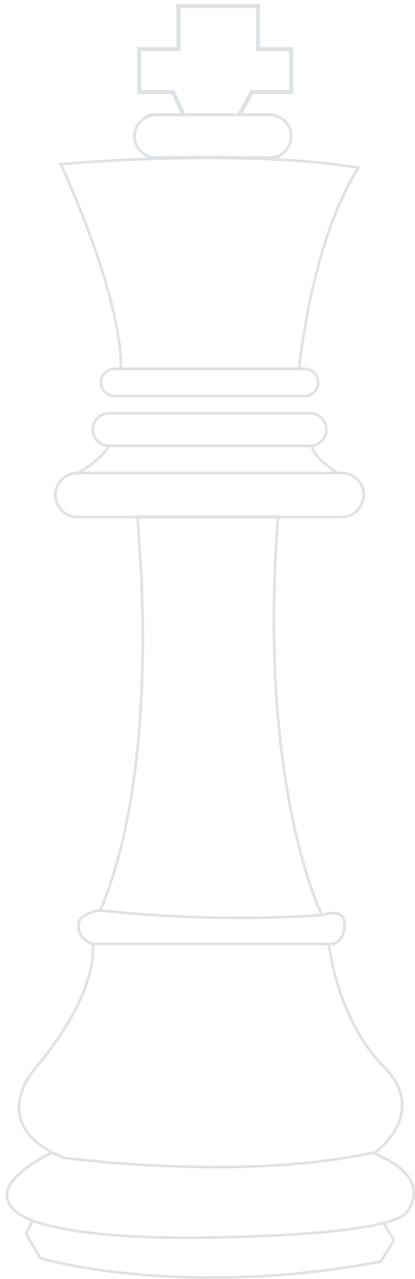
BRAZIL

2nd Semester - 2024

**CESCON**  
**BARRIEU**

# SUMMARY

THIS MATERIAL IS **INTERACTIVE**.  
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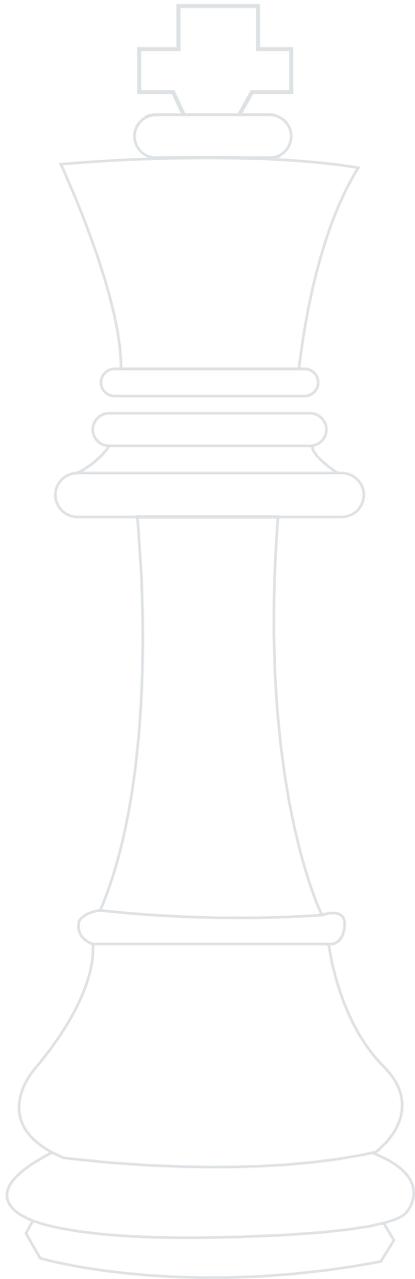
TRANSACTION INVOLVING DAVITA AND BRASNEFRO

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# SUMMARY

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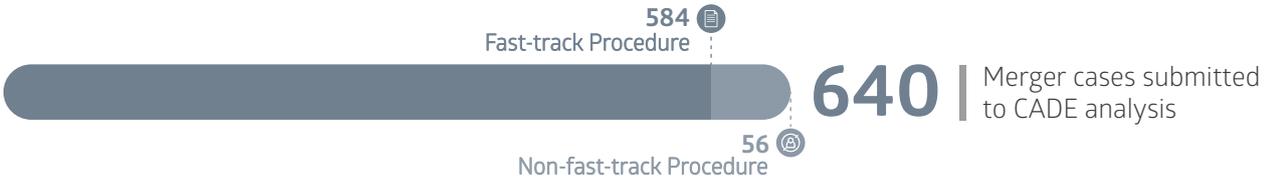
RECOGNITION OF STATUTE OF LIMITATION

"DESENROLA" BRAZIL PROGRAM

# GENERAL OVERVIEW 2024 | CADE



## MERGER FILINGS<sup>1</sup>



**5%** Trend of growth in the number of mergers submitted compared to the same period in 2023 (611 mergers)



## MAIN SECTORS INVOLVED<sup>2</sup>

- Eletric power generation and distribution
- Real estate development
- Wholesale of food products

## REVIEW PERIOD<sup>3</sup>



## ANTICOMPETITIVE CONDUCTS

### INVESTIGATIONS INITIATED BY GS<sup>4</sup>



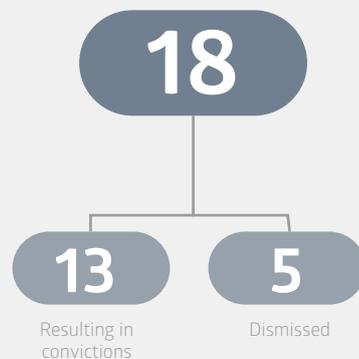
**4** LENIENCY AGREEMENTS SIGNED WITH CADE

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**COLLECTIONS<sup>6</sup>**  
**BRL 249.750.228,85**

Total collected from fines and settlements

### ADMINISTRATIVE PROCEEDINGS<sup>7</sup>



<sup>1</sup>CADE in numbers" plataforma. Accessed on: December 31, 2024.

<sup>2</sup>Internal survey based on the merger reviews published in the Official Gazette from June 20, 2024, to December 31, 2024.

<sup>3</sup>Internal survey based on the merger reviews published in the Official Gazette from June 20, 2024, to December 31, 2024.

<sup>4</sup>Publications in the Official Gazette and research in CADE's public database, considering the procedures published between June 28, 2024, and December 18, 2024.

<sup>5</sup>CADE in numbers" plataforma. Accessed on: December 31, 2024.

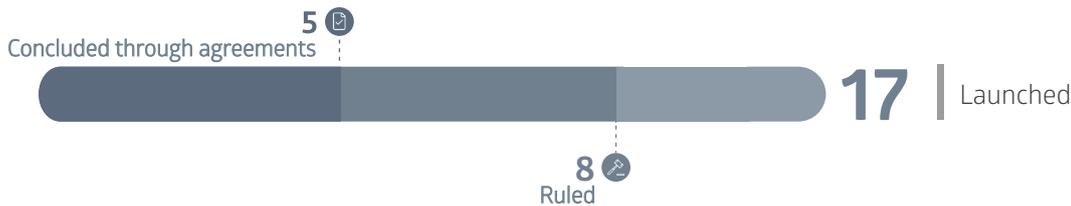
<sup>6</sup>CADE in numbers" plataforma. Accessed on: December 31, 2024.

<sup>7</sup>CADE in numbers" plataforma. Accessed on: December 31, 2024.

\* For better context, the information on this page has been annualized.



## ADMINISTRATIVE PROCEEDINGS FOR THE INVESTIGATION OF GUN JUMPING (APAC)<sup>8</sup>



### MAIN SECTORS INVOLVED



Automotive sector



Real estate asset acquisition

## CADE'S TRIBUNAL | TRENDS

### PUBLIC STATEMENTS AND STANDARD OF PROOF IN CARTEL INVESTIGATIONS

On June 19, 2024, CADE's Tribunal dismissed an investigation into an alleged invitation to cartelization.<sup>9</sup> The case involved public statements made during an online seminar organized by a union in the ethanol sector, attended by several participants from the production and distribution chain of this product. The General Superintendence (GS) argued that some comments made by an employee of one of the companies suggested a potential collusion among competitors to control ethanol supply in the market. Based on this interpretation, the GS recommended the conviction of the involved parties.

However, the Tribunal concluded that the evidence in the case records was limited to a transcript of the seminar, without additional evidence to demonstrate effective coordination among competitors. In the absence of supplementary evidence, such as formal agreements or concrete actions arising from the statements, the case was dismissed due to insufficient evidence.

The dismissal of the case confirms there is a growing trend of concern on the need of robust standard of proof in investigations of anticompetitive conducts. The case also draws attention to the authority's vigilance over public statements made by executives in official forums and their potential impact on the market.

### CONVICTION OF REAL ESTATE BROKER ENTITIES FOR PRICE FIXING

On September 11, 2024, CADE convicted 11 real estate brokers' unions, the National Federation of Real Estate Brokers (FENACI), and the Regional Council of Real Estate Brokers of Goiás (Creci-GO) for price-fixing practices in brokerage services<sup>10</sup>. The investigation revealed that these entities influenced their members to adopt minimum prices through approved and widely disseminated charts.

<sup>8</sup>CADE in numbers" plataforma. Accessed on: December 31, 2024.

<sup>9</sup>Administrative Proceeding No. 08700.005438/2021-31. (CADE ex officio v. Gilvan Celso Cavalcanti de Moraes Sobrinho and Miriri Alimentos e Bioenergia S.A.). Case closed on 06/19/2024.

<sup>10</sup>Administrative Proceeding No. 08700.004093/2020-18. (CADE ex officio v. Sindicato dos Corretores de Imóveis de Goiás; Federação Nacional dos Corretores de Imóveis (FENACI); Sindicato dos Corretores de Imóveis de Alagoas; Sindicato dos Corretores de Imóveis da Bahia; Sindicato dos Corretores de Imóveis do Ceará; Sindicato dos Corretores de Imóveis do Distrito Federal; Sindicato dos Corretores de Imóveis do Espírito Santo; Sindicato dos Corretores de Imóveis do Pará; Sindicato dos Corretores de Imóveis do Pernambuco; Sindicato dos Corretores de Imóveis do Paraná; Sindicato dos Corretores de Imóveis de Minas Gerais; Sindicato dos Corretores de Imóveis de Sergipe). Judgment on 09/11/2024.

The collected documents demonstrated that these charts were reinforced by codes of ethics and standard contracts, resulting in the standardization of commercial practices among professionals in the field. The Tribunal considered these actions harmful to competition, as they limited free negotiation and harmed consumers. As a sanction, CADE imposed fines on the involved entities, ordered the withdrawal of the charts and the update of the codes of ethics to eliminate the imposition of minimum prices.

This decision highlights CADE's approach in addressing price standardization within professional categories and the risks associated with price-fixing.

## CONVICTION OF CARTEL IN THE PHARMACEUTICAL SECTOR

On December 11, 2024, CADE's Tribunal concluded its judgment in a cartel investigation concerning public bids of drugs. The case originated from a complaint filed by the Public Prosecutor's Office of Minas Gerais, which exposed evidence of anticompetitive coordination in public tenders held by the Health Departments of several states in Brazil<sup>11</sup>. The evidence, which included phone recordings and documents obtained during searches, revealed that between 2007 and 2011, companies and individuals fixed prices and participation conditions for these bidding processes.

Additionally, a hub-and-spoke cartel dynamic was identified, in which certain manufacturers acted as facilitators of collusive practices among distributors, playing an indirect coordination role. The case resulted in the conviction of five companies and five individuals, with fines totaling BRL 51.4 million. The Tribunal also forwarded the decision to the Public Prosecutors' Offices of various states for potential criminal actions.

# MERGER FILINGS OVERVIEW

## REMEDIES IN THE CATTLE SLAUGHTERING AND DEBONING MARKET IN BRAZIL

On September 25, 2024, CADE approved, with restrictions, Minerva's acquisition of Marfrig's assets, which included industrial plants and distribution centers in South America. Despite negotiations between the parties and CADE, no agreement was reached on the remedies necessary for the approval of the transaction. Consequently, the Tribunal imposed unilateral remedies, including the divestment of an industrial plant in Pirenópolis (GO), the imposition of a no-expansion clause in several states, and adjustments to the non-compete clause in the contract. These measures aimed to mitigate market concentration risks and prevent dominant positions<sup>12</sup>.

The decision reflects CADE's active role in imposing conditions to clear transactions that have competition concerns, even when there is no consensus with the parties involved.

<sup>11</sup> Administrative Proceeding No. 08012.002222/2011-09. (Public Prosecutor's Office of the State of Minas Gerais v. Kauan de Lucas Virtuoso, Altisberto Martins Ferreira, André Neves de Magalhães, Apolônio Fernandes dos Santos, Armando Pedro Torteli, Carlos Eduardo Ramirez, CM Hospitalar S.A., Comercial Cirúrgica Rio Clarence Ltda., Cristália Produtos Químicos Farmacêuticos Ltda., Dilma Mendes Luz, Dimaci Material Cirúrgico Ltda., Douglas Peres de Araújo, Drogafonte Ltda., Dupatri Hospitalar Comércio, Importação e Exportação Ltda., Felipe de Melo Campos Chaves, Fernando Luis Prochnow, Gustavo Neves de Magalhães, Hipolabor Farmacêutica Ltda., Julio Issao Miyaoka, Laboratório Teuto Brasileiro S.A., Leonardo Teixeira Alves de Oliveira, Ligia Balestra de Pina Medeiros, Lucio Mauro dos Santos Broseguini, Luiz Eustaquio Silva, Macromed Comércio de Material Médico e Hospitalar Ltda., Merriam-Farma Comércio de Produtos Farmacêuticos Eireli EPP, Novafarma Indústria Farmacêutica Ltda., Paulo César Prochnow, Profarma Specialty S.A., Renato Alves da Silva, Rhamis Distribuidora Farmacêutica Ltda., Sanval Comércio e Indústria Ltda., Torrent do Brasil Ltda.). Judgment on 12/11/2024.

<sup>12</sup> Merger Review No. 08700.006814/2023-77. Parties: Minerva S.A., Marfrig Global Foods S.A., and Marfrig Chile S.A). Third Party: Confederação da Agricultura e Pecuária do Brasil - CNA. Approval with unilateral restrictions on 09/25/2024.



## TRANSACTION IN THE BOPET FILM MARKET AND ANTIDUMPING MEASURES

On October 16, 2024, the acquisition of Terphane by Grupo Oben was approved through a Merger Control Agreement (ACC)<sup>13</sup>. The case involved the BOPET film market, where Terphane is the only national producer. Due to competitive concerns, CADE negotiated a package of remedies for a period of five years, including the termination of antidumping measures on certain origins, the prohibition of exclusivity clauses with distributors, and the commitment not to adopt trade safeguards that increase import taxes.

The decision raised discussions about the intersection between trade defense policies and competition, highlighting how antidumping measures can impact competitiveness in the affected markets.



## PARTIES WITHDRAW TRANSACTION IN THE HEALTH SECTOR

The acquisition of the Hospital Fundação Ouro Branco (FOB) by the Unimed System was dismissed following the parties' decision to withdraw. The GS had identified potential risks of market fore closure, particularly regarding the relations between health plan operators and medical-hospital services. Despite negotiations for remedies through an agreement, the parties decided not to pursue the transaction, citing factors unrelated to CADE's analysis<sup>14</sup>.

The conclusion of this case reflects CADE's increasing scrutiny of vertical integrations in the health sector, emphasizing the need for solutions that balance competition and consumer access to services.



## REJECTION OF TRANSACTION IN THE OIL AND GAS SECTOR

On September 25, 2024, CADE unanimously blocked the proposed transaction between 3R Petroleum and the Papa-Terra Consortium. The rejection was based on alleged flaws in the notification process, including possible omissions and misleading information. Furthermore, 3R Petroleum had already included the total production of the Papa-Terra Field in its documentation to shareholders, a situation that suggested the premature consummation of the transaction.

This case underscores the critical importance of providing accurate and transparent information during the merger notification process, particularly in cases involving hostile acquisitions.<sup>15</sup>

<sup>13</sup>Merger Review No. 08700.007543/2023-77. Parties: Film Trading Importação e Representação Ltda., PackFilm US, LLC, Terphane Ltda., and Terphane LLC. Approval conditioned on the execution of a Merger Control Agreement, pursuant to the vote of the Reporting Commissioner, on 10/16/2024.

<sup>14</sup>Merger Review No. 08700.007656/2023-72. Parties: Unimed Conselheiro Lafaiete Cooperativa de Trabalho Médico Ltda., Unimed Inconfidentes Cooperativa de Trabalho Médico Ltda., Unimed São João Del Rei Cooperativa de Trabalho Médico, Fundação Ouro Branco, and Gerdau Açominas S.A. Third Party: Hapvida Participações e Investimentos S.A. The transaction was closed due to loss of purpose, under the terms of the Reporting Commissioner's order, on 13/11/2024.

<sup>15</sup>Merger Review No. 08700.004023/2024-93. Parties: 3R Petroleum Offshore S.A. and Consórcio Papa-Terra. The Tribunal unanimously rejected the request for approval of the merger review, resulting in its dismissal without merit analysis. It ordered the issuance of an infraction notice against 3R Petroleum Offshore S.A.; and also determined the submission of the vote and the parties' statements to the GS for reception as a complaint and evaluation of the applicability of launching an APAC, in accordance with the vote of the Reporting Commissioner, on 09/25/2024.

# GUN JUMPING INVESTIGATIONS

## PARAMETER OF FINES IN GUN JUMPING CASES AND RECOGNITION OF STATUTE OF LIMITATION FOR TRANSACTIONS COMPLETED BEFORE MAY 2012



In the second half of 2024, CADE's Tribunal maintained its focus on administrative procedures for merger investigations (APAC), particularly addressing gun jumping practices involving car dealerships.

The Tribunal reaffirmed that, in gun jumping cases where agreements are negotiated with CADE, a cap of 20% on the adjusted value of the transaction may be applied. This is particularly relevant when the objective dosimetry outlined in CADE's resolutions results in disproportionate penalties. This interpretation is consistent with a precedent set in the first half of 2024 in the case involving Govesa and Kuruma<sup>16</sup>.

Additionally, in the judgment of the APAC case involving the InterAlli Group, Konrad Paraná Comércio de Caminhões Ltda., and others<sup>17</sup>, the Tribunal reaffirmed the view that transactions carried out improperly under the provisions of Law No. 8,884/1994 are subject to the five-year statute of limitations for imposing sanctions, in accordance with PFE/CADE Opinion No. 42/2011<sup>18</sup>. However, the Tribunal reiterated that the obligation to notify the transaction to CADE is not subject to statute of limitation.

## TRENDS | SUPERINTENDENCE

### EXCHANGE OF SENSITIVE INFORMATION

The year of 2024 was marked by the opening of new investigations by GS to examine alleged exchanges of competitively sensitive information, indicating that this topic continues to attract strong scrutiny from CADE and deserves special attention from companies.

In particular, investigations related to the labor market can be highlighted, involving topics such as wages and benefits.

<sup>16</sup>APAC No. 08700.003198/2023-01 (CADE ex officio v. Govesa Motors Veículos, Peças e Serviços Ltda., Kurumã Veículos S.A., and Moitinho Automóveis). For further details, please refer to our [previous newsletter](#).

<sup>17</sup>APAC No. 08700.005458/2019-98 (CADE ex officio v. Grupo Interalli, Konrad Paraná Comércio de Caminhões Ltda., and others): ruling on 16/10/2024.

<sup>18</sup>PFE/CADE Opinion No. 42/2011 regarding Merger Review No. 53500.028086/2006. (DR Empresa de Distribuição e Recepção de TV Ltda. and Antenas Comunitárias Brasileiras Ltda.).

In the second half of 2024, at least four administrative proceedings were initiated to investigate these matters, arising from the signing of Leniency Agreements:

## RESEARCH & DEVELOPMENT

- **International Market for Light Motor Vehicles** (PA 08700.000478/2024-30): On July 15, 2024, the GS initiated an administrative proceeding to investigate the alleged exchange of information in the international market for light motor vehicles. According to the GS, this is the first case in Brazil where competing companies are investigated for attempting to mitigate competition through innovation by allegedly sharing competitively sensitive information with the goal of coordinating their research and development activities.

## LABOR MARKET

- **Companies in the Forklift Sector** (PA 08700.007061/2024-06): On September 20, 2024, the GS initiated an administrative proceeding against companies in the forklift sector. The investigation focuses on alleged agreements and systematic exchanges of sensitive information, including wages, benefits and working conditions, as well as practices such as cover bidding, advertising restrictions at trade fairs, and no-poaching agreements
- **Companies in the industrial sector GES and GEAB Groups** (PA 8700.001198/2024-49): On October 7, 2024, the GS initiated an administrative proceeding against companies in several industrial sectors. The investigation focuses on the exchange of competitively sensitive information in the labor market, including wage ranges, benefits policies, and contractual conditions, within the groups known as the Salary Executive Group (GES) and the Benefits Executive Group (GEAB).
- **Companies in the Consumer Goods Sector – GECON Group** (PA 08700.000992/2024-75): On October 7, 2024, the GS initiated an administrative proceeding against companies in the consumer goods sector. The investigation focuses on the exchange of competitively sensitive information in the labor market, including wage ranges, benefits policies, and contractual conditions, within the group known as the Consumer Goods Companies Group (GECON).

## DISCUSSION OF OBLIGATION TO FILE A MERGER

Transactions involving acquisition of assets and association agreements represented most of the cases where the GS conducted a mandatory filing assessment in the second half of the year. Examples include:

- **Suez RV and Renault:** The French group Suez acquired shares in two companies operating in the scrap metal market from the Renault Group. The GS concluded that the transaction did not require mandatory filing, as one of the acquired companies had no independent economic activities, making it impossible to assess the potential effects in Brazil under the principle of territoriality. Regarding the other company, it was found that Suez already held over 20% ownership, and the transaction would only require mandatory filing if it involved acquiring at least 20% more, as it was a non-competing company<sup>19</sup>.
- **Sul Plata and Greenergy Brasil:** The acquisition of Greenergy Brasil, previously controlled by the Brookfield Group, by the Sul Plata Group, was reviewed and approved. The parties argued that Greenergy Brasil was a non-operational entity. However, according to the GS, it held an operational license granted by Brazilian National Agency for Petroleum, Natural Gas and Biofuels (ANP), which was crucial for operations at the Port of Santos/SP. Thus, the GS reinforced the understanding that the mere fact of a company being non-operational does not exclude the mandatory filing requirement and concluded that the operational license was essential to the buyer, enabling Sul Plata Group to expand its operations in the liquid fuels market<sup>20</sup>.

<sup>19</sup>Merger Review No. 08700.006739/2024-25 (Suez RV Recyclage and Renault).

<sup>20</sup>Merger Review No. 08700.004743/2024-59 (Sul Plata Trading and Greenergy Brasil Trading).

- **Decolar and LATAM:** The partnership between Decolar.com and LATAM involved creating a platform for tourist packages integrated with the LATAM Pass rewards program. While Decolar would manage the platform, LATAM would direct customers and receive sales commissions, essentially as vertical and commutative, without shared risks or results, and therefore not subject to mandatory filing as an associative agreement.<sup>21</sup>
- **Vinci and Varejão:** The GS decided not to review the transaction involving the acquisition of a company's equity stake by several investment funds, as the turnover thresholds were not met. The GS found that the buyers did not reach the BRL 750 million thresholds after excluding intragroup (intercompany) revenues<sup>22</sup>.

## CASES CHALLENGED AT CADE'S TRIBUNAL

### TRANSACTION INVOLVING DAVITA AND BRASNEFRO

On November 12, 2024, GS challenged at CADE's Tribunal the analysis of Brasnefro acquisition by DaVita, highlighting high concentrations in the dialysis market for chronic patients in nine of the ten markets analyzed, including cities such as São Paulo, Rio de Janeiro, and Brasília.

The GS pointed out entry barriers, low rivalry, and potential impacts on DaVita's bargaining power with health insurers and the Unified Health System - SUS. Additionally, it considered the non-compete clauses inadequate. To mitigate the risks, it suggested structural and behavioral remedies. The case is now under review by the Commissioner José Levi Mello do Amaral<sup>23</sup>.

## INJUNCTIONS

### SUSPENSION OF POLITICAL RIGHTS OF CA INVESTMENT IN ELDORADO<sup>24</sup>

On November 18, 2024, the GS granted the request of Eldorado Brasil Celulose S.A. and determined the suspension of political rights of CA Investment, one of its minority shareholders, including the prohibition to vote in the general meetings.

The decision was motivated by allegations that CA Investment was using its political rights to hinder Eldorado's development, benefiting its controlling and competitor company, Paper Excellence, by using strategic information and blocking crucial expansions for Eldorado. The preliminary analysis conducted by the GS revealed that such practices could reduce Eldorado's competitiveness in the pulp market, negatively impacting the competitive dynamics.

CA appealed the decision to CADE's Tribunal. The suspensive effect requested by CA was denied, and the merit discussion is still under review by the Tribunal. Recently, on January 22, 2025, the Brazilian Federal Court (TRF-3) overturned CADE's injunction, restoring Paper Excellence's corporate rights in Eldorado. The case remains under discussion as of this date.

<sup>21</sup>Merger Review No. 08700.003964/2024-18 (Decolar.com, Travel Reservations, Fidelidade Viagens, and TAM Linhas Aéreas).

<sup>22</sup>Merger Review No. 08700.009809/2024-05 (Vinci Impacto and Retorno IV Multistrategy Private Equity Fund and O Varejão Auto Peças Ltda.).

<sup>23</sup>Merger Review No. 08700.003691/2024-01 (DaVita Brasil Participações e Serviços de Nefrologia Ltda e Brasnefro Participações Ltda.)

<sup>24</sup>Administrative Inquiry No. 08700.007664/2024-08.

# GUIDELINES AND CADE'S ADVOCACY EFFORTS



## CADE OPENS PUBLIC CONSULTATION TO UPDATE THE LENIENCY PROGRAM GUIDELINES

On November 2024, CADE began a public consultation on the new version of the Leniency Guidelines.

The updated document is the result of the work of the Antitrust Leniency Working Group (created by GS in 2023). The group provided a platform for the participation of external actors, allowing for contributions, recommendations, and criticisms to improve the procedures for negotiating leniency agreements. In total, six meetings were held throughout 2024.



## CADE UPDATES STUDY ON PORT SERVICES IN BRAZIL

On September 2024, CADE released an updated study on the port services markets.

The new edition presents an overview of the port sector in the national economy, relevant aspects of sectoral regulation, and describes CADE's analysis and decisions on merger review and anticompetitive conducts cases involving these markets.

This updated edition includes 36 merger filings and six administrative proceedings on investigations of conduct judged until December 2023, as well as updates on market statistics and regulation.

## CADE, ANAC AND ANTAQ COOPERATION AGREEMENT



Between September and December 2024, CADE signed Technical Cooperation Agreements (ACT) with ANAC and ANTAQ.



The ACT aims to promote best investigative practices, bringing the agencies closer and increasing the speed and effectiveness of preventing and suppressing cartel practices and other anticompetitive practices in the Brazilian civil aviation and maritime transport sectors.



The agreements will have a five-year duration and include the exchange of information and the creation of studies, research, and educational materials among the agencies.



## CADE'S ATTORNEY-GENERAL TAKES OFFICE WITH FOCUS ON TECH MARKETS

On July 15, 2024, André Luís Macagnan Freire was appointed as the new Attorney-General at CADE. Previously the Attorney-General of the Union, André Freire emphasized during his appointment hearing the strategic role of CADE in competition defense and the relevance of studies on the regulation of tech markets, media, and artificial intelligence. He succeeds Juliana Oliveira Domingues, who held the position at CADE since 2022.

# CADE AND TECH

## RECOMMENDATION OF CONVICTION OF MINIMUM PRICE IMPOSITION WITH EFFECTS ON DIGITAL RETAIL

On September 5, 2024, the GS recommended the condemnation of Rinnai for imposing a Minimum Advertised Price (MAP) policy to resellers in the national gas water heater market<sup>25</sup>. The price tables imposed referred to various means of dissemination, including marketplaces, resellers' own websites, and flyers. According to the GS, this practice primarily affected resellers using e-commerce, where the bargaining power was reduced. The case was assigned to commissioner José Levi and is still awaiting judgment by CADE's Tribunal.

## CADE AND THE REGULATION OF DIGITAL PLATFORMS

On October 10, 2024, the Ministry of Finance presented the results of the Public Consultation on the economic and competitive regulation of digital platforms, including 12 proposals for legal and regulatory measures. In the report "[Digital Platforms in Brazil: Economic Background, Market Dynamics, and Competition Promotion](#)," the Ministry aimed to deepen the understanding of the economic and competitive aspects of digital platforms in Brazil. CADE issued an [official statement](#) expressing its agreement with the proposals in the report and reinforced its contribution to the gathering of contributions. It also highlighted the need for prior regulation in addition to competition law, emphasizing the creation of a specialized digital market unit within CADE. For more details on this topic, refer to the [Report prepared by our Competition and Technology & Innovation team](#)

## CADE CLOSES INVESTIGATIONS INVOLVING UNILATERAL CONDUCT AND DIGITAL PLATFORMS

### META, USE OF DATA, AND AI TRAINING

On December 10, 2024, the GS decided to close the preliminary investigation on Meta<sup>26</sup>. The investigation was opened following a complaint from the Brazilian Institute for Consumer Defense (IDEC) about the alleged abuse of dominant position related to the development of a generative AI tool. The GS found insufficient evidence of anticompetitive behavior associated with the process of extracting, processing, and handling data to train Meta's generative AI tool. Furthermore, it emphasized the need for caution in dynamic markets to avoid inhibiting pro-competitive innovations.

### "JEDI BLUE" (META AND GOOGLE)

On July 9, 2024, CADE closed the administrative inquiry<sup>27</sup> involving Google and Meta regarding the "Jedi Blue" agreement, in which Google allegedly guaranteed special conditions for Meta in ad auctions in exchange for a non-competition stance in the digital advertising market. The GS concluded that there were economic justifications and no evidence of anticompetitive conduct.

<sup>25</sup>Administrative Proceeding No 08700.002702/2022-66 (CADE ex officio v. Rinnai Brasil Tecnologia de Aquecimento Ltda.).

<sup>26</sup>Preparatory Proceeding No 08700.004482/2024-77 (Instituto Brasileiro de Defesa do Consumidor - IDEC. v. Meta Inc. and Facebook Serviços Online do Brasil Ltda.).

<sup>27</sup>Administrative Inquiry No 08700.006751/2022-78 (CADE ex officio v. Google Inc., Google Brasil Internet Ltda., Meta Inc., and Facebook Serviços Online do Brasil Ltda.).

## GOOGLE, SEARCH MARKET AND *SNIPPETS*

On December 4, 2024, the GS closed the inquiry against Google, which investigated possible abuse of dominant position in the search and news markets via the use of snippets (short excerpts of journalistic content). Despite criticisms from the National Association of Newspapers (ANJ) and companies in the sector, the GS concluded that there was no violation, highlighting the absence of actual damage and the competitive dynamics of the online advertising market. The ANJ appealed the decision on December 11, arguing that the analysis overlooked the complexity of the issue and the impact of media outlets' dependence on Google. In its defense, Google argued that its actions were pro-competitive, providing valuable traffic to media outlets and denying any diversion of advertising revenue. The appeal is under review, and the GS will decide whether to maintain the dismissal of the case or initiate an administrative proceeding<sup>28</sup>.

## INVESTIGATION INTO ANTICOMPETITIVE PRACTICES IN THE GOOGLE PLAY STORE

On December 3, 2024, the GS opened an administrative inquiry<sup>29</sup> to investigate whether Google imposed rules on developers that would have hindered the operation of competing app stores on Android. Google will also be investigated for imposing the use of its payment system, negatively impacting the availability of alternative systems for consumers. As the next step, GS will contact the main companies operating in the affected markets.

## INTERIM MEASURES AGAINST APPLE IN A CASE DISCUSSING ANTICOMPETITIVE PRACTICES INVOLVING IOS

On November 25, 2024, the GS imposed a preventive measure against Apple in an administrative proceeding initiated following a complaint from Mercado Livre<sup>30</sup>. The case investigates suspected creation of artificial barriers to entry for competitors and tying sales related to restrictions imposed in the Terms & Conditions (T&Cs) for the iOS operating system. According to the GS, the measure aimed to ensure developers' and users' freedom to choose distribution channels and payment processing systems for in-app purchases. The decision reflects the increasing scrutiny of digital platform practices and is currently suspended due to a court ruling, detailed in the next section of this Newsletter.

# CADE AND BRAZILIAN COURTS

## SUPERIOR COURT OF JUSTICE (STJ) MAINTAINS UNDERSTANDING ON ANALYSIS RULE APPLICABLE TO CARTELS

The STJ<sup>31</sup> maintained the fine imposed by CADE to two companies involved in a cartel in the cable television market in Blumenau/SC. The Federal Regional Court of the 1st Region had annulled the fine arguing that there was a violation of the right to defense and that the damage to the market had ceased. However, the STJ upheld CADE's decision, reinforcing the understanding that cartels are per se illegal, meaning it does not depend on the proof or ceasing of harmful effects.

<sup>28</sup>Administrative Inquiry No. 08700.003498/2019-03.

<sup>29</sup>Administrative Inquiry No. 08700.002969/2024-61.

<sup>30</sup>Administrative Proceeding No. 08700.009531/2022-04.

<sup>31</sup>Interlocutory Appeal No. 2.075.429-DF.

## ANNULMENT OF PREVENTIVE MEASURE IMPOSED ON APPLE BY THE GS

The Federal Court of the Federal District suspended the preventive measure imposed on Apple by the GS<sup>32</sup> which would allow developers and users the freedom to choose distribution channels and payment systems for in-app purchases on iOS. The measure was imposed in the context of an investigation into potential abuse of dominant position by Apple, following a complaint from Mercado Livre<sup>33</sup>. The Judge considered that the measure was “disproportionate” and “unnecessary” at this stage, arguing that the required changes would substantially affect Apple’s business organization and functioned as a final decision, exceeding its intended purpose. The decision is still subject to appeal.

## DISCUSSION OF THE DEADLINE SET IN AGREEMENT WITH CADE FOR DIVESTMENT OF PARTICIPATION

The 4th Panel of the Federal Regional Court of the 6th Region (TRF-6) maintained the first instance decision requiring CSN to reduce its participation in Usiminas to below 5%. CSN’s acquisition of Usiminas shares was approved by CADE in 2014, under a Merger Agreement, which imposed restrictions on CSN’s political rights to maintain the independence of the two companies in the national steel market. CADE also required the reduction of CSN’s participation until 2019. After the deadline expired without compliance, CADE concluded that CSN could keep its participation indefinitely, as long as it did not exercise political rights. In a lawsuit filed by Usiminas in the Minas Gerais court, a one-year deadline for the divestment of the participation was set. CSN appealed the decision, but the TRF-6 rejected the appeal, basing its decision on the risk of price manipulation of Usiminas shares and access to privileged information. The TRF-6 decision is still subject to appeal.

## RECOGNITION OF STATUTE OF LIMITATION

In a unanimous decision, the 5th Panel of the Federal Regional Court of the 1st Region (TRF-1) maintained the appeals from the companies Alcoa and Inapel<sup>34</sup>, annulling the fines imposed by CADE<sup>35</sup> in a case investigating a cartel in the flexible plastic packaging market. The court accepted the argument that during three years the proceeding had no developments, noting that the proceeding had seen no significant movement between August 14, 2009, and May 26, 2014, except for a simple order in 2011<sup>36</sup>. As a result, the decision annulled the fine imposed by CADE.

<sup>32</sup>Writ of Mandamus No. 1097967-08.2024.4.01.3400.

<sup>33</sup>Administrative Proceeding No. 08700.009531/2022-04.

<sup>34</sup>Appeals No. 1008513-90.2019.4.01.3400 and 1007745-67.2019.4.01.3400.

<sup>35</sup>Administrative Proceeding No. 08012.004674/2006-50.

<sup>36</sup>According to Article 1, § 1, of Law No. 9,873/99.

## “DESENROLA” BRAZIL PROGRAM

Launched in 2023, the program has gained attention in the competition sphere. With an increase in corporate participation, it allows the renegotiation of debts under more favorable terms, such as discounts and extended deadlines. According to Desenrola’s rules, amounts registered in the Union’s active debt for ten years or more receive a 65% discount if paid in cash. This transaction is negotiated with the Federal Attorney General (AGU). Two recent examples are:

- In late 2024, Justice Gilmar Mendes of the Supreme Court approved an agreement between Gerdau and CADE, marking the resolution of a long-standing legal dispute that began in 2005, when the steel company was convicted of participating in a cartel in the rebar market. Gerdau paid BRL 256 million in December 2024, benefiting from a 65% discount on the fine in accordance with the program’s terms.
- Votorantim issued a Market Notice informing its investors about ongoing negotiations with CADE and the Attorney General for Federal Agencies (PGF). The goal is to resolve all administrative and judicial proceedings involving the company as part of the Desenrola program. According to public information, the agreement would settle all points of disagreement with CADE and include all disputes with the authority. If executed, the agreement will result in a payment with discounts of up to 65% on a billion-Brazilian reais fine.