THE PUBLIC
COMPETITION
ENFORCEMENT
REVIEW

Seventh Edition

Editor
AIDAN SYNNOTT

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EDITOR’S PREFACE

In the reports from around the world collected in this volume, we continue to see a good deal of international overlap among the issues and industries that attracted government enforcement attention during the past year.

Cartel enforcement remains robust, particularly by the European Commission and the United States. These jurisdictions, along with Brazil, China and Japan, have continued their enforcement actions against automotive parts cartelist, and have levied substantial fines in this area. Other areas of cartel enforcement include ocean shipping, with Japan and the United States undertaking notable activity in this area; and continued enforcement against alleged cartels related to liquid crystal displays. Many investigations have been marked by cooperation among enforcers in several jurisdictions, and this trend toward cross-border cooperation appears to be increasing.

In the area of restrictive agreements, there have been significant public enforcement actions relating to payment card network rules and fees, including a finding of liability in a litigated government challenge in the United States; as well as actions by the European Commission, Germany, Switzerland, Italy and Croatia. We have also seen several examples of actions against manufacturer-imposed restrictions on retailers’ behaviour, particularly against resale price maintenance (including in Croatia, Germany, Greece, Italy and Japan); and restrictions on online sales (in Switzerland and elsewhere). The apparent concern with resale price maintenance in these jurisdictions might be seen to contrast with the relative dearth of recent public enforcement actions against these arrangements in the United States, which itself may reflect a change in the interpretation of the relevant law by United States Supreme Court several years ago.

In the area of dominance, there has been much attention devoted to standard essential patents – patents that cover intellectual property that becomes part of a widely used technology standard – including in the United States, the European Union and China. Cypriot, Finnish, Australian and other enforcers have taken action with respect to food and some of these actions have focused on the bargaining power of large supermarket
chains. The European Commission, the United Kingdom, Belgium, Slovenia and Taiwan have taken action in the energy sector.

We can also see several jurisdictions active in the health-care sector and related fields. The United States, the European Commission, the United Kingdom, Brazil and Italy have all undertaken or continued enforcement actions related to alleged attempts by pharmaceutical manufacturers to delay the entry of generic competitors. In addition, the European Commission has issued its Fifth Report on the Monitoring of Patent Settlements, which are sometimes allegedly used to delay generic drug entry into pharmaceutical markets in violation of competition rules. We also read of enforcers’ actions with respect to hospital mergers and the provision of health care in the United States, the United Kingdom, Germany and Spain. In addition, many jurisdictions, including Ecuador, Mexico and Italy, have taken action in the telecommunications sector.

Merger review and enforcement activity remains robust, and the chapters that follow note increases in activity in the United States, the European Union, the United Kingdom, China, Argentina and elsewhere. Many of these investigations reflect an uptick in pharmaceutical firm mergers; and indeed a number of these have involved cooperation among multiple national enforcement authorities. Several of the reports, including the reports from the United States and India, note enforcement actions involving ‘gun jumping’ in which merging firms are alleged to have engaged in impermissible cooperation prior to the resolution of government merger investigations. We also have reports from the United Kingdom and the United States illustrating that even merger activity in small markets may generate scrutiny.

Many jurisdictions continue to enact new competition laws or amend the existing laws; others continue to develop the implementation of laws enacted in recent years. In this regard, of particular interest is the report about the formal adoption of the European Commission’s Antitrust Damages Directive, which, among other things, concerns the interplay of Commission and national competition authority proceedings and follow-on, private damages actions. In relation to this, the essay entitled ‘Public v. Private Enforcement: Why Europe should Change Course on Private Enforcement’, updated from last year, sets forth a sceptical view of the efficacy of private competition actions in Europe. Also of note are the reported developments in the enforcement regimes and governing laws in the United Kingdom, Spain, Japan, Mexico and Argentina. Here we read of the United Kingdom’s new Competition and Markets Authority, which last year replaced the Office of Fair Trading and Competition Commission; the second year of the Spanish National Markets and Competition Commission; the imminent implementation of amendments to Japan’s Act on Prohibition of Private Monopolization and Maintenance of Fair Trade; continued development of enforcement under the Mexican Antitrust Act; and the amendment last year to the Argentine Antitrust Law.

Similarly, the continued introduction and expanded use of leniency programmes to aid enforcers in detecting, investigating and punishing cartel activity is of particular interest. For some time, the leniency programme in the United States has been
an important element in US competition law enforcement; and the reports from Switzerland, Columbia, Argentina and elsewhere highlight enforcers’ increasing use of these programmes in competition investigations. Indeed, the expanded use of these programmes and the global reach of many cartels will undoubtedly require cartelists to consider carefully the varying incentives and penalties in these programmes among jurisdictions when their activity may be subject to international scrutiny.

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Paul, Weiss, Rifkind, Wharton & Garrison LLP
New York
April 2015
Chapter 5

BRAZIL

Mariana Villela, Leonardo Maniglia Duarte and Rodrigo Alves dos Santos

I OVERVIEW

The new Brazilian competition defence system, which entered into force in May 2012 when the current Brazilian Competition Act (Law No. 12,529/2011) revoked the previous Act (Law No. 8,884/94), is now consolidated. The institutional framework introduced by the new system (which concentrated the roles of three competition agencies into one) has proven to be a significant improvement and added more efficiency to competition enforcement in Brazil, eliminating the unnecessary overlaps caused by the previous system.

Under the previous system, the existence of three competition agencies, with overlapping responsibilities, used to cause delays in the processing of investigations for anti-competitive conduct and in the review and approval of mergers. Under the current institutional design, one single entity – CADE – is responsible for enforcing competition law issues at the administrative level, which is organised into three divisions or units: the Office of the Superintendent General (SG), the Administrative Tribunal and the Department of Economic Studies.

The 2011 Competition Act also introduced a pre-merger review system in Brazil, replacing the previous post-merger review system that had been much criticised for being
cumbersome and inefficient. The new merger control model has exceeded expectations as to timing and efficiency and CADE has been able to review and clear merger files at a fast pace. In 2014, the average time frame for the analysis and examination of simple cases was 20 days, whereas the average time frame for the analysis of non-simple cases was 77 days. These time frames are in stark contrast with the timing for merger analysis under the previous system – approximately 150 days on average in 2011 – and show that CADE’s efforts to implementing a workable pre-merger review system have been very successful.

CADE’s efficiency in handling its pre-merger review system, along with other accomplishments, has been awarded a four-star rating by the Global Competition Review’s Rating Enforcement, as well as the vice-presidency of the International Competition Network, placing CADE among the best eight competition enforcement agencies in the world.

There has been an increase in the number of complex cases reviewed by CADE and the negotiation of remedies under a pre-merger review system has experienced significant developments. CADE has issued new regulations to clarify some grey areas on the applicable rules for merger control and it is expected that it will continue to refine its understanding on certain aspects that still remain controversial.

With the new merger control system working well, CADE has been able to redirect its resources to the prosecution of anti-competitive conducts and, in particular, cartels. CADE is expected to reinforce the relevance of cartel prosecution by continuing to foster the leniency programme, and other investigation tools for anti-cartel enforcement. The number of settlements in cartel cases has increased significantly and more settlements are expected in the near future.

II CARTELS

Since 2012, the SG, CADE’s unit responsible for investigating anti-competitive conducts, has been trying to clear the backlog of cartel cases. Until October 2014, the SG had concluded 42 investigations and forwarded them to CADE’s Administrative Tribunal for judgment. In 17 of these cases, the SG had concluded that the investigations should be dismissed and that the defendants should not be convicted. At the same time, the fight against cartels remains as a top priority for CADE. The SG also carried out at least five dawn raid operations and executed at least four leniency agreements in 2014, in addition to others that are currently under negotiation. The SG also filed at least 121 new investigation procedures, most of which are believed to be related to cartel behaviour and are still in their very early stages.


4 For additional information in this regard, please see the presentation of CADE’s Superintendent General at IBRAC’s International Seminar on Competition Policy, available at: www.ibrac.org.br/Uploads/Eventos/20SeminarioConcorrencia/PALESTRAS/%C3%A9ltimo%20Painel.pdf.
i Significant cases

In 2014, CADE was able to end several cartel cases through the execution of settlement agreements. It also imposed heavy fines in cases of conviction and, for the first time ever, imposed a penalty of divestment of assets in a cartel case.

This decision of divestment of assets was issued in May of 2014,\(^5\) when CADE convicted six companies, six individuals and three associations for cartelising the market of cement and concrete.\(^6\) According to the decision, the defendants will have to divest 20 per cent of their installed capacity for the production of concrete. In addition, the defendants will also have to pay fines, which, combined, amount to approximately 3.1 billion reais, the heaviest combined fine ever imposed by CADE. It is worth mentioning that one of the defendants had executed a settlement agreement with CADE in this investigation in 2007,\(^7\) in which it not only paid a financial compensation to settle at an amount substantially lower than the lowest fine imposed to the defendants convicted in this case (47.3 million reais),\(^8\) but also dodged the penalty to divest assets.

In March 2014, the SG decided to open an investigation on the alleged cartel involving trains and subways public procurements between 1998 and 2013 in the city of São Paulo and in other Brazilian cities, which was triggered by the leniency agreement executed with Siemens in 2013 and led to several dawn raids. More recently, in September 2014, Bosch also signed a leniency agreement with CADE, admitting the practice of a cartel in the spark plugs market, along with the company NGK Spark Plug Co.\(^9\)

The investigations into the automotive parts also led the SG to file three cartel investigations in 2014 against several companies and individuals in the clutch facings market,\(^10\) in the thermal systems market,\(^11\) and in the windshield wipers market.\(^12\) It is also worth mentioning that, in February 2015, CADE concluded its analysis of the marine hose cartel,\(^13\) convicting three companies and an individual, and imposing a total of 13.5 million reais in fines. In this decision, the Tribunal concluded that there was insufficient evidence to convict other defendants initially accused of having participated in the cartel, such as Goodyear do Brasil Produtos de Borracha Ltda.

\(^5\) Please note that there are appeals pending judgment in this case; therefore, this decision is not yet final. In any event, the appeals that have been filed are not capable of altering the merits of CADE’s decision, and serve only to clarify or complement points of the decision that may be unclear.

\(^6\) CADE, Administrative Proceeding No. 08012.011142/2006-79.

\(^7\) CADE, Administrative Proceeding No. 08700.004221/2007-56.

\(^8\) The lowest fine imposed in this case totaled 88.02 million reais, and was applied to Cia De Cimento Itambé.


\(^10\) CADE, Administrative Proceeding No. 08700.010321/2012-89.

\(^11\) CADE, Administrative Proceeding No. 08700.010323/2012-78.

\(^12\) CADE, Administrative Proceeding No. 08700.010320/2012-34.

CADE also executed a leniency agreement with the company Toyo Setal regarding Petrobras’s public procurements, which uncovered that several construction companies allegedly operated a cartel to rig Petrobras’s bids. In addition, CADE opened an investigation into the power consumption measurement systems cartel as a result of a leniency agreement.\textsuperscript{14}

Finally, CADE managed to reach resolution in 22 cartel investigations through the execution of settlement agreements in 2014, which collectively amounted to 153.4 million reais in financial compensation paid by the defendants. In the recent settlement agreements signed with Samsung and with LG in the alleged cartel related to the thin film transistors for liquid crystal display (TFT-LCD),\textsuperscript{15} Samsung agreed to pay a contribution of 8.9 million reais\textsuperscript{16} and LG agreed to pay a contribution of 33.8 million reais. Defendants in the international cargo freight-forwarding cartel investigation\textsuperscript{17} have also agreed to settle and pay financial compensation.

The SG carried out several dawn raids in different markets in 2014, which generally derived from leniency agreements, including the investigation of an alleged cartel in the resins for coating and composite market, the investigation regarding bid-rigging cartels in the state of Paraíba related to civil construction,\textsuperscript{18} and in the investigations involving several auto parts markets (automotive lighting, hazard switches, access mechanisms and automotive clutches).

\textbf{ii Trends, developments and strategies}

On 6 March 2013, CADE enacted Regulation No. 5/2013, which modified the rules regarding settlements. The objective of this Regulation was to increase incentives for companies to cooperate by adding more predictability and transparency regarding the amount of contribution to be paid. The focus of the Regulation is on cooperation by the settling parties. It contains guidelines on the levels of the monetary contribution to be paid by the settling parties, which will vary depending on, \textit{inter alia}, the level of cooperation and the moment of the investigation. Parties who are being investigated for cartel behaviour, however, need to acknowledge their participation in the violation in order to be able to settle. On 18 November 2013, the first settlement was executed under the new Regulation.\textsuperscript{19} In 2014, CADE’s Administrative Tribunal executed a total

\begin{footnotesize}
\begin{itemize}
\item[14] CADE, Administrative Proceeding No. 08700.008413/2014-60.
\item[16] CADE, Administrative Proceeding No. 08700.007696/2013-42.
\item[17] CADE, Administrative Proceeding No. 08012.001183/2009-08.
\item[19] Settlement by ABB Ltda, which acknowledged its participation in an international cartel that supposedly affected the markets for manufacturing and installation of underground high-voltage cables and submarine high and low-voltage cables. See CADE, Administrative Proceedings No. 08012.003970/2010-10 and No. 08700.008576/2012-81.
\end{itemize}
\end{footnotesize}
of 22 settlement agreements in cartel cases involving several markets. More settlements should be expected in cartel cases in the near future.

iii Outlook
An examination of cases initiated and concluded in the past years suggests that cartel prosecution continues to be an enforcement priority for CADE. Since many cases have been sent by the SG to CADE’s Administrative Tribunal, it is also expected that decisions will be rendered soon in cases that have been under investigation for a long time. Moreover, the Brazilian leniency programme continues to be crucial to CADE’s anti-cartel enforcement efforts, and many recent investigations have been initiated following leniency applications.

III ANTITRUST: RESTRICTIVE AGREEMENTS AND DOMINANCE
i Significant cases
Although CADE has been focusing its efforts on anti-cartel enforcement, in 2014 CADE examined a few cases involving abuse of dominance, some of which are discussed below. The SG recommended the conviction of the pharmaceutical company Eli Lily for sham litigation for allegedly filing misleading lawsuits to seek patent protection for active ingredients that it knew were already in the public domain with the purpose of driving competitors out of the market. In another case, the SG recommended the conviction of Telemar for abuse of dominance, as Telemar monitored telephone calls made by competitors to offer services to their clients in order to propose better deals and retain the clients, preventing them from migrating to competing companies. Moreover, the SG also recommended that several shopping malls from São Paulo and Porto Alegre be convicted for executing agreements with radius non-compete clauses. According to the SG, the execution of these clauses is not illicit per se, but, in these two cases, it concluded that such clauses should be subject to reasonable limitations. All of these cases are still pending judgment by CADE’s Tribunal.


CADE’s Tribunal decided other relevant unilateral conduct cases during 2014, such as the investigation against Rodoban Segurança e Transporte de Valores Ltda., which was fined 318,000 reais for abusing its dominant position in Belo Horizonte, where it was the sole provider of security services for the federal lottery. In addition, in February 2014, the Tribunal dismissed the investigations against Eletropaulo and Celpe, two concessionaires of electric energy distribution, which were accused of allegedly abusing their dominant position and refusing to share electric utility poles with telecom and cable TV companies.

Finally, in July 2014, CADE executed a settlement agreement with Redecard S/A in an investigation regarding abuse of dominance in the market of facilitation and monitoring of commercial transactions on the internet, in which Redecard agreed to pay a financial compensation of 7.45 million reais and to cease the practices under investigation.

**ii Outlook**
CADE’s enforcement priorities are clearly focused on fighting cartels, which means that cases involving abuse of dominance tend to represent a lower proportion of CADE’s enforcement activities. This approach, however, does not mean that cases involving abuse of dominance will not be initiated by CADE, although it is worth noting that most of the cases examined in 2014 were initiated following complaints from third parties and were not initiated as a result of CADE’s investigation efforts.

**IV SECTORAL COMPETITION: MARKET INVESTIGATIONS AND REGULATED INDUSTRIES**

**i Significant cases**
As mentioned above, in January 2014, the SG recommended the conviction of Telefônica Norte Leste SA for allegedly abusing its dominant position in the telecoms market by monitoring calls from clients of a former competitor. At the time of writing, this case was yet to be decided by CADE’s Administrative Tribunal. CADE also analysed cases involving the pharmaceutical market, among which is the case against Merck SA. The company was convicted by CADE in August 2014 for having participated in a cartel that tried to prevent the sales of generic medicines in Brazil, and was fined approximately 4 million reais.

The transportation sector was subject to several decisions of convictions from CADE in 2014, which led to the imposition of fines to companies with activities in air, ground and water transportation. In October, the SG recommended that CADE

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26 CADE, Administrative Proceeding No. 08012.000894/2001-08.
27 CADE, Administrative Proceeding No. 08012.004089/2009-01.
29 CADE, Administrative Proceeding No. 08012.005928/2003-12.
condemn four port operators for practising anti-competitive conducts in several ports throughout Brazil. With regard to the ground transportation sector, the SG analysed, throughout 2014, a very controversial merger between Rumo Logística e Operadora Multimodal S/A and América Latina Logística S/A – ALL, and in December 2014, it concluded that the transaction could generate risks to the competition, such as limitations to access infrastructure, and discriminatory practices towards third parties that had to use the services involved in the transaction. In February of 2015, CADE’s Tribunal decided to clear the transaction conditioned to the adoption of certain remedies. As to the air transportation sector, CADE executed a judicial settlement with TAM Linhas Aéreas, which had challenged a fine imposed by CADE in 2004 before the judiciary. Under the settlement, TAM agreed to pay the fine that was originally imposed by CADE, as well as to pay a guarantee deposit to ensure compliance with additional impositions made by CADE.

ii  Trends, developments and strategies

Even though the Brazilian Competition Act does not limit CADE’s jurisdiction to enforce competition law in regulated sectors, certain aspects of this jurisdiction are still unclear and are being analysed by the Brazilian courts. Notably, the discussion regarding CADE’s jurisdiction to enforce competition law over banking mergers and conducts is by far the most complex, having reached the Brazilian Supreme Court (STF), which has yet to rule on the matter. CADE continues to understand that it has jurisdiction to enforce competition law in all sectors, including in the banking sector, although the Brazilian courts have so far sided with the argument sustained by the Brazilian Central Bank (BACEN), according to which BACEN should be solely responsible for enforcing competition law in the banking sector due to the sector’s peculiarities. However, since the STF has not rendered a definitive decision on the matter so far, CADE continues to review competition issues in the banking market.

iii  Outlook

The increase in cooperation between CADE and various regulatory agencies and the various cases involving regulated markets that have been subject to CADE’s scrutiny suggest that CADE will continue to play an important role in the regulatory framework in Brazil. CADE is expected to continue to enforce competition law in regulated sectors, particularly where sectoral regulation fails to prevent and repress practices that may be harmful to competition.

31 CADE, Concentration Act No. 08700.005719/2014-65.
V MERGER REVIEW

In 2014, CADE continued to clear merger filings under a pre-merger review system on a fast and efficient pace, leaving far behind the anxieties and doubts that had been raised when the New Brazilian Competition Act entered into force in 2012. Simple cases eligible for the fast-track procedure have been cleared on average in 20 days, while more complex cases have taken, on average, no more than 100 days to be decided.

i Significant cases

Remedies

In 2014, CADE reviewed several concentrations acts in the higher education market and approved two of them subject to remedies, pointing out concerns regarding the recent concentration wave in this market in Brazil. The transaction by which Kroton acquired Anhanguera’s higher education business in Brazil was conditioned to the divestment of one of Kroton’s universities (Uniasselvi) to a third party, as well as to several behavioural measures.\(^{33}\) CADE also approved the transaction by which the higher education group Estácio acquired UNISEB conditioned to behavioural remedies.\(^{34}\)

CADE conditioned the approval of two transactions involving, respectively, the bovine fresh meat market and the processed food market to the divestment of assets. In the transaction by which Minerva acquired some cattle slaughtering units from BRF, the main issue was the fact that BRF would receive 16.17 per cent of Minerva’s shares as part of the payment. CADE considered that this participation of BRF in Minerva’s capital stock could raise the potential of anti-competitive effects in some processed food markets, in which BRF held a substantial market share.\(^{35}\)

In the transaction by which JBS leased three cattle slaughtering units from Rodopa Indústria e Comércio de Alimentos Ltda, CADE concluded that the transaction could lead to the elimination, by JBS, of a relevant competitor in a market composed mainly by small slaughterhouses and conditioned clearance to the divestment, by Rodopa, of one of its brands and also that Rodopa put into function two cattle slaughtering units currently inactive or, alternatively, sell them to third parties. JBS also committed not to acquire new slaughterhouses in states in which the company already holds a certain level of market share, which was treated as confidential, and to grant CADE access to its premises to perform inspection upon a 72-hour prior notice, regardless of the existence of a court order.\(^{36}\)

CADE also analysed several international transactions in 2014, including the Braskem/Solvay transaction\(^ {37}\) and the Holcim/Lafarge transaction.\(^ {38}\) CADE blocked the Braskem/Solvay transaction having concluded that it would create a high concentration

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33 CADE, Concentration Act No. 08700.005447/2013-12.
34 CADE, Concentration Act No. 08700.009198/2013-34.
36 CADE, Concentration Act No. 08700.010688/2013-83.
37 CADE, Concentration Act No. 08700.000436/2014-27.
38 CADE, Concentration Act No. 08700.007621/2014-42.
in the PVC market. CADE cleared the Holcim/Lafarge transaction conditioned to the execution of a merger control agreement in which the parties committed to divest assets in the cement and concrete markets.

In February 2014, CADE approved the transaction between GlaxoSmithKline PLC and Novartis AG through which the companies proposed the formation of a consumer health-care joint venture. The global transaction was reviewed by several competition authorities, and, in Brazil, it was approved on condition of the execution of a merger control agreement negotiated by CADE and the parties. Under the agreement, GSK committed to divest certain assets related to the anti-smoking products market in Brazil, in line with the agreement executed with the European Commission in the same transaction.

**Gun jumping**

In February 2014, the parties to two transactions involving the oil industry were found to be in violation of the gun-jumping rules, following a similar approach adopted by CADE in a previous gun-jumping case in the oil industry in August 2013. In both cases, the parties proposed settlements that were generally accepted by CADE’s Tribunal, but that did not exempt the parties from paying fines. Moreover, in May 2014, CADE executed a merger control agreement with Fiat and Chrysler, in which the companies recognised that they implemented the transaction before CADE’s clearance, and agreed to pay a 600,000 reais fine.

**Re-examination of transactions by CADE’s Administrative Tribunal**

In a merger filing between Monsanto do Brasil Ltda and Bayer SA, the SG provided its opinion in the sense that the transaction did not require a submission to CADE, because it referred to a non-exclusive technology transfer agreement, following its understanding in similar cases. In January 2014, however, CADE’s Tribunal decided to request the case for re-examination and concluded that the transaction required CADE’s previous clearance, approving it conditional on certain remedies.

It is also worth mentioning that, in April 2014, CADE’s Attorney-General (ProCADE) and the SG advised CADE’s Tribunal to reopen the merger filing involving the constitution of a consortium between White Martins Gases Industriais Ltda, Petróleo Brasileiro SA, and Petrobrás Gás SA in the gas distribution market. The companies challenged CADE’s decision that imposed restrictions for the approval of the transaction.

40 CADE, Concentration Act No. 08700.005775/2013-19.
41 See CADE, Concentration Act No. 08700.008289/2013-52; and CADE, Concentration Act No. 08700.008292/2013-76.
42 CADE, Concentration Act No. 08700.002285/2014-41.
43 CADE, Concentration Act No. 08700.004957/2013-72.
44 CADE, Concentration Act No. 08700.011105/2012-51, and Concentration Act No. 08700.006336/2013-23.
45 CADE, Concentration Act No. 08012.001015/2004-08.
before the courts of law and obtained an injunction exempting them from complying with certain remedies. As a result, the authorities considered that the injunction would allow CADE to reopen the case and review whether other remedies should be imposed. The case is still pending a final decision.

**Fines for the submission of inaccurate information**

CADE continues to investigate the accuracy and completeness of the information submitted by applicants to merger control notifications, and to apply penalties in cases where inaccurate or incomplete information has been submitted. In March 2014, CADE imposed a 2 million reais fine on Rossi Residencial S/A for the submission of misleading information in the merger filing regarding the formation of a joint venture with the company Norcon Sociedade Nordestina de Construções.46

### ii Trends, developments and strategies

In October 2014, CADE enacted new regulations designed to improve its merger control systems on the following matters:

- **a** definition of the types of associative agreements that require a merger notification;
- **b** definition of economic groups for purposes of assessment the notification turnover thresholds in transactions involving investment funds;
- **c** transactions that are eligible for a fast-track procedure;
- **d** procedures for the submission of transactions involving titles or securities convertible into shares; and
- **e** other general procedural rules on merger control.

In November 2014, CADE enacted a regulation to implement its electronic system for merger filing and management of proceedings, which went live in 2015.

CADE has also submitted to public consultation two draft regulations regarding rules for the submission of consultations before CADE; and procedural matters regarding investigations into gun-jumping cases, which are expected to be enacted in 2015.

### iii Outlook

CADE has proved to be able to efficiently examine simple transactions under a pre-merger review system, overcoming known difficulties of limited staff and lack of experience of the new model, although there are aspects of interpretation and implementation of the new Competition Act that are still unclear. The improvement of the Brazilian merger control system continues to be on CADE’s agenda, as demonstrated by the new regulations enacted in 2014.

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46 CADE, Concentration Act No. 08700.009880/2012-46.
VI CONCLUSIONS

i Pending cases and legislation
As indicated, CADE has submitted two draft regulations to public consultation regarding rules for the submission of consultations before CADE; and procedural matters regarding investigations into gun-jumping cases, which are expected to be enacted in 2015. At the time of writing, the period of consultation had already ended, however, no regulation had been enacted. These potential changes may have an impact on the way CADE carries out consultations, especially in order to verify whether certain transactions would require notification under the merger control rules.

In the area of anti-cartel enforcement, CADE’s Administrative Tribunal is expected to decide various cases that were reviewed by the SG in 2014 and that had been under investigation for a few years. The decisions to be rendered in these cases and the approach the SG may take with respect to new investigations are issues that deserve attention from the antitrust and business communities, as they may frame the enforcement environment for the next few years. Additionally, CADE is expected to end the trial regarding the Cement cartel, which is pending analysis of appeals filed by the defendants.

ii Analysis
Brazil is a dynamic jurisdiction for competition law, as the developments in the past 10 years have shown. The new competition law framework, that has in place for almost two years, has been reasonably successful so far. As it develops, however, it is natural that new challenges will appear. It is expected, nevertheless, that CADE will be able to deal with these challenges adequately, given the difficulties that it has already overcome recently and considering the overall evolution of competition law and policy in Brazil.
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