CADE's Tribunal without minimum quorum to make decisions

VEIRANO ADVOGADOS

Background



According to the Brazilian Competition Act, transactions approved by CADE's General-Superintendent can only be implemented **after the end of a 15-day period appeals or requests for further review by CADE's Tribunal**.

What is the composition of CADE's Tribunal?

CADE's Tribunal is composed by up to **seven members: one President + six Commissioners**.

7



4

Decisions can **only be taken with the presence** of **at least four members.**

On 4 November 2023, the mandate of Commissioner Luis Henrique Braido ended.



Since 5 November, CADE's Tribunal has only three members.



This means that it no longer has the minimum quorum required by law to open judgement sessions.

In this scenario, the law provides that **all legal deadlines are suspended until the quorum is recomposed. This includes the suspension of the 15-day period for appeals or requests for second review in merger cases**.

CADE is not fully paralyzed!

Cases submitted to CADE during this period continue to be analyzed and, oftentimes, have their analysis concluded.

Nevertheless, during the suspension of deadlines, companies that have their transactions approved by CADE's General-Superintendent cannot implement them. It will be necessary to wait until the minimum quorum is recomposed and the elapsing of the 15-day waiting period, except in case of authorizations by the Courts of Law.

The recompositing of the Tribunal's minimum quorum depends on:

1. The appointment of a candidate by the President of the Republic;
2. Approval of the candidate by the Senate; and
3. The candidate formally taking office.

Precedent!

2019

Was the year in which this situation happened for the last time.

83 days

Is the number of calendar days that CADE's Tribunal remained without minimum quorum on that occasion.
Between 16 July and 7 October.

150+

Approximate number of transactions that had their timetables for closing affected.

Our Antitrust & Competition team is at your disposal
to clarify any questions about this subject.

Results-oriented law practice

veirano.com.br

VEIRANO
ADVOGADOS