

Antitrust/Competition

How transformations in Brazil's retail market are affecting the geographic relevant market definition

Brazil's retail sector is experiencing an increase in M&A transactions in comparison to its performance in recent years. Such movement has relied substantially on the food retail market, which is highly competitive and has taken advantage - in contrast to other industries - of a boost during the Covid-19 pandemic, intensifying the movement for online orders, which previously was not very explored for food purchase.

In view of the transformations in the consumer experience, CADE has reassessed its past practice for the definition of geographic relevant market in transactions involving the sector. Traditionally, when analyzing such markets, CADE concentrated its analysis based on the distance that the consumer would be willing to travel to make purchases, using a hypothetical radius of competing stores.

In view of such changes in the reality of the market, CADE has incremented its traditional methods of analysis, starting to use complementary methodologies such as "C75" - which uses the distance obtained by verifying the concentration of 75% of registered consumer addresses - in Merger Act No. 08700.003654/2021-42. More recently, CADE has developed its own method to verify the influence between competitors based on the real travel time of the consumer by private vehicle between locations, which was applied in Merger Acts No. 08700.002595/2022-76 and 08700.004575/2022-30.

Indeed, especially in the post-Covid-19 scenario, there has been an appreciation of the perspective of the time taken to obtain the product by the consumer as a competitive factor - whose relevance is second only to price - and, likewise, the antitrust authority has been signaling its responsive positioning towards realigning its criteria and capturing such dynamics more reliably.

More importantly, these analytical adaptations taken by CADE can be used in other scopes outside the food retail market. After all, among the innovations present in the sector, "dark stores" retail stands out, where the consumer can make everything from convenience purchases to shopping for the entire home, and receive it at home, on Supermercado Justo or the various apps specialized in ultra-fast delivery, such as Rappi Turbo, Daki, and Ifood Rápido.

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The approach tested by CADE seems appropriate and necessary, since a good part of the competitive advantage in this sector is based on the ability to get the products to the consumer as quickly as possible. However, going forward, it is possible to conjecture the applicability of this new methods to other retail sectors, including durable goods, an area which has experienced an improvement in its logistics structure to provide same-day deliveries and/or pickups.

Therefore, it is important to continue monitoring the next developments taken by CADE in the retail sector; it seems that the authority is aligning its review methods with the changes experienced by the sector and that such improvements in the geographic analysis may bring greater complexity and less predictability to the analysis undertaken by CADE in M&A transactions in the food retail sector.



Practice Area News

Big-Tech companies in Cade's sight regarding stance on "Fake News PL". The General Superintendence of the Administrative Council for Economic Defense (SG/CADE) opened Preliminary Inquiry nº. 08700.003089/2023-85 to investigate potential abuse of dominant position by Google and Meta in the context of discussions regarding Draft Law No. 2630, known as the "Fake News PL". This decision was taken following the receipt of denunciations that Google and Meta were allegedly using their platforms to conduct campaigns against the draft.

CADE's Tribunal refuses a healthplan market transaction clearance - an alert to the sector. CADE's Tribunal rejected the acquisition by Hapvida of the health plan business of the Smile Group, establishing the case as an important precedent in the sector, considering that CADE has not rejected a transaction since 2018. The analysis performed by the authority showed significant concerns arising from the acquisition and since there was no proposal of remedies by the applicants, it was rejected by the majority of CADE's Tribunal.

Brazilian's antitrust community awaits CADE's new guide on analysis of Vertical Integrations. CADE's General Superintendence ("SG") is developing a Guide for Analysis of Vertical Integrations in Merger Acts. The assigned drafting group - which is also supported by CADE's Economic Studies Department, a work team gathered by the Brazilian Institute of Studies on Competition, Consumer Relations and International Trade ("IBRAC") and more recently, a hired Technical Consultant - will benchmark norms and guidelines and elaborate recommendations for CADE's addressing of the matter in future cases.

In the Firm

Felsberg's Antitrust practice debuts on The Legal 500 and is recognized as Tier 5

Felsberg Advogados is a full-service law firm which celebrated 50 years in practice in 2020. Founded in 1970 by Thomas Felsberg, the firm has always had an innovative spirit at the core of everything it does. Felsberg Advogados' broad and all-encompassing vision enables the firm as a team to meet the current and future legal requirements of all clients, from the biggest corporate groups to the freshest of startups. The firm is committed to supporting social, cultural and educational projects, restructuring and expanding its pro bono program in 2021 and becoming a partner of Instituto Pro Bono in 2022, with the objective of combating inequality in the access to justice. Respect for diversity is reflected in the firm's values. Among partners, almost 50% are women, and within the office, 63% are women; diversity is ensured by DiversiFeA, the firm's Committee of Equity, Diversity and Inclusion. The firm's international practice is reinforced by its membership in the world's leading law firm networks - Felsberg Advogados is the Brazilian representative for both Meritas and Legalink. Our lawyers have in-depth understanding of different legal cultures and regulatory environments in other countries. Many are fluent in several languages with prior experience in international firms, and some are qualified to practice law in Brazil as well as abroad.

Felsberg advises Rappi on the acquisition of Box Delivery. The deal was unconditionally approved by CADE in May, 2023.

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