

## Competition

### Recomposition of CADE's Tribunal: A Brief Profile

After over a month of paralysis, the swearing-in of the four new members of CADE's Tribunal — which took place on December 27th — restored the quorum of the council, allowing the deadlines for administrative proceedings and the activities of the Tribunal as a whole to resume.

While the new appointments and the actual occupancy of the vacant positions have had an immediate impact, it is interesting to note that the new composition of the Tribunal, currently made up of a majority of the new appointees, may have a greater impact in the future.

In this sense, it is important to note that the indications made by Brazil's President of the Republic and approved by the Senate were already speculated upon and largely expected. In a simple overview, as it will be seen further, two of the new members previously worked or were recently working in the authority and one of them directly contributed to the current Brazilian competition defense law, Law No. 12,529/2011.

Another quick observation shows that there is also a sense of maintenance in the Council's dynamics, considering that the appointments still preserve some characteristics of the predecessor' Council structure: only one of the members brings an economic background and only of them is a woman.

It is noteworthy that the sense of continuity even applies to the authority's recent agendas and the academic profile of the appointees.

For example, Commissioner Camila Cabral, the authority's former chief economist in 2013, has conducted extensive research on markets with intense innovation and digital markets in general, an agenda that has been widely discussed in recent years.

Furthermore, Commissioner Diogo Thompson, recently former Deputy Superintendent of the PFE-CADE, has an extensive academic production linked with Leniency Agreements. These agreements have been declining globally, which is a concern that has already been expressed by authorities worldwide,



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including CADE which recently has been restating the importance of reinvigorating the program.

Additionally, Commissioner Carlos Jacques - who participated in the drafting process of Brazil's antitrust law and has been a consultant in economic law for the Senate — and José Levi do Amaral Júnior, whose career includes extensive contributions to the theory of constitutional law and the Brazilian state, contribute to the team vast experience in other aspects.

It is therefore possible to deduce that the new composition of CADE's Tribunal suggests a desire for continuity in the Court's recent work. Additionally, the most debated agendas that were already previously received with majority consensus by the later composition will likely remain prominent, without prejudice to the arising of new discussions in the themes that were not resolved.

Although the current situation brings a sense of stability and even a certain predictability to the antitrust community, it is important to wait for the next chapters to unfold. The first CADE's Judgment Session with the new composition is scheduled for February 7, 2024.





## Practice Area News

**Ministry of Finance Opens Public Consultation on Big Tech Competition Regulation.** The **MINISTRY OF FINANCE** has launched — on **January 19** — a public consultation on the “*Participa+ Brasil*” platform, seeking contributions from society on the economic and competitive regulation of digital platforms in Brazil, asking whether amendments should be made to the Brazilian Competition Law, whether new regulation is needed, what aspects should be regulated, and how to coordinate government action to address the issue.

**Expectations for CADE’s Judgment on the OAB Fee Schedule.** The Federal Prosecutor’s Office of **CADE** has presented its opinion in the **Administrative Proceeding No. 08012.006641/2005-63**, which discusses whether the Brazilian Bar Association’s (“OAB”) fee schedule violates antitrust laws. This is the last technical opinion that was missing in the procedure that began in 2010, joining **CADE**’s Superintendence General understanding, against what was argued by the Federal Attorney General’s Office in **CADE**. Due to said lack of consensus, the antitrust community is awaiting the final judgment of the case by **CADE**’s Tribunal, although it is not possible to forecast when the case will be put on the agenda.

**CADE Opens Another Administrative Procedure Targeting Schedule of Fees.** **CADE** has installed another administrative procedure – resulting from an investigation that began in 2017 – related to the discussion of fee schedules, which has been a frequent topic of interest through the years by the authority as seen above, this time directed at the Brazilian National Federation of Journalists and 23 regional journalist unions.

## In the Firm

- Founded in 1970 by Thomas Felsberg, Felsberg Advogados is a full-service law firm with an innovative spirit that permeates its approach to meet diverse legal needs, from corporate giants to startups. Committed to social causes, Felsberg expanded its pro bono program in 2021, partnering with Instituto Pro Bono in 2022 to address justice access inequalities. Diversity is a core value, with nearly 50% female partners and 63% women in the office, overseen by the DiversiFeA committee. Internationally, the firm strengthens its practice through membership in Meritas and Legalink, offering lawyers fluent in multiple languages and well-versed in global legal environments.
- Felsberg’s Antitrust Partner Paula Salles was recognized in the latest 2023 *Análise Advocacia Mulher*.

