

### Is a Revision of Resolution 33/2022 on the Horizon?

During the 226th Judgment Session of the CADE Tribunal, Reporting Commissioner Victor Fernandes presented his vote in the context of **Administrative Proceeding for the Investigation of a Merger Act No. 08700.000641/2023-83**, drawing attention to an important discussion to be faced by CADE: the need to review the criteria for mandatory submission of transactions under CADE's merger control.

The case under investigation concerned a gun jumping violation. The parties did not submit the transaction for CADE's review because they believed that they did not meet the revenue threshold criteria under the terms of Resolution No. 33/2022, due to the fact that the parties did not consider the equity funds in their corporate structure to define their economic groups. However, contrary to the parties' initial assessment, CADE's General Superintendence suggested that, since both parties to the transaction had equity funds in their corporate structures whose shares in each of the companies were equal to or greater than 20%, they objectively should be deemed as part of the economic groups of these funds.

The Reporting Commissioner conducted a thorough analysis of CADE's precedents, discussing the interpretation of the provisions that stipulate the submission of transactions involving equity funds under Resolution No. 33/2022. It was found that CADE's position as regards the interpretation of Resolution No. 33/2022 concerning investment funds had not been consolidated until then. As a result, the authority ruled in favor of a gun jumping violation, but the parties were exceptionally excused from the imposition of a fine.

As expressed by the Commissioner, considering that more than ten years have passed since the issuance of the first Resolution establishing the current criteria for notification, *"it is imperative that CADE reconsiders the hypotheses of configuration of unitary management for the purposes of merger control, especially in the face of the emergence of corporate arrangements with dispersed and pulverized shareholdings"*.

It is important to note that such discussion has been brought out not only due to the current greater



Paula Salles

[psal@felsberg.com.br](mailto:psal@felsberg.com.br)



Maria Paula  
Pereira de Andrade

[mpp@felsberg.com.br](mailto:mpp@felsberg.com.br)

complexity of corporate structures, since other challenges are also insurgent, such as the amounts stipulated as the revenue legal thresholds. The need to update these amounts set forth by CADE is not unanimous among the antitrust community, but there is a consensus on the importance of taking action given the increasingly high number of deals submitted to the authority each year. For instance, up to March of this year, as reported by the authority on its social media, CADE has already analyzed 126 mergers. Along with other suggested proposals, the creation of additional criteria linked to the value of the transaction and/or the acquired asset is also being discussed.

This issue has already been raised in the peer review conducted by the OECD for CADE's admission to its competition committee. OECD has recommended regular evaluation of the notification criteria to the authority, in order to avoid over-notification of cases. The debate is gaining momentum. And, with the recent highlight on the matter, it is expected that this will soon be on the authority's agenda.





## Practice Area News

**CADE Publishes a New Guide Regarding Trustees.** On April 2, CADE's General Superintendence issued a "Guide for the use of Trustees". The guide aims to standardize and improve the use of trustees to monitor the parties' compliance with decisions or agreements with the Authority.

**President Lula Indicates New Names to CADE.** The office of President Luis Inácio Lula da Silva has indicated to the Senate the names to fill the positions of General Superintendent (the highest position in CADE's General Superintendence) and Chief Prosecutor (the highest position in CADE's Specialized General Prosecutor's Office) in CADE.

For the Superintendence, the president reappointed Alexandre Barreto, who already holds the position, and for the Prosecutor's Office, André Luís Macagnan, replacing Juliana Domingues, whose mandate ends on April 13.

**Cooperatives Condemned for Gun Jumping by CADE.** In an analysis of two transactions involving agricultural cooperatives (Administrative Proceedings for the Investigation of a Merger Act No. 08700.009227/2022-59 and no. 08700.003705/2023-06), CADE's Tribunal ordered the mandatory notification of the transactions and condemned the parties for the practice of gun jumping.

In both cases, the authority highlighted that cooperatives act commercially and should therefore be considered as parties to economic transactions. It is important to note that these transactions were not exactly acquisitions, however resulted in factual acquisitions of business, which led CADE's Tribunal to consider them as subject to merger control.

## 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**  
ADVOGADOS