

CADE investigates exchange of sensitive information concerning the employment marketplace

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On March 17, 2021, CADE opened Brazil's **first administrative proceeding involving anticompetitive conduct concerning the employment marketplace**. The focus of the investigation is the exchange of competitively sensitive information between competitors in the healthcare industry.

According to an opinion issued by CADE's General Superintendence, the investigated companies allegedly created **a group to exchange information** related to terms of employment of professionals in the industry, including compensation policies, benefits and other advantages. The information was supposedly shared: (i) directly between group members; (ii) including the companies' current data and/or future plans; (iii) in a disaggregated and individualized manner, allowing group members to identify the source of the information; and (iv) between group members only (i.e. information was not shared with third parties or made public).

CADE's General Superintendence contends that this conduct: (i) created a basis for consultation and comparison to be used by companies in their decision-making processes, enabling and influencing coordinated conduct within the affected employment markets; (ii) disseminated information among companies' top management teams, enabling and influencing uniform practices among the companies; and (iii) had adverse effects (even if merely potential) on free competition in the affected employment markets, by allowing companies to adopt lower and/or uniform parameters.

In addition to the alleged exchange of competitively sensitive information, the public version of the General Superintendence's opinion suggests that the investigated conduct might also involve hypothetical **coordinated conduct between group members to fix compensation terms and conditions**.

As all documents and factual information related to the case are confidential, we must await developments to see if the evidence supports the allegations.

Even though this is CADE's first administrative proceeding exclusively related to the employment marketplace, similar conduct have been the subject of discussions and investigations by competition authorities in other countries, such as the United States, the United Kingdom, France, Italy and Japan. In addition, the OECD has released guidance on the potentially harmful effects of this type of practice. The opening of the investigation by CADE is therefore an indication that Brazil's competition authority has also been paying attention to this issue and will continue to do so.

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