

Ten years after enactment of Brazil's Competition Law, covid-19 has not affected policy and enforcement

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2021 marks ten years since the Brazilian Competition Law was enacted, and the significant progress that has been made since that time does not seem to have been affected by the covid-19 crisis.

From an institutional standpoint, CADE has succeeded in maintaining its status as one of the most respected competition agencies worldwide. The Brazilian public's awareness of competition law matters has grown significantly thanks to CADE's work on high-profile matters as well as its advocacy efforts, and the strategic value of competition law enforcement is noticeably stronger. Antitrust compliance continues to gain importance in terms of good governance.

CADE has indicated that it will continue to enforce its agenda, circumstances allowing, despite the fact that the effects of the pandemic are expected to last well into 2021. In fact, there has been no noticeable change in terms of merger review and anticompetitive conduct enforcement in the recent past.

Early on in the pandemic, CADE made it clear that the authority would be very cautious about accepting the pandemic as a defense either for mergers that would not be otherwise approved (under a failing firm argument, for instance) or as a defense in the context of an anticompetitive behavior. A general principle repeated publicly and constantly by CADE officials - and even reflected in at least one merger case reviewed by CADE's Tribunal - is that no permanent change with enduring potential negative effects would be accepted to address a temporary situation such as this crisis.

Looking back, the balance sheet for CADE's merger-related work is generally positive, from the perspective of both the efficiency and the quality of the decisions - and, as said, there was no expectation that the pandemic would change the scenario. Looking ahead, the authority has been consistently voicing concerns about killer acquisitions and the sufficiency of current notification thresholds to capture all transactions of interest for effective competition enforcement.

In terms of conduct enforcement, Brazil has been comparatively less affected by the downturn in cartel investigations that has been observed worldwide in recent years. Even so, there is an undisputed global decrease in leniency applications, and cases at CADE are moving at a slower pace: some recently

launched local investigations are still outcomes of Operation Car Wash, which has accounted for most of CADE's work on cartel matters since at least 2014. CADE's cartel settlement program has remained quite active, and the authority has signaled that the bar should be raised in terms of contributions and payments required to settle.

Closer attention to unilateral conduct is a trend that has been reported by CADE's officers in several public statements in recent years. While this agenda for future action on dominance cases is still gaining traction, new cases have been made public and it is expected that this policy trend may be increasingly reflected in statistics, with no impact by covid-19 on the trend.

In fact, very early on in the pandemic, CADE sent out a clear message to the market stating that it was already monitoring the behavior of companies: it launched an investigation into possibly abusive price increases, asking major players for price history information for a long list of products for which demand had increased at that time, such as masks, hand sanitizer and medication for covid-19 symptoms.

In this context, official appointments that are due to take place later in 2021 will be pivotal for competition policy in Brazil. The terms of office for CADE's Tribunal Chair and one other Commissioner, as well as CADE's General Superintendent, expire this year.

Their replacements will naturally play a key role in continuing the authority's work, and become especially important in a context where the Tribunal has been much more active and thorough in its oversight of the General Superintendence's work.

**This content is part of the e-book "A Post-Covid World, the ESG Agenda and Other Trends in 2021: Insights for Foreign Investors in Brazil". [Click here to view all the articles.](#)*

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