CADE launches public consultations on merger control rules and Internal Procedures

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Barbara Rosenberg
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The Brazilian Competition Authority has opened two public consultations that may significantly affect merger filing analysis, fast-track eligibility, procedural strategy, and engagement with CADE. The proposals seek to make filing requirements more predictable and comprehensively reform CADE's Internal Rules. Public comments may be submitted until November 6, 2026.

On September 23, 2026, the Brazilian Competition Authority (*Conselho Administrativo de Defesa Econômica* – CADE) launched two public consultations with potentially significant implications for competition matters in Brazil. One proposes amendments to CADE Resolution No. 33/2022, which governs merger notification requirements and the fast-track review procedure. The other proposes a comprehensive reform of CADE's Internal Rules and, more broadly, its procedural and institutional framework.

The proposed amendments to Resolution No. 33 seek to make filing requirements more predictable, refine the criteria for fast-track review, and reduce notifications of transactions that are unlikely to produce material effects on competition. Among the most relevant changes, the proposal would:

- clarify the definition of economic group for turnover calculation purposes;
- introduce specific rules for calculating turnover in transactions involving the transfer of businesses;
- improve the framework for determining control;
- revise the treatment of minority share acquisitions by focusing notification requirements on transactions that confer control or result in an acquisition or cumulative increase of at least 20% in the relevant shareholding; and
- require a reasoned decision for CADE to convert a case from the fast-track to the ordinary (non-fast track) procedure.

This includes, importantly, changes concerning (i) the exclusion of the seller from the turnover test in the case of certain acquisition deals, and (ii) the exclusion of minority acquisitions below 20% of the definition of "concentrations" – i.e., if the changes are approved, the acquisition of a >5% interest in competitors or vertically related companies would no longer be required.

Although the proposal is intended to reduce the number of transactions requiring notification, CADE emphasized that it would retain its statutory authority to require the submission of a non-reportable transaction within one year after closing—its “call-in” power. CADE also indicated that transactions involving concentrated industries, cross-shareholding structures, strategic assets, technological developments, disruptive competitors, or emerging business models may attract closer scrutiny even when they fall below Brazil’s mandatory filing thresholds.

As to the consultation regarding CADE’s Internal Rules, it proposes the most extensive revision of CADE’s procedural framework in recent years. It would consolidate rules currently dispersed across separate resolutions, formalize institutional practices, and introduce new governance, transparency, and public-participation mechanisms.

The proposed changes include:

- the creation of a Competition Policy Governance and Planning Committee, responsible for coordinating strategic initiatives across CADE’s various units;
- the publication of an enforcement priorities agenda;
- the inclusion of specific proceedings for CADE’s competition advocacy activities;
- new forms for public participation in proceedings, including the formal introduction of amicus curiae;
- new transparency measures; and
- procedural changes concerning investigations, injunctions, merger review proceedings and confidentiality provisions.

If adopted, the proposals should provide greater visibility into CADE’s enforcement and policy priorities and more detailed rules for issues historically shaped by precedent and practice.

For businesses and transaction parties, the proposals may affect both the initial assessment of whether a transaction must be notified and the procedure followed once a filing or other matter reaches CADE. The amendments therefore merit attention not only from parties contemplating transactions, but also from companies exposed to investigations, advocacy proceedings, or requests for public participation before the authority.

Both consultations are open for public comments until November 6, 2026.

BMA is reviewing the proposals and will participate in working groups preparing submissions to CADE. Our Competition team is also available to discuss the proposals and their potential implications for specific businesses or transactions.

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