

COMPETITION LAW

*What your company needs to know
before closing a deal*

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Corporate transactions such as mergers, incorporations, and acquisitions, discussed in our latest Corporate Newsletter, require not only negotiation between the parties, but also **special attention to competition law and to the rules on prior notification to the Administrative Council for Economic Defense** ("CADE"), which can directly impact the validity and success of the transaction.

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The Brazilian Competition Defense System

Brazilian Law 12,529 of November 30, 2011, establishes the legal framework for competition defense in Brazil and designates CADE as the authority responsible for reviewing transactions, investigating anticompetitive conduct and performing the preventive control of concentrations that may affect the market.

This control is mandatory for various corporate transactions, including those carried out abroad that produce effects in Brazil.

CONCENTRATION ACTS:

WHEN MUST A TRANSACTION BE SUBMITTED TO CADE?

The following are considered concentration acts:

- Mergers
- Acquisitions of control (majority, minority, sole, or shared)
- Incorporations
- Associative contracts

Such transactions may be submitted to CADE for review to ensure that they do not result in anticompetitive effects, as parties may formally seek the authority's prior opinion on a preventive basis.





The Resolution CADE No. 33 of April 14, 2022 sets out specific thresholds and **parameters to determine when acquisitions must be notified.**

Despite the conceptual differences between mergers and acquisitions, both may require notification to CADE, **even when they do not increase market power.**

When Is Notification to CADE Mandatory?

The prior notification to CADE ceases to be optional when the concentration act involves economic groups whose turnover in Brazil reaches the following thresholds:

- One group has a turnover of at least BRL 750 million;
- The other group has a turnover of at least BRL 75 million.

Importantly, the value of the deal is not the determining factor, what matters is the turnover of the parties. International transactions may also require notification if they produce effects in the Brazilian market.

GUN JUMPING:

A RISK YOUR COMPANY CANNOT AFFORD

Two companies acting as if they were already one

before CADE's mandatory approval

constitutes gun jumping, which may lead to:

- i. fines of up to BRL 60 million;
- ii. nullity of acts already performed; and
- iii. opening of an administrative investigation.

Specialized legal guidance is
**essential to avoid delays,
penalties, and competitive risks.**

How does CADE review these transactions?

CADE assesses:

- 1. the relevant market;**
- 2. market structure** and **market share;**
- 3. risk of market foreclosure** or abuse of dominant position;
- 4. possible remedies**, whether structural (such as divestments) or behavioral;
- 5. whether the transaction qualifies for a fast-track review**, applicable to low-risk cases.

CONCLUSION: **LEGAL CERTAINTY IS ESSENTIAL**

To ensure that mergers, incorporations, and acquisitions are completed safely, it is crucial to:

- **assess in advance** whether notification to CADE is required;
- **map out competitive risks;**
- **prevent** gun jumping;
- **structure the transaction** in compliance with the applicable legislation.

Our firm provides strategic support in corporate and competition matters, **ensuring regulatory compliance, efficiency in the review process, and security for your company's continued growth.**

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