



ICN WEBSITE

Template pursuant to Section 3 (a) of the ICN Framework on Competition Agency Procedures

[Agency name, Jurisdiction]

The following template is submitted by the **Administrative Council for Economic Defense – CADE, Brazil**, pursuant to Section 3(a) of the ICN Framework on Competition Agency Procedures (“CAP”).

I. Introduction

Please add brief presentation/link to agency website.

On the official website of the Administrative Council for Economic Defense (CADE), one can find detailed information about its functions, structure, and activities related to competition law enforcement in Brazil. CADE’s website provides access to various resources and documents, including:

1. Guidelines and Regulations: CADE's guidelines on merger control, anticompetitive practices, leniency agreements, and other relevant topics.
2. Decisions and Case Law: Access to CADE's decisions, rulings, and case summaries, which offer insights into the application of competition law in specific cases.
3. Forms and Templates: The website provides downloadable forms and templates related to filings, notifications, and other procedural requirements.
4. Publications: CADE publishes reports, studies, and research papers on competition-related topics, which are available on the website.
5. News and Press Releases: Updates on CADE's activities, news articles, and press releases related to significant cases, regulatory changes, and events.
6. FAQs and Contact Information: Frequently asked questions about competition law and enforcement in Brazil, along with contact information for different departments and units within CADE.

CADE’s website is available at <https://www.gov.br/cade/pt-br>.

Please bear in mind that CADE’s website is primarily available in Portuguese, but some information is also accessible in English as well at: https://www.gov.br/cade/en?set_language=en.

II. Laws, Regulations, and Policies relevant for the implementation of the CAP

For each CAP Principle below, please explain how your competition law investigation and enforcement procedures meet the Principle. Please highlight important features relevant for the implementation of the CAP and explain limitations, if applicable. Feel free to include links or other references to related materials such as relevant legislation, implementing rules and regulations, and guidelines where helpful and appropriate.

Please update your Template reflecting significant changes as they relate to the CAP, as needed.

b) Non-Discrimination

Each Participant will ensure that its investigation and enforcement policies and Procedural Rules afford Persons of another jurisdiction treatment no less favorable than Persons of its jurisdiction in like circumstances.

CADE enforces competition law¹ on a non-discriminatory basis, treating individuals and entities from other jurisdictions no less favorably than Brazilians in like circumstances.

This assertion is supported by the Competition Law.

According to article 2 of the Competition Law: “[the law] applies, without prejudice to agreements and treaties of which Brazil is a signatory, to practices conducted, totally or partially, in the national territory, or that produce or may potentially produce effects in it”. This means that CADE's jurisdiction extends to actions that occur within Brazil or have an impact on the country, regardless of the nationality or origin of the individuals or entities involved. Additionally, article 31 of the Competition Law clearly states its full applicability over “any individuals or legal entities of public or private law, as well as to any associations of entities or individuals, whether de facto or de jure, even if temporarily, incorporated or unincorporated, even if engaged in business under the legal monopoly system”. This broad application ensures that the legal rights and obligations outlined in the Competition Law are equally applicable to any person whose practices occur within Brazil or have effects in the country.

Furthermore, the Brazilian Code of Civil Procedure², which is applied subsidiary to the Brazilian Competition Law, emphasizes the principle of equal treatment for both nationals and non-nationals, whether they reside in Brazil or not. This means that access to justice and procedural protocols must be provided equally to all parties involved, regardless of their nationality.

CADE's approach to international cooperation is guided by various agreements and treaties, such as bilateral cooperation agreements, multilateral frameworks, and regional integration initiatives. These agreements often contain provisions that promote equal treatment and non-discrimination among the participating jurisdictions.

¹ Law 12,529/2011 (the Brazilian Competition Law) is available in English at: <http://en.cade.gov.br/topics/legislation/laws/law-no-12529-2011-english-version-from-18-05-2012.pdf/view>

² Available in Portuguese at: http://www.planalto.gov.br/ccivil_03/_Ato2015-2018/2015/Lei/L13105.htm.

As a matter of fact, CADE is committed to adhering to international best practices and standards in competition law enforcement. It seeks to align its policies and procedures with internationally recognized principles, such as those outlined by the International Competition Network (ICN) and the Organization for Economic Co-operation and Development (OECD). These principles emphasize the importance of providing fair and non-discriminatory treatment to all parties involved in competition proceedings.

CADE ensures that competition law is enforced without discrimination, treating individuals and entities from other jurisdictions no less favorably than Brazilians in similar circumstances. This commitment to equal treatment, as stated above, is supported by the Competition Law itself, as well as the Brazilian Code of Civil Procedure when applicable, affording persons of other jurisdictions fairness, equality, and non-discrimination in investigation and enforcement practices.

c) Transparency and Predictability

- i. Each Participant will ensure that Competition Laws and regulations that apply to Investigations and Enforcement Proceedings in its jurisdiction are publicly available.*
- ii. Each Participant with the authority to adopt Procedural Rules will have in place such rules applicable to Investigations and Enforcement Proceedings in its jurisdiction.*
- iii. Each Participant will ensure that Procedural Rules that apply to Investigations and Enforcement Proceedings in its jurisdiction are publicly available.*
- iv. Each Participant will follow applicable Procedural Rules in conducting Investigations and in participating in Enforcement Proceedings in its jurisdiction.*
- v. Each Participant is encouraged to have publicly available guidance or other statements, clarifying or explaining its Investigations and Enforcement Proceedings, as appropriate.*

CADE ensures that the competition laws and regulations that apply to investigations and enforcement proceedings in its jurisdiction are publicly available. Transparency is a key principle for CADE, and it is committed to providing public access to its laws, regulations, and procedural rules. Laws and regulations governing CADE's investigations and enforcement proceedings are published and made accessible to the public. The primary source of competition law in Brazil is Law 12,529/11, also known as Competition Law, which establishes the Brazilian System of Competition Defense. This law sets out the legal framework for competition enforcement, including provisions related to investigations, mergers, anticompetitive practices, and penalties. The Tax Criminal Law (Law 8,137/1990) and the Public Procurement Law (8,666/1993) set out the criminal provisions applicable to certain antitrust violations under Brazilian law. On a subsidiary basis, CADE complies with the Law of Administrative Procedure (Law 9,784/99), the Code of Civil Procedure (Law 13,105/15) and the Code of Consumer Protection (Law 8,078/90).

Additionally, CADE has its own set of internal rules and procedural guidelines that further detail the processes and procedures followed by the authority in conducting investigations

and enforcement proceedings. These internal rules provide guidance on matters such as case initiation, notification, evidence, hearings, and decision-making. CADE ensures that these competition laws, regulations, and procedural rules are readily available to the public. They can be accessed through CADE's official website, where interested parties, including individuals, companies, and legal professionals, can obtain comprehensive information about the applicable legal framework and procedural aspects governing investigations and enforcement proceedings.

By making competition laws and regulations publicly available, CADE promotes transparency, legal certainty, and access to information, allowing stakeholders to understand and comply with the rules governing competition in Brazil.

CADE, as stated above, has its own set of internal rules that govern the procedural aspects of its investigations and enforcement proceedings. These internal rules provide detailed guidelines and procedures that CADE follows when conducting investigations, reviewing mergers, and addressing anticompetitive practices. They cover various aspects of the investigative and enforcement process, including the initiation of cases, notification of parties under investigation, access to case files, submission of evidence, hearings, defenses, decision-making, and appeals. The internal rules outline the rights and obligations of the parties involved and establish the procedural framework that CADE follows in ensuring fair and effective competition enforcement.

The rules set out in the Competition Law are supplemented by regulations, resolutions and decrees issued by CADE. It is worth mentioning: (i) Resolution 22/2019, updated by Regimental Amendment 01/2020, which sets forth CADE's Internal Regulations and procedural rules applicable to both mergers and investigation conduction; (ii) Resolution 33/2022, which sets forth the fast-track procedure in merger reviews; (iii) Resolution 12/2015, which governs the consultation process before CADE, allowing parties to inquire about interpretations of the law. Moreover, CADE has issued guidelines on specific topics, such as remedies, horizontal mergers, gun jumping, leniency and compliance.

CADE's procedural rules are designed to ensure transparency, due process, and consistency in investigative and enforcement activities. They provide a clear framework for the parties involved, outlining their rights and obligations throughout the proceedings. By adopting procedural rules specifically applicable to investigations and enforcement proceedings, CADE aims to ensure the proper conduct of its activities and the protection of the rights of the parties involved. These rules contribute to the integrity and effectiveness of CADE's competition enforcement process.

CADE ensures that its procedural rules that apply to investigations and enforcement proceedings in its jurisdiction are publicly available. CADE's procedural rules, known as Internal Regulations, are publicly accessible on CADE's website and provide comprehensive guidelines on the procedures followed by CADE during investigations and enforcement proceedings. These rules outline the rights and obligations of the parties involved, the steps involved in the process, and the principles followed by CADE in conducting its activities.

The Internal Regulations are indeed published on CADE's official website and can be accessed by the public, including the parties under investigation, interested third parties, legal practitioners, and the general public as a whole. They serve as a reference for understanding the procedures and requirements that govern CADE's investigations and enforcement

actions. By making its procedural rules publicly available, CADE aims to promote transparency and provide stakeholders with a clear understanding of the rules and procedures that govern its activities. This allows for greater accountability and ensures that the parties involved have access to the information necessary to participate effectively in the proceedings.

All procedural rules are publicly available at CADE's website. Parties can request procedural correction if deemed appropriate.

To enhance transparency, CADE has implemented the Electronic System of Information (SEI), which serves as the official system for managing its electronic documents. In each proceeding, there are separate public and restricted case files, as appropriate. Restricted case files refer only to confidential investigations listed as restricted or merger acts whose Notice has not yet been published, instrument by which Cade makes the analysis of the operation public. Public case files are accessible online through SEI, allowing public consultation and providing increased transparency regarding ongoing cases.

Furthermore, CADE's judgment sessions are livestreamed and made available to the public on CADE's website. This initiative ensures that interested parties can observe the decision-making process and promotes greater transparency in CADE's activities. Sessions schedules are published biannually, trial dockets up to 72 hours before the respective Ordinary Judging Session (OJS), trial minutes within 5 business days after the OJS. Furthermore, cases allocation sessions are also made available through audio and have their minutes published.

CADE follows applicable procedural rules in conducting investigations and participating in enforcement proceedings in its jurisdiction. CADE is bound by its own Internal Regulations, which provide detailed procedures and guidelines for conducting investigations and participating in enforcement proceedings. These rules outline the rights and obligations of the parties involved, the steps to be followed, and the principles that guide CADE's actions. These procedural rules ensure that investigations and enforcement proceedings are conducted in a fair, transparent, and consistent manner. They provide a framework for the parties involved to exercise their rights, present their defenses, and engage in meaningful participation throughout the process.

By adhering to these procedural rules, CADE aims to ensure due process, protect the rights of the parties, and maintain the integrity of its investigations and enforcement actions. This includes following proper notification procedures, allowing for the submission of defenses and evidence, conducting hearings and meetings as necessary, and issuing decisions based on a thorough and objective analysis of the facts and applicable laws. The application of procedural rules helps to safeguard the integrity and effectiveness of CADE's investigations and enforcement proceedings, and ensures that all parties involved are treated fairly and have the opportunity to present their cases and arguments.

CADE provides publicly available guidance and other statements that clarify and explain its investigations and enforcement proceedings. CADE has issued non-legally binding guidelines and documents that aim to provide guidance and transparency regarding its practices and procedures. These materials, which do not modify Law 12.529/2011, CADE'S Internal Regulations and Resolutions, are made publicly available and serve as references for the parties involved, legal practitioners, and the general public. Practices and procedures

described therein can be altered at the discretion of Cade's convenience and opportunity, depending on the circumstances of the specific case.

CADE has published guidelines on specific topics such as merger control, leniency agreements, cease and desist agreements, and remedies. These guidelines provide detailed explanations of CADE's approach, criteria, and procedures in handling cases related to these areas. They help parties understand the requirements, expectations, and possible outcomes of their interactions with CADE during investigations and enforcement proceedings.

CADE may issue public statements, press releases, or explanatory notes to provide further clarification or explanations regarding specific cases, legal interpretations, or changes in its procedures. These statements contribute to enhancing the understanding of CADE's investigative and enforcement practices and promote transparency in its decision-making process.

By making these guidance materials and statements publicly available, CADE aims to ensure that stakeholders have access to information and insights that can help them navigate the investigations and enforcement proceedings effectively. It also promotes consistency and predictability in CADE's actions, contributing to a clearer understanding of its approach to competition matters in Brazil.

d) Investigative Process

- i. Participants will inform any Person that is the subject of an Investigation as soon as practical and legally permissible of that Investigation, according to the status and specific needs (e.g., forensic considerations) of the Investigation. This information will include the legal basis for the Investigation and the conduct or action under Investigation.*
- ii. Participants will provide any Person that has been informed that it is the subject of an Investigation, or that has notified a merger or other transaction or conduct, with reasonable opportunities for meaningful and timely engagement on significant and relevant factual, legal, economic, and procedural issues, according to the status and specific needs of the Investigation.*
- iii. Participants will focus investigative requests on information that they deem may be relevant to the competition issues under review as part of the Investigation. Participants will provide reasonable time for Persons to respond to requests during Investigations, considering the needs to conduct informed Investigations and avoid unnecessary delay.*

CADE informs any person who is the subject of an investigation as soon as it is practical and legally permissible to do so. CADE ensures that the notification is provided promptly and takes into account the status and specific needs of the investigation, including any forensic considerations.

When initiating an investigation, CADE notifies the person under investigation by delivering a notice that contains the necessary information regarding the investigation, such as the

identification of the respondent, description of the alleged conduct, reference to the legal provision related to the presumed violation, and the opportunity to present a defense within the prescribed legal term.

The notification process aims to provide the person under investigation with knowledge of the allegations and an opportunity to respond and present their defense effectively. CADE follows the applicable procedural rules and regulations to ensure fairness and due process throughout the investigation.

When CADE notifies a person who is the subject of an investigation, the information provided includes the legal basis for the investigation as well as the specific conduct or action that is under investigation. The notification will clearly identify the alleged violation or misconduct and reference the relevant legal provision that is being invoked.

This is done to ensure transparency and allow the person under investigation to understand the specific allegations and legal framework that form the basis of the investigation. By providing this information, CADE enables the person to prepare an appropriate defense and address the allegations against them in a meaningful manner.

Regarding the investigation of anticompetitive conducts, CADE ensures that any person who is subject to an investigation at the level of an administrative proceeding is provided with the rights to an adversarial proceeding and full defense. According to CADE's Internal Regulations, as stated in article 147, the opening of a formal investigation follows the notification of the person under investigation. The notification must include: (i) identification of the respondent and, if applicable, the complainer; (ii) description of the illegal conduct attributed to the respondent, with the identification of the facts to be assessed; (iii) identification of the legal provision in connection with the presumed infringement; and (v) determination for the respondent to present a defense within the legal timeframe, specifying the to be produced and providing the full identification of up to three witnesses. This process allows for a comprehensive understanding of the accusation and enables the respondent and interested third parties to engage meaningfully by presenting factual, juridical, and economic information relevant to the case.

CADE provides any person who has been informed that they are the subject of an investigation, or who has been notified of a merger or other transaction or conduct, with reasonable opportunities for meaningful and timely engagement on significant and relevant factual, legal, economic, and procedural issues.

CADE recognizes the importance of allowing the parties involved to actively participate in the investigative process. This includes providing opportunities for the parties to present their arguments, evidence, and defenses, as well as to engage in discussions on relevant matters related to the investigation. This engagement can involve addressing factual discrepancies, legal interpretations, economic analysis, and procedural considerations.

By offering reasonable opportunities for engagement, CADE ensures that all parties have a chance to present their perspectives, provide additional information, and clarify any issues or

concerns. This allows for a more comprehensive and informed decision-making process, promoting fairness and transparency in the proceedings.

In the context of merger assessment, the Brazilian Competition Law states the publication of a public notice after the notification of a merger or its amendment in accordance to article 53, § 2 of the law. During the merger assessment process, the merging parties and interested third parties have the opportunity to engage and provide relevant factual, juridical and economic facts that they consider appropriate. In addition, if enabled in the proceeding, an interested third party is allowed to appeal to CADE's Tribunal (article 65, item I of the Competition Law).

CADE focuses its investigative requests on information that it deems may be relevant to the competition issues under review as part of the investigation. CADE's approach is to gather information that is necessary and useful for the assessment of the competition concerns involved in a case.

During an investigation, CADE has the authority to request information, documents, data, and other evidence from the parties involved or third parties that may have relevant information. These requests are targeted to obtain the information that is specifically related to the competition issues being examined.

By focusing on relevant information, CADE aims to ensure that its investigations are efficient and effective in assessing potential anticompetitive conduct or mergers. This approach allows CADE to gather the necessary evidence to make well-informed decisions while minimizing unnecessary burdens on the parties involved or third parties who are requested to provide information.

CADE provides reasonable time for persons to respond to requests during investigations. CADE recognizes the importance of allowing parties and other relevant persons sufficient time to provide their responses and submit the requested information.

The specific timeframe for responding to requests may vary depending on the complexity of the case, the nature of the information requested, and other relevant factors. CADE aims to strike a balance between conducting thorough and informed investigations and avoiding unnecessary delays.

By providing reasonable time for responses, CADE ensures that the parties have adequate opportunity to gather and submit the requested information, present their arguments, and participate effectively in the investigative process. This allows for a fair and transparent assessment of the competition issues under review.

Case review meetings between CADE and the respondents, as well as between CADE and interested parties, can be scheduled at any time, upon request by the respondents, third parties or the authority itself. These meetings take place at CADE and a concise description of meeting's subject, a list of attendees are made available in the public case records after the meeting is held.

Access to the case files is ensured to the respondent (according to article 70, § 4 of the law), with the exception of sensitive information related to competitors or legal confidentiality. In addition to notifications throughout the investigation, when the proceeding is submitted for

judgement, the person under investigation may still present final allegations within 15 business days.

Furthermore, CADE's Tribunal final decision is published within five (5) business days in the Federal Official Gazette containing a detailed description of the investigation, the violations assessed, and the penalties imposed.

e) *Timing of Investigations and Enforcement Proceedings*

Each Participant will endeavor to conclude its Investigations and aspects of Enforcement Proceedings under its control within a reasonable time period, taking into account the nature and complexity of the case.

CADE endeavors to conclude its investigations and aspects of enforcement proceedings within a reasonable time period, considering the nature and complexity of the case. CADE recognizes the importance of efficiency and timeliness in its proceedings to ensure effective enforcement of competition law.

While the specific timeframe for each case may vary depending on its particular circumstances, CADE strives to handle investigations and enforcement proceedings in a timely manner. The aim is to balance the need for thorough analysis and decision-making with the goal of avoiding undue delays.

The Brazilian Competition law states that mergers are to be reviewed in 240 days (article 88, § 2). This deadline can be extended by an additional 60 days at the request of the parties (article 88, § 9, I), or by no more than 90 days, based on a reasoned decision of the Tribunal (article 88, § 9, II). In view of article 88, §2° and §9° of the Competition Law, if CADE fails to comply with the established deadlines, the merger will be automatically approved. Therefore, there are legal incentives for procedural promptness and administrative efficiency in case assessments. Cases under the fast-track procedure are to be decided within 30 days after the filing (Resolution 16/2016).

Regarding investigations and enforcement proceedings, the Competition Law and CADE's Internal Regulation (from article 139 to 161) provide a specific set of rules and timeframes applicable to these processes. Failure to comply with these timeframes without reasonable justification can result in administrative, civil, and criminal liabilities, for the responsible parties (as provided in articles 68 and 82 of the law).

The competition law and CADE's Internal Regulation aim to provide legal certainty to the parties involved in the assessment process, taking into consideration the nature and complexity of the case.

Furthermore, these efforts are aligned with Brazil's Public Administration's Multiannual Plan (PPA), which establishes public policies and measures to achieve specific goals. Within CADE's goals, outlined in the PPA, the following targets are set up: (i) "To review mergers in a timely manner, maintaining the average timeframe of fast-track proceedings review below 30 days, prioritizing the resolution of competition concerns by means of agreements."; (ii) "To

investigate violations against the economic order in a timely manner so that the number of cases under investigation for more than 5 years does not exceed 20% of the backlog.”

By seeking to conclude investigations and enforcement proceedings within a reasonable period, CADE aims to provide legal certainty to the parties involved and promote the efficient functioning of the competition enforcement system.

f) Confidentiality

- i. Each Participant will have publicly available rules, policies, or guidance regarding the identification and treatment of confidential information.*
- ii. Each Participant will protect from unlawful disclosure all confidential information obtained or used by the Participant during Investigations and Enforcement Proceedings.*
- iii. Each Participant will take into consideration both the interests of the Persons concerned and of the public in fair, effective, and transparent enforcement regarding the disclosure of confidential information during an Enforcement Proceeding.*

CADE has publicly available rules, policies, and guidance regarding the identification and treatment of confidential information. CADE recognizes the importance of protecting confidential information during its investigations and enforcement proceedings.

CADE's rules and regulations, including the Brazilian Competition Law and CADE's Internal Regulations, contain provisions that address the classification and treatment of confidential information. These provisions aim to ensure that confidential information provided to CADE is appropriately safeguarded.

The Brazilian Competition Law contains several provisions regarding classification and treatment of confidential information, such as article 9, item XVIII, article 11, item III, article 13, items II and VI, article 19, § 1, item I; and article 72.

According to article 49 of the Competition Law, CADE must ensure “confidential treatment of documents, information and procedural acts necessary for clarifying the facts or required in the interest of society”. This provision emphasizes the importance of maintaining confidentiality in order to protect sensitive information.

CADE's Internal Regulations also states general procedural rules regarding the confidentiality of documents establishing the parameters and procedures for classifying the information as restricted in ongoing proceedings.

In addition to the legal framework, CADE has issued guidelines and resolutions that provide further guidance on the handling of confidential information. For example, CADE's Guidelines

on Leniency and Cease and Desist Agreements outline the procedures for handling confidential information in the context of leniency applications and settlement negotiations.

By having publicly available rules, policies, and guidance on the identification and treatment of confidential information, CADE aims to ensure transparency, fairness, and the protection of sensitive business information throughout its investigations and enforcement proceedings.

CADE is committed to protecting confidential information obtained or used during its investigations and enforcement proceedings from unlawful disclosure. CADE recognizes the sensitive nature of confidential information and takes measures to safeguard it.

CADE's rules, including the Brazilian Competition Law and CADE's Internal Regulations, contain provisions that specifically address the protection of confidential information. These provisions aim to prevent the unlawful disclosure of confidential information and ensure that it is treated with the necessary confidentiality and discretion.

CADE establishes restricted access to case files, allowing only authorized individuals such as CADE's internal staff or the parties involved to access confidential information. It sets forth guidelines and procedures for handling and safeguarding confidential information throughout the investigative process.

Moreover, CADE's commitment to protecting confidential information extends beyond its own internal procedures. CADE expects all participants, including parties, attorneys, and third parties, to handle confidential information in a responsible and confidential manner. Participants are expected to respect the confidentiality requirements and legal obligations related to the use and disclosure of confidential information.

By implementing these measures, CADE aims to ensure the protection of confidential information and maintain the integrity of its investigations and enforcement proceedings.

CADE takes into consideration both the interests of the persons concerned and the public in fair, effective, and transparent enforcement when it comes to the disclosure of confidential information during an enforcement proceeding.

While CADE acknowledges the importance of protecting confidential information, it also recognizes the need for transparency and accountability in its enforcement actions. CADE aims to strike a balance between these interests by adopting a case-by-case approach and considering the specific circumstances of each enforcement proceeding.

In certain instances, CADE may need to disclose confidential information to the extent necessary to ensure a fair and effective enforcement process. This disclosure may be required to enable the parties involved to adequately defend their interests, respond to allegations, and present their arguments and evidence. Additionally, disclosure of certain information may be necessary for the understanding of the enforcement actions and to maintain transparency in CADE's decision-making process.

However, CADE is mindful of the potential harm that can arise from the improper disclosure of confidential information. It takes measures to protect sensitive information and ensures

that any disclosure is done in a manner that respects legal requirements and safeguards the legitimate interests of the persons concerned.

It is important to remind that CADE protects confidential information from unlawful disclosure, providing guidance and establishing restricted access to case files and data that can be accessed only by CADE's internal staff and the parties involved. Confidential information can be disclosed only when authorized by market participants, through waivers of confidentiality.

Moreover, to enhance the protection of confidential information, CADE issued Public Resolution 21/2018, which adopts the rationale and parameters of Directive 104/2014 of the European Union regarding the classification and disclosure of confidential information in its procedures. As a result, CADE adopted the standards of black list, grey list and white list, to guide the disclose of documents as regards administrative proceedings. As for merger reviews, the protection of confidential information is enforced as set forth by CADE's Internal Regulations, articles 52 to 55.

Overall, CADE strives to balance the interests of the persons concerned and the public in its enforcement proceedings, ensuring fair, effective, and transparent enforcement while respecting the confidentiality of information to the extent possible under the applicable laws and regulations.

g) Conflicts of Interest

Officials, including decision makers, of the Participants will be objective and impartial and will not have material personal or financial conflicts of interest in the Investigations and Enforcement Proceedings in which they participate or oversee. Each Participant is encouraged to have rules, policies, or guidelines regarding the identification and prevention or handling of such conflicts.

At CADE, officials including decision-makers are expected to be objective and impartial in their roles and must not have any material personal or financial conflicts of interest in the investigations and enforcement proceedings in which they participate or oversee.

The Brazilian Competition Law explicitly addresses conflicts of interest for Administrative Tribunal members (President and Commissioners), in article 8, including timeframes after the end of their terms (quarantine period – §1). These prohibitions also apply to the General Superintendent (article 12, §3), Attorney General (article 16, §3) and Chief Economist (article 18, §2).

Furthermore, the Administrative Procedure Law (Law 9,784/99) and the Code of Civil Procedure (Law 13,105/15) are applicable on a subsidiary basis to CADE's administrative proceedings (article 115 of the Law 12,529/11). These laws provide general rules that prevent

impediments or suspicions in the assessment, decision, and judgment of the parties, thereby helping to avoid conflicts of interest.

It is crucial for the credibility and effectiveness of CADE's work that officials involved in investigations and enforcement proceedings maintain a high level of objectivity and impartiality, free from any personal or financial interests that could compromise the integrity of the process.

CADE's Code of Conduct (Resolution 19/2017) for public officials contain provisions related to conflicts of interest. These rules define the responsibilities of officials and establish measures to prevent conflicts, such as disclosure requirements and recusal procedures.

Furthermore, CADE may implement additional policies or guidelines as needed to address specific conflict of interest situations or to provide further clarity on the handling of conflicts in its investigations and enforcement proceedings.

By having these rules, policies, and guidelines in place, CADE aims to ensure that its officials maintain the highest standards of integrity, impartiality, and professionalism in carrying out their duties, thereby safeguarding the fairness and credibility of the competition enforcement process.

CADE is provided with a comprehensive framework to address conflicts of interest and ensure the impartiality and integrity of CADE's decision-making processes. These measures aim to prevent possible conflicts of interest with the parties involved in the assessment and decision of cases. CADE'S Commissioners and President may recuse themselves and as a result do not participate in the judgment of the respective case.

h) Notice and Opportunity to Defend

- i. Each Participant will provide Persons subject to an Enforcement Proceeding timely notice of the alleged violations or claims against them, if not otherwise notified by another governmental entity. To allow for the preparation of an adequate defense, parties should be informed of facts and relevant legal and economic reasoning relied upon by the Participant to support such allegations or claims.*
- ii. Each Participant will provide Persons subject to a contested Enforcement Proceeding with reasonable and timely access to the information related to the matter in the Participant's possession that is necessary to prepare an adequate defense, in accordance with the requirements of applicable administrative, civil, or criminal procedures and subject to applicable legal exceptions.*
- iii. Each Participant will provide Persons subject to an Administrative Proceeding with reasonable opportunities to defend, including the opportunity to be heard and to present, respond to, and challenge evidence.*

CADE is responsible for providing timely notice to the persons who are subject to an Enforcement Proceeding. According to CADE's procedures, the Council ensures that the

persons involved in the proceeding are notified of the alleged violations or claims against them.

Under the Brazilian Competition Law and CADE's Internal Regulations, when an Enforcement Proceeding is initiated, the persons under investigation are notified by CADE. The notification includes the details of the alleged violations or claims, as well as the legal provisions related to the case.

This notification serves as a means to inform the persons concerned about the nature of the charges or claims brought against them and provides them with an opportunity to respond and defend their interests. It is an important aspect of due process and procedural fairness in CADE's enforcement proceedings.

By providing timely notice of the alleged violations or claims, CADE ensures that the persons subject to an Enforcement Proceeding have the necessary information to understand the case against them and to prepare their defense accordingly.

CADE is responsible for providing parties with relevant information, including facts and legal and economic reasoning to support the allegations or claims made in an Enforcement Proceeding.

As part of the investigative process, CADE ensures that parties have access to the relevant information and evidence that supports the allegations or claims being made against them. This includes providing parties with access to the facts, legal provisions, economic analysis, and other reasoning relied upon by CADE during the investigation.

By informing parties of the facts and relevant legal and economic reasoning, CADE ensures transparency and allows the parties to understand the basis of the allegations or claims against them. This information is crucial for parties to prepare an adequate defense and to effectively respond to the allegations or claims made during the proceeding.

CADE aims to provide parties with a fair and transparent process, where they have access to the information necessary to understand and address the case against them.

CADE is committed to providing persons subject to a contested Enforcement Proceeding with reasonable and timely access to the information related to the matter that is necessary to prepare an adequate defense. This access is provided in accordance with the requirements of applicable administrative, civil, or criminal procedures and subject to applicable legal exceptions.

As part of the investigative and enforcement process, CADE ensures that the parties have access to the relevant information and evidence that is necessary for them to prepare their defense. This includes granting reasonable and timely access to the information that is directly related to the matter under investigation.

However, it is important to note that access to information may be subject to legal exceptions, such as the protection of confidential information or privileged communications. CADE will take into account these exceptions while providing access to information.

The objective is to strike a balance between the parties' right to access the information necessary for their defense and the need to protect confidential or privileged information. By

providing reasonable and timely access to relevant information, CADE aims to ensure a fair and effective enforcement process.

As mentioned above, the decision that initiates the administrative proceedings shall “determine the notification of the Person under investigation to present a defense and specify the evidence to be produced, within a period of 30 (thirty) days” (article 70 of Law 12,529/11). The initial notification must contain the entire content of the decision approving the initiation of the administrative proceedings and representation, if applicable (article 70, §1). It means that the notification must contain, at a minimum, the identification of the respondent, a description of the alleged illicit conduct, and a reference to the legal provision related to the alleged violation (article 147 of CADE’s Internal Regulations).

Access to the case files is warranted guaranteed to the respondent (article 70, § 4 of Law 12.529/11), except in cases where disclosure could compromise sensitive information of the competitors or legal confidentiality. Moreover, Law No. 12,529/11 states that the respondent can “request any diligence, which may be performed or not, at the discretion of the General Superintendence” in the administrative inquiry, which is set up when “evidence is not sufficient to initiate the administrative proceedings” (article 66, §1 and §7).

CADE provides persons subject to an Administrative Proceeding with reasonable opportunities to defend themselves. This includes the fundamental rights of being heard and presenting, responding to, and challenging evidence.

During the Administrative Proceeding, CADE ensures that the parties have the opportunity to actively participate in their defense. They are given the chance to present their arguments, provide evidence, respond to allegations, and challenge the evidence put forward by the opposing party or CADE itself.

Parties are given a platform to be heard, whether through written submissions, oral arguments, or other appropriate means, depending on the specific procedures followed by CADE in each case. This allows them to express their perspective, present their case, and address any issues or evidence relevant to the proceedings.

Furthermore, CADE ensures that the parties have access to the evidence being relied upon in the case. This enables them to review and assess the evidence, formulate their responses, and challenge the evidence if necessary.

After the initiation of the case by the General Superintendence, the respondent can submit new allegations of defense (article 73). If further diligences are requested by the Reporting Commissioner, the respondent can present final allegations before the proceedings are submitted to the Administrative Tribunal (Article 76, sole paragraph).

Before the final judgment, the respondent has the opportunity to present a final oral defense during a public session (Article 81 of CADE's Internal Rules).

The goal is to provide the parties with a fair and meaningful opportunity to defend themselves throughout the Administrative Proceeding, ensuring procedural fairness and due process.

i) Representation by Counsel and Privilege

- i. No Participant will deny, without due cause, the request of a Person to be represented by qualified legal counsel of its choosing.*
- ii. Each Participant will provide a Person a reasonable opportunity to present views regarding substantive and procedural issues via counsel in accordance with applicable law. Notwithstanding the foregoing, Persons may be required to provide direct evidence.*
- iii. Each Participant will recognize applicable privileges in accordance with legal norms in its jurisdiction governing legal privileges, including privileges for lawful confidential communications between Persons and their legal counsel relating to the solicitation or rendering of legal advice. Each Participant is encouraged to have rules, policies, or guidelines on the treatment of privileged information.*

CADE does not deny, without due cause, the request of a person to be represented by qualified legal counsel of their choosing. CADE recognizes the importance of legal representation in administrative proceedings and respects the right of individuals and entities to choose their legal counsel.

Parties involved in CADE proceedings have the right to be accompanied and counseled by an attorney if they wish. CADE does not arbitrarily deny or restrict the choice of legal representation unless there are valid reasons or circumstances defined by law.

Qualified legal counsel plays a crucial role in ensuring that the rights and interests of the parties are protected during the proceedings. CADE acknowledges this and allows individuals and entities to exercise their right to legal representation by the counsel of their choosing, subject to the requirements and regulations set forth by the applicable laws and procedures.

The Brazilian Competition Law (Law 12,529/11) states that respondents have the right to be accompanied and counseled by an attorney-in-fact, if they wish so choose (article 70, §3 and §4).

This provision is in accordance with the Administrative Procedure Law (Law 9,784/99) that grants respondents the right to “be assisted, optionally, by a lawyer”, according to article 3, item IV (Law 9,784/99 is applicable to CADE's proceedings on a subsidiary basis as stated in article 115 of Law No. 12.529/11).

CADE provides a person with a reasonable opportunity to present their views regarding substantive and procedural issues through legal counsel in accordance with applicable law. CADE recognizes the importance of allowing parties to fully participate in the proceedings and present their arguments and perspectives through their chosen legal representatives.

Parties have the right to engage with the proceedings, including presenting their views, arguments, and defenses, through their legal counsel. This allows for a fair and transparent process where the parties can effectively present their case and address any substantive or procedural issues that arise during the proceedings.

However, it is important to note that while legal counsel can present views and arguments on behalf of their clients, parties may also be required to provide direct evidence to support their

claims or defenses. This ensures that the proceedings are based on factual information and relevant evidence.

CADE endeavors to provide a balanced and equitable platform for parties to present their views and arguments through legal representation, while also ensuring that the proceedings are conducted in accordance with applicable laws and regulations.

CADE recognizes applicable privileges in accordance with the legal norms in its jurisdiction governing legal privileges. This includes privileges for lawful confidential communications between persons and their legal counsel relating to the solicitation or rendering of legal advice.

In Brazil, the legal profession is protected by confidentiality privileges that safeguard the confidentiality of communications between clients and their attorneys. The Brazilian law that regulates the legal profession (Law 8,906/94) provides for the inviolability of “written, electronic, telephonic, and telematic correspondence” between attorneys and their clients, as long as it is related to the practice of advocacy (article 7, items II and III).

CADE acknowledges and respects these legal privileges, recognizing the importance of maintaining the confidentiality of communications between persons and their legal counsel. This ensures that clients can freely and openly seek legal advice without fear of their confidential communications being disclosed.

CADE has rules, policies, and guidelines on the treatment of privileged information. CADE recognizes the importance of protecting privileged information, including the confidentiality of communications between persons and their legal counsel.

CADE's procedural rules and guidelines provide specific provisions on the treatment of privileged information. These rules outline the obligations of CADE officials and participants in investigations and enforcement proceedings to maintain the confidentiality of privileged information and ensure that it is not unlawfully disclosed.

Specifically, CADE's rules and guidelines may include provisions on the following:

- Non-disclosure obligations: CADE officials are required to maintain the confidentiality of privileged information and are prohibited from disclosing such information without proper authorization or legal requirements.
- Restricted access: Access to privileged information may be restricted to authorized personnel who have a legitimate need to know the information for the purpose of conducting the investigation or enforcement proceeding.
- Handling of documents: Procedures may be in place to securely handle and store privileged documents, ensuring that they are not accessed or disclosed to unauthorized individuals.
- Redaction or confidentiality markings: CADE may require the identification or marking of privileged information in documents to distinguish it from non-privileged information.
- Disclosure in certain circumstances: CADE's rules may outline the conditions under which privileged information may be disclosed, such as with the consent of the party or as required by law.

These rules, policies, and guidelines aim to provide clear guidance on the treatment of privileged information and ensure that it is handled in a manner consistent with legal requirements and principles of confidentiality.

j) Decisions in Writing

- i. Each Participant in charge of issuing decisions or orders will issue in writing its final decisions or orders in which it finds a violation of, or imposes a prohibition, remedy, or sanction under applicable Competition Laws. Such final decisions or orders will set out the findings of fact and conclusions of law on which they are based, as well as describe any remedies or sanctions. Each Participant will ensure that all final decisions are publicly available, subject to confidentiality rules and applicable legal exceptions.*
- ii. Each Participant will ensure that all commitments it accepts to resolve competition concerns are in writing. Subject to confidentiality rules and applicable legal exceptions, each Participant will (i) make public the commitments it accepts, and (1) describe the basis for the competition concerns or (2) reference public materials in which those concerns are expressed, or (ii) provide a summary explanation of the commitments and the reasons for them.*

CADE issues its final decisions or orders in writing when it finds a violation of, or imposes a prohibition, remedy, or sanction under applicable Competition Laws. When a case is concluded, CADE's decisions are typically documented in written form, providing a detailed analysis of the case, the findings of the investigation, and the reasoning behind the decision.

CADE's written decisions or orders include, but are not limited to, the following elements:

- Findings of fact: The decisions outline the relevant facts and evidence that were considered during the investigation, including the conduct or actions under review.
- Legal analysis: The decisions discuss the applicable legal provisions and principles of competition law that were applied to assess the conduct or actions at issue.
- Reasoning: CADE provides a clear and coherent rationale for its decision, explaining how the facts and evidence led to the conclusion of a violation, imposition of a prohibition, remedy, or sanction.
- Remedies or sanctions: If CADE determines that a violation has occurred, the decision may include the specific remedies or sanctions imposed, such as fines, divestitures, behavioral remedies, or other measures deemed appropriate.
- Dissenting opinions: In some cases, individual commissioners or members of CADE may issue dissenting opinions, providing their alternative views or objections to the majority decision.

CADE's written decisions or orders are important for transparency and legal certainty. They serve as a reference for the parties involved, as well as for the legal community and the public, to understand the reasoning and basis for CADE's enforcement actions.

It is worth noting that CADE's decisions are made available to the public through the Electronic System of Information (SEI), its official website and the Federal Union's Official Gazette. These written decisions contribute to the development of case law and the overall transparency of CADE's enforcement activities.

Final decisions or orders issued by CADE do include the findings of fact and conclusions of law on which they are based, as well as describe any remedies or sanctions imposed. These elements are crucial for providing transparency and clarity in the decision-making process.

By setting out the findings of fact, conclusions of law, and remedies or sanctions, CADE's final decisions or orders provide transparency and legal certainty to the parties involved and the public. They serve as a reference for understanding the rationale behind CADE's enforcement actions and help establish precedents for future cases.

In the context of mergers that are subject to examination by the Tribunal, CADE examines and makes decisions on transactions in a public session, where they can approve, reject, or partially approve a transaction, including the imposition of remedies, while respecting any legally restricted information or information in the interest of the case. Several operations are decided within the scope of the General Superintendence. After the publication of the unrestricted approval order in the Federal Union's Official Gazette, a period of 15 consecutive days is counted for appeal or taking over. If this does not happen, it passes into matter adjudged. The approval order is always supported by an opinion from the sectoral coordination as the rationale for the decision. Both the approval order from the General Superintendence and at least one version of the opinion are required to be public versions. CADE's final decisions are available through the Electronic Information System, providing the most relevant information, reasoning, and conclusions. The reasoning and conclusions gathered in the investigative phase are also provided thoroughly and publicly.

In the context of anticompetitive conducts, the law states that the technical notes initiating the administrative proceedings must contain the minimum requirements for identification of the parties, description of the facts and reference to the legal provision related to the case.

According to Article 22, § 1, of the Administrative Procedure Law (Law 9,784/99, applicable on a subsidiary basis as stated in article 115 of Law No. 12,529/11), all administrative acts "of the proceedings shall be in writing, in Portuguese, with date and location of its emission and signature of the competent authority".

These provisions ensure that the decisions made by CADE are documented in writing, comply with procedural requirements, and provide transparency and accessibility to the parties involved and the public.

CADE ensures that its final decisions are publicly available, subject to confidentiality rules and applicable legal exceptions. CADE recognizes the importance of transparency in its decision-making process and aims to provide access to its decisions in order to promote accountability and legal certainty.

While CADE strives for transparency, it also acknowledges that certain information may be subject to confidentiality restrictions or legal exceptions. These exceptions typically relate to sensitive business information, trade secrets, or other confidential data that should be protected in accordance with applicable laws and regulations.

CADE takes appropriate measures to redact or protect such confidential information when making its decisions public. This ensures that the publicly available versions of the decisions strike a balance between transparency and the need to preserve the confidentiality of sensitive information.

By making its final decisions publicly available, with necessary safeguards for confidentiality, CADE enables stakeholders, including the parties involved in the case, legal practitioners, academics, and the general public, to access and review the reasoning, outcomes, and precedents set by the Council in its enforcement actions.

CADE ensures that all commitments it accepts to resolve competition concerns are in writing. When parties propose commitments as a means to address competition concerns identified during an investigation or enforcement proceedings, CADE requires these commitments to be submitted in written form.

Written commitments are essential as they provide clarity and serve as a binding agreement between the parties and CADE. They outline the specific actions, undertakings, or remedies that the parties are committing to undertake to address the identified competition concerns. Written commitments help ensure transparency, accountability, and enforceability of the agreed-upon measures.

By requiring commitments to be in writing, CADE aims to establish a clear framework for the parties' obligations and facilitate effective monitoring and compliance with the commitments. This approach allows CADE to oversee the implementation of the commitments and take appropriate action if the parties fail to fulfill their obligations as outlined in the written agreement.

CADE takes confidentiality rules and applicable legal exceptions into account when deciding on the public disclosure of commitments it accepts. While CADE generally aims to ensure transparency and public availability of information, certain confidentiality requirements may restrict the full disclosure of commitments or the underlying competition concerns.

However, CADE makes efforts to provide a summary explanation of the commitments and the reasons for accepting them, to the extent possible without disclosing confidential or sensitive information. This summary explanation helps to provide insight into the nature of the competition concerns and the measures agreed upon to address them.

In some cases, CADE may also reference public materials or previous public statements where the competition concerns have been expressed. This allows interested parties to understand the context and basis for the commitments without compromising confidential information.

The specific level of detail and information disclosed may vary depending on the circumstances of each case, taking into consideration the need to protect confidential business information and other legal requirements. CADE strives to strike a balance between transparency and confidentiality in its disclosure practices regarding accepted commitments.

k) Independent Review

No Participant will impose on a Person a prohibition, remedy, or sanction in a contested Enforcement Proceeding for violation of applicable Competition Laws unless there is an

opportunity for the Person to seek review by an independent, impartial adjudicative body (e.g. court, tribunal, or appellate body).

CADE operates within the legal framework of Brazil and ensures that the rights of the Persons involved in contested Enforcement Proceedings are respected. If CADE imposes a prohibition, remedy, or sanction on a person for a violation of applicable Competition Laws, the affected Person has the right to seek review by an independent and impartial adjudicative body.

CADE operates with administrative jurisdiction that is independent within the executive branch of government. However, any decision issued by CADE can be subject to judicial review in the judiciary branch. The judicial review of administrative decisions is based on the constitutional principle of separation of powers and the principle stated in Article 5 (XXXV) of the Brazilian Constitution, which ensures that any injury or threat to a right can be brought before the judiciary. As a result, CADE's decisions are subject to judicial review.

CADE's decisions can be challenged by the affected parties or any interested party before a federal judge in any of the 27 federal states in Brazil. Typically, CADE's decisions can be appealed to a federal court, and the decision of the federal court can be further appealed to a federal tribunal. Finally, the decision of the federal tribunal can be appealed to the Superior Court of Justice, which is responsible for the harmonization of judicial decisions, and/or the Federal Supreme Court, which handles constitutional matters. The judiciary branch has the authority to review any decision issued by CADE, regardless of whether it is a final decision, a charging document, or a procedural act.

The judicial review of competition cases in Brazil entails both a review of legality and a full review of the merits of the decision. Therefore, the judiciary branch can either confirm CADE's decision or partially or fully annul it. In cases of annulment, the judiciary can either order CADE to reconsider its decision or substitute CADE's decision with its own.

By providing the opportunity for review by an independent and impartial adjudicative body, the affected Person can seek legal recourse to challenge CADE's decisions and ensure that their rights are protected. This mechanism helps to safeguard the principles of due process, fairness, and access to justice in contested Enforcement Proceedings.