

## Brazil's New Competition Law One Year after Taking Effect

On May 29, 2012, Law No. 12.529/11 took effect, significantly changing the landscape of antitrust enforcement in Brazil. The law (i) consolidates the investigative, prosecutorial, and adjudicative functions of Brazil's three competition authorities into one independent agency; (ii) introduces a mandatory pre-merger notification system; and (iii) introduces changes to the administrative and criminal sanctions applicable to anticompetitive conduct.

**Institutional Framework.** The shift of functions from the Ministry of Justice's Secretariat of Economic Law (SDE) to the Administrative Council for Economic Defense (CADE)'s new Directorate-General (DG) has taken place smoothly. Although yet to receive the additional task force of two hundred civil servants provided it by the new law, CADE has managed to maintain and even improve on the level of efficiency of the former regime. It has so far issued six resolutions, of which resolution concerning its internal regulation, expert opinion rules, cartel settlement rules and rules on the monitoring of its decision-making enforcement are example. Other resolutions – such as that concerning the new Merger Guidelines – are expected to be issued soon. CADE has been also organizing its public case adjudication hearings according to case matter headings (e.g., exclusivity clauses or alleged fuel retail cartels), allowing for more consistent precedent.

**Merger Control.** CADE's main challenge in the transition to the new regime was the implementation of the mandatory pre-merger notification system. With Law No. 12.529/11 taking effect, CADE can impose fines for "gun jumping" ranging from BRL 60,000 to BRL 60 million. Also, the time period for merger review is now 330 calendar days from the day of filing. Since the law's enactment, CADE has analyzed approximately 250 mergers (under the previous regime, the average was 700 mergers annually) and has taken but an average of 20 days in fast-track merger analysis and 70 days in regular review. The analysis of two recently-cleared (with restrictions) complex mergers cases took an average of 190 days. Other two were cleared with restrictions relating to non-compete clauses. The Tribunal has made use of the legal provision that allows it to review merger cases already cleared by the DG. With regard to notification thresholds, the rules for calculating turnover of economic groups that include private equity funds are considered too broad and CADE is expected to revise Resolution No. 2/2012, its internal regulation addressing the same.

**Anticompetitive Behavior.** Since Law No. 12.529/11 took effect, CADE has imposed sanctions in connection with ten investigations, all relating to horizontal behavior and the majority of which concern the fuel retail sector. Although the fine for anticompetitive behavior was reduced from 1 to 30 percent of the subject company's turnover in the year prior to the beginning of the investigation to 0.1 to 20 percent of the turnover of the sector affected, this change has had little impact on anticompetitive behavior. CADE continues to impose a severe fine of 15 percent of the turnover in the economic sector affected by the conduct to those considered guilty of cartel practices and, in most of these cases, the calculation basis is equal to the subject company's turnover. Moreover, CADE's investigative body appears to have resumed the use of more aggressive means of investigating anticompetitive behavior such as dawn raids and the use of leniency agreements, mostly in cooperation with the criminal authorities. CADE continues to focus on cartels in addressing anticompetitive behavior.

### São Paulo

Av. Brig. Faria Lima, 2601  
12th floor - 01452-924  
São Paulo, SP - Brazil  
Phone. +55 11 3555 5000

### Rio de Janeiro

Praia de Botafogo, 440  
15th floor - 22250-908  
Rio de Janeiro, RJ - Brazil  
Phone. + 55 21 3503 2000

### Brasília

SBN Q 1, Bl B, n. 14, Ed. CNC  
2th floor - 70714-900  
Brasília, DF - Brazil  
Phone. + 55 61 2109 6070

contato@levysalomao.com.br

Ana Paula Martinez  
amartinez@levysalomao.com.br

Mariana Tavares de Araujo  
mtavares@levysalomao.com.br