

CADE Amends Its Merger Review Rules

On October 1, 2014, Brazil's Administrative Council for Economic Defense (CADE) approved certain amendments to the country's current merger review rules. These amendments reflect CADE's experience with the pre-merger review system established by Law No. 12.529/11 (the Brazilian Competition Law). The main changes are described below.

Filing of transactions involving investment funds. For the purpose of calculating the turnover thresholds set forth in Article 88 of the Law, the turnover of the fund management entity and that of other funds under the same management shall no longer be considered. Only the turnover (i) of the economic group of each entity that holds 50% or more of the fund, and (ii) of companies controlled by the fund or companies in which the fund holds a stake of 20% or more of the total or voting capital shall be considered. In practice, this amendment reduces the number of transactions involving investment funds subject to merger review. For those transactions that must be filed, the information to be presented respecting the involved parties must include data on the manager(s) and other funds under the same management.

Fast-track proceeding. The list of transactions that may be fast-track processed is expanded, now including cases in which there is no causal connection between the transaction and the level of market concentration – i.e., horizontal mergers resulting in a HHI variation below 200 – as long as the transaction does not result in the control of more than 50% of the market. Additionally, the hypothesis of low market share with vertical integration is expanded, to include those cases where none of the parties control more than 30% (previously 20%) of any of the vertically integrated markets.

Transactions involving the controlling shareholder and acquisition of the status of largest investor. Shareholding acquisition by the *sole* controlling shareholder is no longer subject to mandatory filing. This exception does not apply to acquisitions by entities comprising part of a controlling group. Also exempt from mandatory filing are transactions through which the relevant party becomes the largest individual investor but do not involve the shareholding percentages requiring mandatory filing set by CADE Internal Resolution No. 2/2012.

Bonds and securities convertible into stock. Subscription of bonds or securities convertible into stock must be filed when, cumulatively, (i) their future conversion into stock reaches a shareholding percentage requiring mandatory filing, and (ii) the acquirer receives the right to indicate members of the management or supervisory bodies or receives voting or veto rights regarding competitively sensitive information, except for those rights already granted by law. In cases where bonds or securities are distributed through public offer, the subscription does not require CADE's prior clearance, but the exercise of any political right is not possible until CADE clears the transaction. The subsequent conversion of the bonds and securities into stock does not require a new filing.

Stock exchange or over-the-counter market transactions. Stock exchange or over-the-counter market transactions are not dependent on CADE's prior clearance (previously, only stock public offering was exempt). The exercise of political rights related to the shareholding, however, require said prior clearance.

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

Alexandre Ditzel Faraco
afaraco@levysalomao.com.br