

CADE'S TRIBUNAL REESTABLISHMENT OF QUORUM AND MAIN EFFECTS

On December 27, 2023, and shortly after his nomination was published in the Brazilian Official Journal¹, Diogo Thomson de Andrade took office as a commissioner of the Administrative Council for Economic Defense ("CADE") for a four-year term. As a result, the minimum quorum of four commissioners for the functioning of the Tribunal has been reestablished.

Thus, the deadlines for proceedings currently at the Tribunal, which were suspended since November 6, 2023, are running normally as of December 28, 2023². This will allow for the closing of several transactions already approved by CADE's General Superintendence and which were only awaiting the expiration of appeal period. According to public information, there are more than 80 transactions in this situation.

In addition to Diogo Thomson de Andrade, the other names appointed by President Luiz Inácio Lula da Silva were Camila Cabral Pires Alves, Carlos Jacques Vieira Gomes, and José Levi Mello do Amaral Júnior. Their nomination was already published in the Brazilian Official Journal and they are expected to take office in the coming days.

Please find below the profiles of the CADE's Tribunal new commissioners.

¹ Available at: <https://www.in.gov.br/en/web/dou/-/decretos-de-26-de-dezembro-de-2023-533502475>. Accessed on: December 28, 2023.

² See Order No. 114/2023 issued by CADE's President, on December 27, 2023, and published in the Brazilian Official Journal on December 28, 2023. Available at: <https://www.in.gov.br/web/dou/-/despacho-n-114-de-27-de-dezembro-de-2023-533936941>. Accessed on: December 28, 2023.



PROFILE OF CADE'S TRIBUNAL NEW COMMISSIONERS

Camila Cabral Pires Alves holds a Master's degree and a PHD in Economics from the Federal University of Rio de Janeiro - UFRJ (2010). She is an Associate Professor at the Institute of Economics of UFRJ (IE-UFRJ), where she holds the position of Deputy Director of Graduate Studies and coordinates the Research Group on Law, Economics, and Competition (GDEC). She has also served as the coordinator of the Graduate Program in Economics (PPGE-IE/UFRJ). She has previously worked as a Professor at UFRJ and as a Visiting Scholar at the Washington College of Law - American University (Washington, DC). From 2011-13, she was seconded to CADE, where she served as Deputy Chief Economist and Chief Economist.

Diogo Thomson de Andrade holds a Bachelor of Laws degree from the Pontifical Catholic University of São Paulo (2003). He holds a Master's degree in Philosophy of Law from PUC/SP (2009) and is currently pursuing a PHD in Law at the Brasiliense Institute of Education, Development, and Research (IDP). He has been a Federal Prosecutor (member of the Office of the Attorney General) since 2004. He has held the position of CADE's Deputy Superintendent since 2012.

Carlos Jacques Vieira Gomes holds a Bachelor of Laws degree from the University of São Paulo (1998) and specializes in Regulatory Law from the University of Brasília (1999). He has a master's degree in Antitrust Law from the University of Brasília (2003). He is a professor in the postgraduate courses in Business Law at the Brasiliense Institute of Public Law (IDP) and in in-company courses on Competition Law at FGV - Fundação Getúlio Vargas. He is a Legislative Consultant at the Federal Senate in Economic Law and Business Law.

José Levi Mello do Amaral Jr. holds a Master's degree in State Law and Legal Theory from UFRGS (2001), a Doctorate in State Law (USP, 2003), and a post-doctoral degree in Constitutional Law (USP, 2018). He is an Associate Professor at the Law School of the University of São Paulo. He has been a Prosecutor of the National Treasury since 2000 and has held the following positions: Attorney General of the Union (2020-2021), Prosecutor General of the National Treasury (2019-2020), Executive Secretary of the Ministry of Justice (2016-2017), and General Counsel of the Union (2015-2016).



MAIN EFFECTS OF THE QUORUM'S REESTABLISHMENT AND HIGH-PROFILE CASES

The main effect of the quorum's reestablishment is the resumption of activities of the CADE Tribunal, considering that all proceedings currently at the Tribunal and the deadlines set forth in the Brazilian Competition Law (Law No. 12,529/2011) were suspended.

Based on the Tribunal's current inventory, our team selected some high-profile cases, which are expected to be analyzed by CADE's new Tribunal in 2024.

Some examples of high-profile cases involving alleged anticompetitive practices, in which the new Tribunal expects to hand down its decision in 2024:

- (i) administrative proceeding that investigates an alleged bid-rigging cartel in the construction of shantytowns in Rio de Janeiro (Complexo do Alemão, Manguinhos, and Rocinha - PAC Favelas)³,
- (ii) administrative proceeding that investigates the Brazilian Bar Association (OAB) for price-fixing by imposing minimum prices tables for the collection of legal fees, as set forth in OAB's Code of Ethics and General Regulations⁴,
- (iii) administrative inquiry that investigates Adyen do Brasil Ltda., for alleged anticompetitive practices in the gateway market (e.g., refusal to deal, tying and bundling, blocking of essential infrastructure, and discriminatory treatment)⁵, and
- (iv) administrative proceeding that investigates an alleged cartel conduct in the Brazilian market for orthotics, prosthetics, and special medical materials (OPSM), particularly implantable cardiac stimulators and related accessories⁶.

³ Administrative Proceeding No. 08700.007776/2016-41 (Plaintiff: CADE ex officio and Defendants: Andrade Gutierrez Engenharia S.A., Construções e Comércio Camargo Corrêa S.A., EIT – Empresa Industrial e Técnica S.A., Camter Construções e Empreendimentos S.A., Construtora Norberto Odebrecht S.A., Salgueiro Construções S.A., Construtora Coesa S.A., Álya Construtora S.A., Carioca Christiani Nielsen Engenharia S.A., and Caenge S.A. – Construção, Administração e Engenharia, and others)

⁴ Administrative Proceeding No. 08012.006641/2005-63 (Plaintiff: Secretariat of Economic Law ex officio and Defendant: Brazilian Bar Association).

⁵ Administrative Inquiry No. 08700.001110/2020-65 (Plaintiff: Banco Safra S.A. and Safrapay Credenciadora Ltda. and Defendant: Adyen do Brasil Ltda.).

⁶ Administrative Proceeding No. 08700.003699/2017-31 (Plaintiff: CADE ex officio. Defendants: Brazilian Association of High Technology Industry for Health Products, Brazilian Association of Medical, Dental, Hospital, and Laboratory Articles and Equipment Industry, Biotronik Comercial Médica Ltda., Boston Scientific do Brasil Ltda., Medtronic Comercial Ltda., St. Jude Medical Brasil Ltda., and others).

In relation to merger control, it is worth highlighting some relevant transactions that could be prevented from closing without the return of the Tribunal's quorum:

- (i) the acquisition, by Knauf do Brasil, of the drywall gypsum board manufacturing plant from Trevo Industrial de Acartonados⁷,
- (ii) the acquisition, by Minerva S.A., of a portion of the beef and lamb business in South America, including certain industrial cattle slaughter and deboning plants, and a distribution center owned by Marfrig Global Foods S.A. and Marfrig Chile S.A.⁸, and
- (iii) the acquisition, by Bunge Limited, of all shares and the totality of Viterria Limited's control (currently held by Glencore PLC, Canada Pension Plan Investment Board, and British Columbia Investment Management Corporation)⁹.

⁷ Merger Case No. 08700.003198/2023-01 (Applicants: Knauf do Brasil Ltda. and Trevo Industrial de Acartonados S.A.).

⁸ Merger Case No. 08700.006814/2023-77 (Applicants: Minerva S.A. and Marfrig Global Foods S.A.).

⁹ Merger Case No. 08700.007903/2023-31 (Applicants: Bunge Limited and Viterria Limited.).

For information, please contact:

Joyce Honda

Joyce.Honda@cesconbarrieu.com.br

Rodrigo Belon

Rodrigo.Belon@cesconbarrieu.com.br

Ricardo Gaillard

Ricardo.Gaillard@cesconbarrieu.com.br

Thales Lemos

Thales.Lemos@cesconbarrieu.com.br

Rafaella Jaroslavsky

Rafaella.Schwartz@cesconbarrieu.com.br

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