



Guidelines on Merger Remedies in Brazil

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The Brazilian Competition Authority (CADE) has issued several guidelines in the past few years as an effort to promote competition enforcement in Brazil. The recent examples concern Compliance Programs, Leniency Agreements, Settlement Agreements, Gun jumping and a revised Merger Horizontal Guidelines.² The next step is a Guideline for Merger Remedies, which is currently in its draft version and it is open for consultations to both the national and global antitrust community. In this context, this short column will present the main aspects of two guidelines issued for merger control, namely the new merger horizontal guidelines and the draft merger remedies guidelines.

In April 2016, CADE published the *Horizontal Merger Guidelines*³ (or simply “Guideline H”). The new Guidelines replaces the first guidelines on this matter issued in 2001, which was developed by CADE in partnership with the former Secretariat of Economic Law of the Ministry Justice and the Secretariat for Economic Monitoring, of the Ministry of Finance. The New Merger Horizontal Guidelines are based on the new Brazilian Competition Law (in effect since May 2012), which introduced a pre-merger review system in Brazil. In addition, the document is in line with the best antitrust practices abroad. The guidelines refer exclusively to the transactions that involve the economic integration between competitors companies or potential competitors. Its main purpose is to provide transparency regarding CADE’s evaluation of horizontal mergers, to guide CADE’s staff to adopt the best competition practices available when evaluating mergers and acquisitions with horizontal effects, and to assist the economic agents to better understand the procedures and criteria employed by CADE when assessing mergers.

The draft Guidelines on Merger Remedies intends to shed light on CADE’s policy on antitrust remedies. Its main focus is on merger remedies, although it may also be applied to abuse of dominance cases. The draft was based on CADE’s recent experience with its pre-merger control regime, in particular cases that required conditions to be approved. The draft Guidelines states that structural remedies should be preferable, as they usually offer a permanent solution for the competition concern identified by the competition authority. Remedies should also be implementable in the short term. Nonetheless, behavior remedies may also be appropriate, in particular in cases involving vertical concerns. In both situations, the use of monitor trustees are recommended, as well as international cooperation in transnational transactions. Briefly, the Remedies Guidelines will ensure more transparency on both procedural and substance for the designing and implementation remedies of complex mergers in Brazil.

The issue of these Guidelines is a conscious effort from CADE to clarify its understanding and to promote its enforcement policy. The Brazilian experience indicates that these guidelines are often well perceived by local competition community, as they previously gather private inputs through public consultations, reflect the enforcer’s perspective, and enable greater predictability in the application of the competition legislation.

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² All of them are available at www.cade.gov.br/aceso-a-informacao/publicacoes-institucionais/guias_do_Cade.

³ The Horizontal Merger Guidelines is available, in its version in Portuguese, at: <http://www.cade.gov.br/aceso-a-informacao/publicacoes-institucionais/guias_do_Cade/guia-para-analise-de-atos-de-concentracao-horizontal.pdf>.