

## COVID-19 AND ITS IMPACTS ON BRAZILIAN COMPETITION LAW

The Brazilian Council for Economic Defense (“Cade”) will keep performing its legal mandate of economic and competition defense in Brazil during the current Covid-19 crisis. However, some adjustments are undoubtedly necessary. This short piece summarizes below some of the adjustments conducted by Cade to maintain its activities and also lists some precautions that must be taken during such critical times.

### Operational adjustments at Cade

On March 23rd 2020, Cade's president, Mr. Alexandre Barreto de Souza, released a message to the antitrust community and society in general, ensuring that Cade will remain in full function during the public calamity period, observing the following procedures:

- Cade adopted measures to enable home office of its employees to avoid abrupt interruptions in the functioning of the Authority;
- The Tribunal's Judgment Sessions will be held online, and the lawyers representing the parties involved in the cases in the docket will be able to participate online or in person at the plenary of Cade's Tribunal;
- Oral statements must be recorded and sent to the Tribunal before the Judgment Sessions;
- There will be a web link and a telephone available for questions of order during the Judgment Sessions;
- Meetings with the General Superintendence and the members of the Tribunal will be conducted via video or teleconference. The procedure for scheduling meetings remains the same.
- The online Judgement Sessions and its procedures are regulated by the Internal Amendment No. 01/2020, which amended articles 59, 74, 75 and 80 of Cade's Internal Rules.

## **Changes in Cade's procedural deadlines**

On a note dated March 25th 2020, Cade clarified the impacts of Provisional Measure No. 928, of March 23rd, 2020, in the functioning of the Authority. The Provisional Measure amended Law No. 13,979/2020 by adding article 6-C to its text. According to Cade:

- Procedural deadlines will not be in force against those investigated in cases of:
  - administrative procedures for the imposition of administrative sanctions for antitrust violations;
  - administrative procedures for the investigation of gun jumping violations;
  - administrative procedures for the imposition of incidental procedural sanctions;
- The deadlines for the following procedures will remain in force:
  - merger control procedures;
  - administrative inquiries to investigate antitrust violations;
  - preparatory procedures for administrative inquiries to investigate antitrust violations;
  - leniency agreements;
  - cease and desist agreements and merger control agreements in their monitoring phase;
  - Consultations and agreements of performance under their monitoring phase.
- Even though there is no deadline in force against investigated parties in administrative procedures, this does not prevent Cade to continue such investigations and to perform administrative acts related to the progress and processing of such procedures.
- Specific situations that require the extension of additional deadlines will be analyzed on a case-by-case basis.

## **Opening of an administrative investigation against companies of the medical and pharmaceutical sector**

Considering the worsening of the situation regarding Covid-19, the demand for medical and pharmaceutical products grew rapidly. Due to this situation, Cade initiated a preparatory procedure to investigate the sector, seeking to verify the occurrence of potential excessive pricing practices. The main targets of the investigation are companies in the health sector such as hospitals, laboratories, drugstores, distributors and manufacturers of surgical masks, alcohol gel and manufacturers of medicines to treat Covid-19.

### **Precautions for economic agents amid the Covid-19 crisis**

In situations like the current, it is common for economic agents to seek methods of cooperation with one another to overcome the crisis and preserve their activities. In the present situation, considering Cade's previous experience, the Authority is prepared to adopt extraordinary measures and react quickly to such demands, in the same manner as it did during the truckers' strike in Brazil which paralyzed the economy. In that situation, Cade authorized the signing of a cooperation protocol between the main fuel distributors in Brazil. In any case, it should be reminded that players who wish to act in cooperation must bear in mind the possibility of having their contracts previously scrutinized by Cade, considering that such contracts may be deemed an associative contract that must be previously submitted to the Authority for prior approval. Moreover, parties must also be aware of potential anticompetitive effects of cooperation agreements between competitors, taking the necessary precautions to make such cooperation viable in a legal manner. Cade will be closely watching such situations.

Finally, mergers of companies in financial distress are common in these critical times. In such cases, we believe that Cade tends to be very conscious of the current situation, mobilizing its best efforts to deliver an expeditious analysis and decision. These situations call for a joint effort between Cade and the parties, considering that 100% of the merger analysis will be done remotely.

We emphasize that the entire team at Pereira Neto | Macedo is available to assist clients in reaching the most effective legal solutions at this delicate moment.

**São Paulo, 02 de abril de 2020.**

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