ICN MERGER NOTIFICATION AND PROCEDURES TEMPLATE

Merger Working Group

Brazil

Conselho Administrativo de Defesa Econômica (CADE)

March 2021

IMPORTANT NOTE: This template is intended to provide background on ICN jurisdiction's merger notification and review procedures.

Reading the template is not a substitute for consulting the referenced statutes and regulations.

[Please include, where applicable, any references to relevant statutory provisions, regulations, or policies as well as references to publicly accessible sources, if any.][1]

1. Merger notification and review materials [references to publicly accessible sources (homepage address) and indication of the languages in which these materials are available]	
	Statutory Laws

A. Notification provisions	**Law No. 12.529/2011 or "Lei de Defesa da Concorrência" (LDC)** (Available in Portuguese and English)
	• Territoriality rules: effects requirement - Article 2.
	• Agents who are subject to the LDC - Article 31.
	• The competence of CADE's General Superintendence (SG in the Portuguese acronym) to prepare and initiate merger proceedings - Article 13, V, XII.
	• Notification fees - Article 23 to 27.
	• Merger proceeding at SG:
	  ○ Basic requirements of a merger approval request - Article 53.
	  ○ SG's initial handling of the request - Articles 54 and 55.

[1] Editor's note: all the comments in [square brackets] are intended to assist the agency when answering this template but will be removed once the completed template is made public.

	• Notification thresholds - Article 88, I, II, § 1 and Article 90, I, II, III, IV, sole paragraph. • Pre-merger control rules - Article 88, §§ 2, 3, 4. • CADE's prerogative to analyze mergers that do not fall within LDC's notification criteria - Article 88, § 7. • Notification of mergers involving the stock market - Article 88, § 8 and Article 90, II.
B. Substantive merger review Provisions	**Law No. 12.529/2011 or "Lei de Defesa da Concorrência" (LDC)** (Available in Portuguese and English) • Possibility that the merger be declared as complex - Article 56. • Mergers that *a priori* are prohibited - Article 88, § 5. • Effects which may justify the approval of an "*a priori* prohibited merger" - Article 88, § 6. • Definitions of merger types - Article 90.
C. Implementing regulations	• **Statutes of the Administrative Council for Economic Defense (RICADE)** (Available in Portuguese). • **Resolution nº 2, of May 29, 2012 (Resolution 2/2012)** (Available in Portuguese) • **Resolution nº 16, of September 1, 2016 (Resolution 16/2016)** (Available in Portuguese). • **Resolution nº 17, of Octobfer 18, 2016 (Resolution 17/2016)** (Available in Portuguese). • **Resolution nº 24, of July 8, 2019 (Resolution 24/2019)** (Available in Portuguese).

D. Notification forms or information requirements	• **Annex I of Resolution 2/2012: form for non-fast-track cases** (Available in Portuguese)**.** • **Annex II of Resolution 2/2012: form for fast-track** (Available in Portuguese)**.**

Interpretative Guidelines and Notices

E. Guidance on Merger Notification Process [e.g., information on calculation of thresholds, etc.]	Not available.
F. Guidance on Substantive Assessment in Merger Review [Please include reference separately, if applicable]	• **Horizontal Mergers Guidelines** (Available in Portuguese and English) • **Antitrust Remedies Guidelines** (Available in Portuguese) • **Guidelines on Gun Jumping** (Available in Portuguese and English)
G. Has your agency published guidelines or directives on notification of mergers involving specific sectors (e.g., digital economy)? [If affirmative, please provide references and languages available]	No.
H. Other relevant notices, policy statements, interpretations, rules, or guidance on aspects of merger review or the agency's decision-making process	The following publications may be useful tools in understanding the agency's merger review and decision-making process: • **CADE's Yearbook** or "Anuário" (Available in Portuguese and English) • **CADE's Case Law Newsletter** or "Boletim de Jurisprudência" (Available in Portuguese) Additionally, CADE's Department of Economic Studies or "Departamento de Estudos Econômicos" (DEE) publishes several materials that may also serve as references to the agency's merger review and decision-making process: • **Review of CADE's Decisions** or "Cadernos do Cade" (Available in Portuguese and English) • **Opinions in Mergers and Conduct Cases** or "Notas Técnicas" (Available in Portuguese and English)

	• **Working Papers** or "Documentos de Trabalho" (Available in Portuguese and English) • **Seminars** or "Seminários" (Available in Portuguese and English)

2. Agency (or Agencies) responsible for merger enforcement.	
A. Name of the Agency which reviews mergers. If there is more than one agency, please describe the allocation of responsibilities.	The Administrative Council for Economic Defense (CADE – Portuguese acronym) is the agency responsible for merger review. Although the Secretariat for Economic Monitoring (SEAE - Portuguese acronym) is also part of the Brazilian Competition Policy System (LDC, article 3), it is solely responsible for advocacy initiatives and has no jurisdictional functions (LDC, article 19).
B. Contact details of the agency [address and telephone including the country code, email, website address and languages available on the website]	Conselho Administrativo de Defesa Econômica (CADE) • Address: Setor de Edifícios de Utilidade Pública Norte – SEPN, Entrequadra 515, Conjunto D, Lote 4, Edifício Carlos Taurisano, 70770-504 – Brasília, Distrito Federal, Brasil • Telephone number: + 55 61 3221-8585/ 8582 • Email: cade@cade.gov.br • Website in Portuguese: https://www.gov.br/cade/pt-br • Website in English: http://en.cade.gov.br/
C. Is agency staff available for jurisdiction/filing guidance? [If yes, please provide contact points for questions on merger filing requirements and/or consultations]	Yes. For more information, please contact CADE's International Unit: • Telephone number: + 55 61 3221-8585/ 8582 • Email: international@cade.gov.br

3. Covered transactions	
A. Thorough definition of potentially covered transactions [i.e., share acquisitions, asset acquisitions, mergers, de-mergers, consolidations, consortia, amalgamations, joint ventures or other forms of contractual relationships, such as partnerships and alliance agreements]	According to the LDC, the following types of transactions are subject to CADE's review: • Merger of two or more companies that were independent until then (article 90, I). • Situations in which one or more companies acquire, directly or indirectly (by purchase or exchange of stocks, shares, bonds or securities convertible into stocks or assets, whether tangible or intangible, by contract or by any other means or way) the control or parts of another company or companies (article 90, II); • Whenever one or more companies incorporate another company or companies (article 90, III). • Whenever two or more companies enter into an associative contract, consortium or joint venture (article 90, IV). According to Resolution number 17/2016, associative contracts (contractual relationship) must be notified when the following conditions are cumulatively fulfilled: • the contract has a term of at least 2 years; • a common business results from the contract; • parties share the risks and results derived from the business; and • the parties are competitors.
B. What is the geographic scope of transactions covered?	LDC applies to practices fully or partially carried out in the Brazilian territory, or that produce or may produce effects on it (LDC, art. 2). Additionally, LDC foresees that a foreign company that performs transactions or has its branch, agency, subsidiary, office, establishment, agent, or representative in Brazil, shall be considered a Brazilian resident (LDC, art. 2, § 1).
C. If change of control is a determining factor, how is control defined and interpreted in practice?	Control is established whenever the agent possesses more than 50% of a company's voting capital. In addition to this definition, control can be characterized whenever one company has decisive influence over relevant commercial decisions of another company such as, production level, sales, technological investments and R&D strategies.

D. Are partial (less than 100%) stock acquisitions/minority shareholdings covered? At what levels? Are acquisitions of assets ever covered? If so, do the assets have to form a free-standing business or can the combination of the assets with the business of the acquirer be considered in order to have jurisdiction? Does the authority have jurisdiction over "bare" asset purchases, e.g. where the assets purchased do not relate to the acquirer's existing business?	Corporate stock acquisitions (including partial ones) must be notified to the agency in the following situations: • Acquisition of control, either individual or shared (Resolution 2/2012, art. 9, I), except for the cases in which the acquisition is made by the sole controller of the company (Resolution 2/2012, art. 9, sole paragraph). • When the target company and the other companies belonging to the same economic group of the acquirer do not compete or perform activities in vertically related markets and: o the acquisition confers the buyer the direct or indirect ownership of 20% or more of the shares or voting capital of the target company (Resolution 2/2012, art. 10, I, a). o the acquisition is made by an owner of 20% or more of the shares or voting capital, provided that the shares directly or indirectly acquired, from at least one seller (individually considered), equals or exceeds 20% of the shares or voting capital (Resolution 2/2012, art. 10, I, b). • When the target company and the companies of the economic group of the acquirer compete in the same market or perform activities in vertically related markets and: o the acquisition confers the buyer the direct or indirect ownership of 5% or more of the shares or voting capital of the target company (Resolution 2/2012, art. 10, II, a). o Any additional acquisition that, individually or together with others, results in an increase of 5% or more of the shares or voting capital of the buyer, provided that the buyer already owns 5% or more of the shares or voting capital of the target company (Resolution 2/2012, art. 10, II, b). • Subscription or acquisition of bonds, debentures and other securities convertible into shares: o If the future conversion results in the control of the target company or meets the criteria for notification of partial acquisition (Resolution 2/2012, art. 11, I).

	○ If the bonds, debentures or other securities grant the buyer rights to indicate members of the managing or supervisory bodies of the target company or rights to vote on or to block competitively sensitive decisions (Resolution 2/2012, art. 11, II). According to the LDC, the acquisition of assets, whether tangible or intangible, are subject to CADE's review (article 90, II). Additionally, the notification forms require that information on the acquisition of assets be provided to the agency (Resolution 2/2012, Stage III of Annexes I and II). Neither the LDC nor Resolution 2/2012 require that the assets acquired form a free-standing business for CADE to have jurisdiction. As for the transactions that must be notified to the agency, there are no exceptions concerning bare asset purchases. Nevertheless, CADE's precedents consider that the acquisition of an individual asset must be notified to the agency in case the asset is directly related with a business or destined for a specific economic activity. Moreover, Resolution 2/2012 foresees that a fast-track review procedure applies when the buyer or its economic group did not participate, before the merger, in the market affected by it, or in vertically related markets, or in other markets in which the target company or its economic group operated (art. 8, II).

4. Thresholds for notification	
A. What are the general thresholds for notification? [If the thresholds are subject to adjustment, state on what basis and how frequently (e.g., for inflation, annually)]	Besides the substantive and geographic criteria mentioned above (Question 3A and 3B, respectively), merger control applies when both of the following thresholds are met (LDC, art. 88): • at least one of the groups involved in the transaction must have registered, on the latest balance sheet, an annual gross turnover or an overall volume of business in Brazil of at least BLR 750 million, in the fiscal year preceding the transaction; **and**

	• at least another group involved in the transaction must have registered, on the latest balance sheet, an annual gross turnover or an overall volume of business in Brazil of at least BLR 75 million, in the fiscal year preceding the transaction. Nonetheless, CADE may change those values upon enactment of an inter-ministerial decree of the Ministries of Finance and Justice.
B. To which entities do the merger notification thresholds apply, i.e., which entities are included in determining relevant undertakings/firms for threshold purposes? If based on control, how is control determined?	Merger notification thresholds apply to the companies directly involved in the transaction, as well as to their economic group. According to Resolution 2/2012, the concept of economic group comprises: • Companies subject to common control (art. 4, §1, I). • All the companies in which any of the companies subject to a common control direct or indirectly holds at least 20% of the shares or voting capital (art. 4, §1, II). In the case of investment funds, the concept of economic group includes: • The economic group of the investors holding, directly or indirectly, 50% or more of the quotas of the fund involved in the transaction (either individually or under a shareholding agreement) (art. 4, §2, I). • The companies controlled by the fund directly involved in the transaction and the companies in which the fund holds, directly or indirectly, at least 20% of the shares or voting capital (art. 4, §2, II).
C. How is the nexus to the jurisdiction determined (e.g., sales or assets in the jurisdiction)? If based on an "effects doctrine", please describe how this is applied in practice. If national sales are relevant, how are they allocated geographically (e.g., location of customer, location of seller)?"	To determine the nexus of a transaction to the Brazilian jurisdiction, CADE must consider if the merger is carried out in the Brazilian territory, or if the merger produces or may produce effects on it (LDC, art. 2), i.e., if the products or services involved in the transaction would at least potentially reach Brazil. Moreover, the agency must verify if the companies involved in the transaction and their economic groups meet the criteria concerning their annual gross turnover or their overall volume of business in Brazil (LDC, art. 88).
D. Can a single party trigger the notification threshold (e.g., one party's sales, assets, or market share)?	No.

E. Are any sectors excluded from notification requirements? If so, which sectors? To what period(s) of time do the thresholds relate (e.g., most recent calendar year, fiscal year; for assets-based tests, calendar year-end, fiscal year-end, other)?	No sectors are excluded from notification requirements. The thresholds refer to the year preceding the transaction.
F. Are there special threshold calculations for specific sectors (e.g., banking, airlines, media, digital markets) or specific types of transactions (e.g., joint ventures, partnerships, financial investments)? If yes, for which sectors and types of transactions?	No, but in the banking sector, financial intermediation revenue is considered as form of turnover.
G. Are there special rules or exceptions/exemptions regarding jurisdictional thresholds for transactions in which both the acquiring and acquired parties are foreign (foreign-to-foreign transactions)? [Describe the methodology for identifying and calculating any values necessary to determine if notification is required, including the value of the transaction, the relevant sales or turnover, and/or the relevant assets]	No.
H. Does the agency have the authority to review transactions that fall below the thresholds or otherwise do not meet notification requirements? If so, what is the procedure to initiate a review? [Describe methodology for calculating exchange rates]	Yes. CADE may require transactions that fall below the notification threshold to be reported within one year from the respective date of consummation (LDC, art. 88 § 7 and RICADE, art. 106 § 4). The investigation of transactions that are not reported to CADE is carried out by means of an administrative procedure (APAC in the Portuguese acronym), set forth by Resolution 24/2019. In such cases, the SG shall (at its own discretion and before determining that the alleged merger should be notified) initiate an APAC (i) *ex officio*; upon (ii) request of any member of CADE's Administrative Tribunal; (iii) a whistleblower report; or (iv) a reasoned complaint (Resolution 24/2019, Articles 2 and 14).

I. Are current notification criteria catching relevant transactions related to digital markets?	.. CADE understands that the current notification criteria are not satisfactorily catching relevant transactions related to digital markets. Thus, the agency is closely watching developments in and discussions related to this market, in order to adequate its notification system to the particularities of this sector of the economy.

Calculation Guidance and related issues

J. If thresholds are based on any of the following values, please describe how they are identified and calculated to determine if notification is required: **i) the value of the transaction;** **ii) the relevant sales or turnover;** **iii) the relevant assets;** **iv) market shares;** **v) other (please describe).**	Thresholds are based on companies' annual gross turnover or their overall volume of business in Brazil. According to CADE's institutional forms regulating non-fast-track (normally referred to as "ordinary") and fast-track merger procedures (namely, Annexes I and II of Resolution 2/2012), parties must present exact and complete information, indicating the methodology and the source of the data used for calculation. The forms also require companies to present detailed information not only on the annual gross turnover and overall volume of business they and their economic groups had in Brazil, but also on the economic activities performed by each of these agents. In this sense, parties (companies directly involved in the transaction and their economic groups) must present a copy of their latest annual report and/or their audited financial statements.
K. Which entities are included in determining relevant investment funds for threshold purposes? If based on control, is the definition of control in these cases any different from the definition of control in general (question 3C)? If yes, how?	For threshold purposes, parties must consider the turnover and overall volume of business not only of the companies directly involved in the transaction, but also of their economic groups. According to Resolution 2/2012, in transactions involving investment funds, the concept of economic group (see Question 4B) includes the fund directly involved in the transaction and: • The economic group of the investors holding, directly or indirectly, 50% or more of the quotas of the fund involved in the transaction (either individually or under a shareholding agreement) (Article 4, §2, I). • The companies controlled by the fund directly involved in the transaction and the companies in which the fund holds, directly or indirectly, at least 20% of the shares or voting capital (Article 4, §2, II).

	As previously stated (see Question 3B), sole control is established whenever the agent possesses more than 50% of the voting capital of a company or whenever one company has decisive influence over relevant commercial decisions of another company such as, production level, sales, technological investments and R&D strategies.
L. In case an investment fund is part of a transaction, are its controllers required to present turnover information related to other funds under same manager (general partner) control? Are those other funds considered as part of the transaction for turnover purposes?	According to Resolution 2/2012, for notification purposes, parties must consider the turnover of the companies directly involved in the transaction, as well as of their economic groups. The concept of "economic group", in turn, comprises companies subject to a common control (Resolution 2/2012, Article 4, §1, I) and cases in which any of the companies subject to a common control directly or indirectly holds at least 20% of the shares or voting capital (Resolution 2/2012, Article 4, §1, II). Although this rule is also currently applicable for cases involving investment funds, it is important to note that such funds are subject to additional rules set forth by Resolution 2/2012 which, instead of referring to the notion of "controllers", refers to the percentage of quotas held by an economic group. More specifically, Resolution 2/2012 determines that the economic group of the investors holding, directly or indirectly, 50% or more of the quotas of the fund involved in the transaction (either individually or under a shareholding agreement) must present turnover information (Article 4, §2, I). Similarly, the notification must also consider the turnover of the companies controlled by the fund directly involved in the transaction and that of the companies in which the fund holds, directly or indirectly, at least 20% of the shares or voting capital (art. 4, §2, II).
M. Describe the methodology applied for currency conversion [e.g. which exchange rates are used].	Parties must use the Brazilian Real (BRL) as the currency unit in any information they provide to the agency. Parties must also indicate, when applicable, the exchange rate, choice criteria, and reference date they adopted (RICADE, Article 45). Furthermore, for calculating the notification threshold, the exchange rate to be used is the one referent to the last working day of the year prior to the merger (RICADE, Article 45, §1).

5. Pre-notification	
A. If applicable, please describe the pre-notification procedure and whether it can be mandatory or not [e.g., time limits, type of guidance given, etc.].	Although there is no formal pre-notification procedure, RICADE foresees that, except for the cases falling within the fast-track procedure, parties may contact the SG before filing the notification, in order to clarify any doubts (Article 113).
B. If applicable, what information or documents are the parties required to submit to the agency during pre-notification?	The draft of the notification form – Annex I of the Resolution 2/2012.

6. Notification requirements and timing of notification	
A. Is notification mandatory? [Please describe if notification is mandatory in pre-notification phase, post-merger or voluntary]	Pre-merger notification is mandatory.
B. If parties can make a voluntary merger filing when may they do so?	N/A.
C. What is the earliest that a transaction can be notified (e.g., is a definitive agreement required; if so, when is an agreement considered definitive?)	Merger notifications must be filed before the transaction has been consummated, and preferably after the signature of a formal document binding the parties (RICADE, Article 106, § 1).
D. When must notification be made? If there is a triggering event, describe the triggering event (e.g., definitive agreement) and the deadline following the event. Do the deadline and triggering event depend on the structure of the transaction? Are there special rules for public takeover bids?	Merger notifications must be filed before the transaction has been consummated, preferably after the signature of a formal document binding the parties (RICADE, Article 106, § 1). This means that the parties must keep their physical structure and competitive conditions unmodified until CADE's final assessment of the merger. Additionally, any transfer of assets and influence of one party over the other is forbidden, as is the exchange of competitively sensitive information that is not strictly necessary for the signature of the formal document binding the parties (RICADE, Article 106, § 2).

	Once the notification has been filed, should the SG verify that the petition (i) fails to include essential information and documents for CADE to conduct the review, or (ii) does not contain the proof of payment of the filing fee, or even that (iii) has faults and irregularities that may prevent a decision on the merits, CADE will order the party to amend its notification once, under penalty of case dismissal (RICADE, Article 110). The step following the notification (or its amendment, if there is any) is making the transaction public, by publishing it on the Official Gazette (RICADE, Article 110, sole paragraph). Within 15 days after the SG has made the merger public, those whose interests may be affected by the transaction may petition to intervene in the review procedure as third parties (RICADE, Article 117). In respect to triggering events and deadlines, RICADE sets forth a few special rules for specific cases, which are enumerated below: • Open market stock purchase and over-the-counter trades do not need to be previously cleared by CADE (Article 108). However, the exercise of any political rights related to such transactions is prohibited until the agency approves them (Article 108). Parties may, on the other hand, request CADE to grant them authorization for exercising those rights, should that be necessary to fully protect the value of the investment (Article 108). • Transactions involving public takeover bids may be notified to CADE after they are made public and may be consummated without being previously cleared by the agency (Article 107). However, the exercise of any political rights related to shares acquired through a public takeover bid is prohibited until CADE approves the transaction (RICADE, Article 107, § 1). Parties, on the other hand, may request CADE to grant them authorization for exercising such rights, should that be necessary to fully protect the value of their investment (Article 107, § 2). • If a transaction involving sale of control requires making a public takeover bid, this requirement must be reported to CADE when such transaction is notified to the agency. In this case, the public takeover bid does not need to be once again notified after its publication (Article 107, § 3).

	• Public takeover bids which are made (i) for cancelling a company's registration as a publicly traded company or (ii) due to an increase of shares held by the controller of a publicly traded company are not notifiable transactions (Article 108, § 4).
E. If there is a notification deadline, can parties request an extension for the notification deadline? If yes, please describe the procedure and whether there is a maximum length of time for the extension.	There is no fixed notification deadline, yet parties must notify the merger to CADE before the transaction is consummated.

7. Simplified Procedures	
A. Describe any special procedures for notifying transactions that do not raise competition concerns (e.g., short form, simplified procedures, advanced ruling certificates, discretion to waive certain information requirements, etc.).	The SG has 30 days to review transactions under the fast-track procedure, counting from notification filing date (or amendment, if applicable). If this deadline is exceeded, the SG must formally justify the delay and give the delayed merger review priority. Additionally, if the merger has not yet been made public, the SG must do so, except in case the notification filed by the parties requires previous amendment (Resolution 2/2012, Article 7, § 2 and § 3).
B. Describe the criteria adopted to consider a transaction under the simplified procedure.	The simplified procedure applies to transactions that CADE, at its own discretion, deems to be simple and not to raise competition concerns, thus not requiring an in-depth analysis (Resolution 2/2012, Article 6, 7 and 8, VI). Additionally, all of the following transactions are necessarily subject to the simplified procedure: • Cases in which two or more separate companies set up a joint venture under common control solely and exclusively to enter a market, the products/services of which are not horizontally or vertically related to the merging parties' former activities. • Cases in which the buyer or its economic group did not participate, before the transaction, in the market affected by the merger, or in the vertically related

	markets, or in other markets in which the target company or its economic group operated. • Cases in which the deal leads to control of less than 20% in the relevant market and casts no doubts about the lack of competition concerns related to the transaction. • Cases in which none of the parties or their economic groups control more than 30% in any of the vertically integrated relevant markets. • Cases in which there is no causal link between the transaction and the high horizontal overlap in the relevant market (i.e., HHI variation is inferior to 200), provided that the deal results in control of the relevant market not superior to 50%.

8. Information and documents to be submitted with a notification	
A. Describe the types of documents that parties must submit with the notification (e.g., agreement, annual reports, market studies, transaction documents, internal documents).	Merger review notifications submitted to CADE must include the information and documents necessary for the administrative proceedings to be launched, in addition to the proof of payment of the filing fee (LDC, Article 53). RICADE additionally requires that parties present the original or a certified copy of each of the following documents: (i) powers of attorney, accompanied by any corporate documents that validate them; (ii) any documents that formalize the transaction; and (iii) other documents that may be requested by the agency (Article 43). Moreover, besides requesting specific information regarding the parties, the transaction, and the expected effects of the latter in the relevant market(s) under analysis, the notification forms (Annexes I and II of Resolution 2/2012) present each a list of documents that parties must submit to CADE scrutiny. The ordinary procedure form (Annex I), for example, requests the following documents to be presented: • Regarding the transaction:

	○ A copy of the final or most recent version of all contractual instruments relating to the transaction. ○ Copies of non-competition and shareholder agreements, if any. ○ Copies of analyzes, reports, studies, surveys, presentations, and other similar documents prepared by or for any member of (i) the board of directors; (ii) the supervisory board; (iii) shareholders' meeting; or (iv) any other person performing similar functions to those carried out by the agents previously listed, and whose objective is to analyze the transaction with respect to: competition standards in the market, market shares, competitors, estimates of sales growth, estimates of expansion into new geographic markets and other competitive issues. ○ A list of all the documents that have been created in the scope of the transaction, such as: supply agreements, minutes of meetings related to the deal, public takeover bid documents sent to the Securities and Exchange Commission of Brazil (Comissão de Valores Mobiliários - CVM in the Portuguese acronym), among others. • Regarding the activities of the parties: ○ last annual report and/or audited financial statements. ○ market studies, research, reports, projections and any other document, prepared by third parties or not, which are related to: (i) competitive positioning of the company and its competitors; (ii) demand and supply conditions; (iii) dispute for customers; (iv) strategic behavior (price, sales, innovation, inputs/outputs etc.); (v) complaints of anti-competitive behavior by companies that integrate the same relevant market; (vi) supply, demand, cost, price, product/service attributes effects caused by direct competition from another product or service; (vii) sectoral balance sheets, market diagnostics etc. ○ marketing reports, commercial reports, plans and strategies for brand promotion, product positioning reports and any other similar document; ○ strategic planning, business plan, expansion and containment plans, and any other similar document.

B. Is there a distinction between tangible and intangible (e.g., customer portfolio, data on consumers, etc.) assets in the description of the transaction? [In respect to digital markets, state if the agency considers the amount of user data the companies have, and which will be passed on in the transaction]	Both the ordinary and the simplified notification forms require that, in transactions involving asset acquisitions, parties provide information on the tangible and intangible assets acquired and indicate the location of the tangible assets (Annexes I and II of Resolution 2/2012). No further distinction between tangible and intangible assets is made by Resolution 2/2012 or by other regulations. In digital markets, CADE's precedents consider that the following information must be provided to the agency in respect to the assets involved in the transaction: the number of platform users, the number of platform sellers/ offerers products or services, the transacted amount or other data related to the activity.
C. Are documents proving the efficiencies of the transaction required? [If applicable, please provide the type of documents normally required]	Although Resolution 2/2012 does not explicitly require parties to submit documents proving the efficiencies of the transaction, it requires parties to submit documents that should allow CADE to analyze if and which efficiencies result from the deal, especially in cases declared complex. In such cases, parties must present efficiencies that would be passed on to consumers. Parties are required to describe the areas in which they operate, the transaction and its effects on the market(s) affected by it, as well as the merger's economic and strategic justification (Annexes I and II of Resolution 2/2012). Moreover, parties must submit a wide range of information not only on the market affected by the deal, but also on the supply structure of such market, and on the relevant market in which parties and their economic group operate. In ordinary merger proceedings, parties must submit additional information on the relevant market, in respect to the following topics: the structure of the demand, the existence of monopsony power, the market entry conditions, and the exercise of coordinated power.
D. What information is required in case the target company is experiencing financial insolvency?	As stated in the Guide for Horizontal Merger Review, CADE, in line with the understanding of many foreign jurisdictions, has been extremely cautious with the failing firm defense theory, accepting it only in cases in which applicants cumulatively prove that:

	• If the transaction were to be blocked, the company would either have to leave the market, or would be unable to pay its debts due to financial distress. • If the transaction were to be blocked, the company's assets would not remain in the market, which implies there would be a reduction in supply and economic welfare, and greater market concentration. • The company effectively tried to seek alternatives less harmful to competition (for instance, via alternative buyers or a judicial reorganization proceeding), remaining no other solution for preserving its economic activities other than the transaction being cleared. Besides those requirements, cases involving the failing firm defense must also meet the non-negative net effect requirement applied to all transactions. That is, CADE must conclude that the antitrust effects resulting from blocking the transaction (and from the likely insolvency of the firm) would be worse than the market concentration created in case the transaction is approved.
E. Is there a specific procedure for obtaining information from target companies in the case of hostile/ unsolicited bids?	Although there is no explicit provision in the law, in CADE's precedents the SG amended notifications involving hostile bids and requested specific information on the target company directly from its directors.
F. Are there any document legalization requirements (e.g., notarization or apostille)? What documents must be legalized?	As previously mentioned, RICADE requires parties to present the original or a certified copy of each of the following documents: (i) powers of attorney, accompanied by any corporate documents that validate them; (ii) any documents that formalize the transaction; and (iii) other documents that may be requested by the agency (Article 43). Moreover, any document executed in a foreign jurisdiction must be notarized in the country where it was signed and such notarization must be certified by the Brazilian Consulate of that country. Another alternative is that a translation be carried out and certified by the lawyer of the companies involved in the transaction.

G. What are the agency's rules and practice regarding exemptions from information requirements (e.g., information submitted or document legalization) for transactions in which the acquiring and acquired parties are foreign (foreign-to-foreign transaction)?	The substantive and procedural rules regarding information requirements are the same for foreign or national parties. In other words, there are no exemptions from information requirements for transactions in which the acquiring and acquired parties are foreign. In fact, when a document is in any language other than Portuguese, it must be submitted along with its translation. Moreover, any document executed in a foreign jurisdiction, must be notarized in the country where it was signed, and such notarization must be certified by the Brazilian Consulate of that country. Alternatively, parties may present a translation carried out and certified by the lawyer of the companies involved in the transaction.
H. Can the agency require third parties to submit information during the review process? Can third parties voluntarily submit information or otherwise contact the agency to intervene?	Yes. The SG and the reporting commissioner of a case may request information from any individuals or legal persons, government bodies, authorities, and government or private entities (LDC, Article 11, III and Article 13, VI). Additionally, the SG may allow those whose interests and rights may be affected by the transaction to intervene in the review procedure as third parties (LDC, Article 50, I).
I. Are parties allowed to submit information beyond what is required in the initial filing voluntarily (e.g., to help narrow or resolve potential competitive concerns)?	Yes. According to Resolution 2/2012, besides all the documents and information requested by the agency, parties may submit any other material that they deem relevant to CADE's review of the merger (see Annexes I and II).
J. Are there different forms for different types of transactions or sectors?	Yes. CADE's Resolution 2/2012 provides for two notification forms: • Annex I contains a form for non-fast-track cases (or ordinary procedure cases). • Annex II contains a form for fast-track cases (or simplified procedure cases), as mentioned in the item 7.B of the present questionnaire.

K. With respect to investment funds: **i) Is it requested that an investment fund taking part in a transaction provide a statement that its controllers do not manage any other investment funds in the same relevant market?** **ii) Should an investment fund be controlled by an entity that is also responsible for other funds in the same relevant market, are such funds considered part of the transaction? Is it requested that the controlling entity provide market information (e.g., market share) related to the other funds it manages and which are in the same relevant market?** **iii) Should there be no classic concentration, is there any sort of exemption regarding presenting certain information requested in the form?**	i) No. ii) In the effect analyse, the concept of economic group applicable to transactions involving funds is determined by item II.5.2 of the Annex I and II of Resolution 2/2012According to it, the following agents must provide market information in the notification of a transaction involving investment funds: • The funds directly involved in the transaction. • The entity managing the funds directly involved in the transaction. • The funds that are managed by the same entity managing the funds directly involved in the transaction (i.e., funds under common control). • The quotaholder groups that own, directly or indirectly, at least 20% of the shares or voting capital of any of the funds directly involved in the transaction. • The companies controlled by the funds directly involved in the transaction, and the companies in which such funds hold, directly or indirectly, at least 20% of the shares or voting capital (portfolio companies). • The companies controlled by the funds under common control, and the companies in which such funds hold, directly or indirectly, at least 20% of the shares or voting capital (portfolio companies). Nevertheless, in respect to the companies and funds under common control and their portfolio companies, information must be provided only in the cases in which such entities are horizontally or vertically related to market affected by the transaction. iii) There are no exemptions regarding the presentation of information requested in the forms set out by Resolution 2/2012 (Annexes I and II). Although the simplified procedure requires a smaller amount of information, once a transaction qualifies for this fast-track merger review, parties must submit all information required by its respective form (Resolution 2/2012, Annex II).

9. Translation	
A. In what language(s) can the notification forms be submitted?	The notification forms must be submitted in Portuguese. Moreover, whenever a document is submitted in any language other than Portuguese, such document must be submitted, at the time of the notification, along with its translation. By means of a justified petition, the parties may request authorization to present a translation of selected excerpts of the document(s). However, it's up to CADE to decide whether it will accept or deny such request. Even though the translation must be presented at the time of notification, parties may request additional time to submit it.
B. Describe any requirements to submit translations of documents: **i) with the initial notification; and** **ii) later in response to requests for information.** **In addition:** **iii) what are the categories or types of documents for which translation is required;** **iv) what are the requirements for certification of the translation;** **v) which language(s) is/are accepted; and** **vi) are summaries or excerpts accepted in lieu of complete translations and in which languages are summaries accepted?**	RICADE (Article 46) determines that the following documents are only to be entered into the records in a foreign language if accompanied by its translated version in Portuguese: • all contractual documents related to the transaction. • shareholders' agreements. • non-compete agreements. • articles of incorporation. That, however, is a non-exhaustive list and CADE may, at its sole discretion, require the Portuguese version of other documents to be presented too.

10. Review Periods	
A. Describe any applicable review periods following notification.	CADE has 240 days to examine transactions that fall within the ordinary procedure (LDC, Article 88, § 2). Such period may be extended either for up to 60 days, upon request of the parties involved in the transaction (LDC, Article 88, § 9, I), or up to 90 days, upon a reasoned decision of the SG (LDC, Article 56) or of CADE's Tribunal, specifying the reasons for why the transaction was considered complex, thus qualifying for a review period

	extension (LDC, Article 88, § 9, II). On the other hand, transactions that fall within the simplified procedure must be reviewed in up to 30 days (Resolution 2/2012, Article 7, § 2). If this deadline is exceeded, the SG must formally justify the delay and give the delayed merger review priority (Resolution 2/2012, Article 7, § 3) (See Question 7A).
B. Are there different rules for public tenders (e.g., open market stock purchases or hostile bids)?	Special rules concerning public tenders are restricted to the notification's triggering event, the implementation of the transaction (open market stock purchases can be consummated before CADE concludes the review of the transaction), and the exercise of certain rights by the acquirer (see Question 6D). There are not different rules for public tender in respect to review periods.
C. What are the procedures for an extension of the review periods, if any? Do requests for additional information suspend or re-start the review period?	In order to obtain an extension of the review period (up to 60 days), parties must formally request CADE that such an extension be granted (LDC, Article 88, § 9, I). CADE, in its turn, may extend the review period (up to 90 days), upon a reasoned decision of the SG (LDC, Article 56) or of CADE's Tribunal, specifying the reasons for the extension, the period of extension, which may not be further renewed, and the measures which are necessary for the submission of the case for trial (LDC, Article 88, § 9, II). Requests for additional information do not suspend or re-start the review period. Merger review periods may not be suspended or interrupted for any reason, except in the event of lack of minimum quorum of CADE's Tribunal, as the case may be (LDC, Article 63).
D. Is there a statutory or other maximum duration for extensions?	Extensions granted upon request of the parties must be of maximum 60 days (LDC, Article 88, § 9, I). Extensions resulting from a reasoned decision of the agency must not exceed 90 days (LDC, Article 88, § 9, II). In other words, the review period of a merger falling within the ordinary procedure has a maximum total duration of 330 days.

E. Does the agency have the authority to suspend review periods? Does suspending a review period require the parties' consent?	No. Merger review periods may not be suspended or interrupted for any reason, except in the event of lack of minimum quorum of CADE's Tribunal, as the case may be (LDC, Article 63).
F. What are the time periods for accelerated review of non-problematic transactions, if any?	Transactions that fall within the simplified procedure must be reviewed in up to 30 days (Resolution 2/2012, Article 7, § 2). If this deadline is exceeded, the SG must formally justify the delay and give the delayed merger review priority (Resolution 2/2012, Article 7, § 3) (See Question 7A).
G. If remedies are offered, do they impact the timing of the review?	No. Merger review periods may not be suspended or interrupted for any reason, except in the event of lack of minimum quorum of CADE's Tribunal, as the case may be (LDC, Article 63).

11. Waiting periods / suspension obligations	
A. Describe any waiting periods/suspension obligations following notification (e.g., full suspension from implementation, restrictions on adopting specific measures) during any initial review period and/or further review period.	Parties may not consummate/implement the transaction before CADE's final assessment of it (LDC, Article 88, § 3). Until that moment, parties must keep their physical structure and competitive conditions unmodified, under penalty of being sanctioned for gun-jumping (LDC, Article 88, § 4). That means that any transfer of assets and influence of one party over the other is forbidden, as is the exchange of competitively sensitive information that is not strictly necessary for the signature of the formal document binding the parties (RICADE, Article 106, § 2).
B. Can parties request a derogation from waiting periods/suspension obligations? If so, under what circumstances?	Parties may request, at any moment, provisional clearance to consummate the transaction, provided that the following requirements are cumulatively met (RICADE, Article 114): • There is no risk of irremediable harm to the competitive environment of the market;

	• The measures to be implemented are completely reversible; and • The applicants demonstrate that the acquired firm will face imminent substantial and irreversible financial losses should the provisional clearance be denied.
C. Are the applicable waiting periods/suspension obligations limited to aspects of the transaction that occur within the agency's jurisdiction (e.g., acquisition or merger of local undertakings/business units)? If not, to what extent can the parties implement the transaction outside the agency's jurisdiction prior to clearance (e.g., through derogation from suspension, hold separate arrangements)?	Waiting periods are applicable to transactions that may have effects in Brazil. Thus, for an example, if a transaction involving sales of assets in another jurisdiction affects the Brazilian market, it may only be implemented once CADE has approved it. In cases in which the merging companies' assets are all located abroad, CADE relies on a close cooperation with other agencies not only to discuss the case and exchange information, but also in the definition of remedies. This is clearly illustrated by the Working Paper Remedies in Cross-Border Merger Cases developed by CADE to the OECD Competition Committee.
D. Are parties allowed to close the transaction if no decision is issued within the statutory period?	Yes. Failure to comply with the time limits for merger review (See Question 10A), results in the merger being tacitly cleared (RICADE, Article 132).
E. Describe any provisions or procedures available to the enforcement agency, the parties and/or third parties to extend the waiting period/suspension obligation.	N/A
F. Describe any procedures for obtaining early termination of the applicable waiting period/suspension obligation, and the criteria and timetable for deciding whether to grant early termination.	N/A

G. Describe any provisions or procedures allowing the parties to close the transaction at their own risk before waiting periods expire or clearance is granted (e.g., allowing the transaction to close if no "irreversible measures" are taken).	As previously mentioned, parties may request, at any moment, provisional clearance to consummate the transaction, provided that the following requirements are all met (RICADE, Article 114): • There is no risk of irremediable harm to the competitive environment of the market. • The measures to be implemented are completely reversible. • The applicants demonstrate that the acquired firm will face imminent substantial and irreversible financial losses should the provisional clearance be denied. To demonstrate the imminent substantial and irreversible financial losses to which the acquired firm is subject, the request must include all the documents, financial reports, and declarations necessary to provide unequivocal evidence of the alleged facts (Article 114, § 1). Within 30 days after the request has been filled, the SG must forward it to the Tribunal along with an opinion on whether provisional clearance to the merger should be granted (Article 114, § 2). Provided that the request has been properly filled, the Tribunal is to consider it within 30 days after it was forwarded by the SG, without prejudice to the regular course of the merger review procedure carried out by the SG (Article 114, § 3). In case provisional clearance is granted, conditions aimed at preserving the reversibility of the transaction must be imposed, as the case may be (Article 114, § 4). The decision issued by the Tribunal is final, and parties are not allowed to file requests for reconsideration (Article 114, § 5).

12. Responsibility for notification / representation	
A. Who is responsible for notifying – the acquiring company(ies), acquired company(ies), or both? Does each party have to make its own filing?	The notification must be submitted jointly, whenever possible. (RICADE, 109 § 1 and Article 3, Resolution 2/2012).

B. Do different rules apply to public tenders (e.g., open market stock purchases or hostile bids)?	Special rules concerning public tenders are restricted to the notification's triggering event, the implementation of the transaction, and the exercise of certain rights by the acquirer (see Question 6D). There are not different rules for public tender in respect to responsibility for notification.
C. Are there any rules as to who can represent the notifying parties (e.g., must a lawyer representing the parties be a member of a local bar)?	According to the Brazilian Code of Civil Procedure, the notifying parties must be represented by a lawyer enrolled with the Brazilian Bar Association (Ordem dos Advogados do Brasil - OAB) or by the representants/directors of the companies involving in the transaction.
D. How does the validity of the representation need to be attested (e.g., power of attorney)? Are there special rules for foreign representatives or firms? Must a power of attorney be notarized, legalized, or apostilled?	The representation must be attested by a power of attorney duly notarized. Whenever a power of attorney is granted abroad, such document must be notarized and legalized in the Brazilian Consulate of the country where it was notarized. If the power of attorney was granted abroad, a certified translation must be also presented. Foreign representatives or firms are not allowed to represent the notifying parties before the Brazilian authorities.

13. Filing fees	
A. Are any filing fees assessed for notification? If so, in what amount and how is the amount determined (e.g., flat fee, fees for services, tiered fees based on complexity, tiered fees based on size of transaction)? [Please provide the amount in local currency and in USD as of December 31st, 2020]	Yes. A flat fee of 85,000.00 BRL (approximately 16,378 USD as of December 31st, 2020) applies to the notification of merger cases (LDC, Article 23). Such fee may be updated by an act of the Executive Branch, after authorization of the National Congress (LDC, Article 23, sole paragraph).
B. Who is responsible for payment?	Any of the parties filing the merger notification is responsible for payment of the notification fee (LDC, Article 24).

C. When is payment required?	The payment of the fee is verified upon the filing of the merger notification (LDC, Article 25).
D. What are the procedures for making payments (e.g., accepted forms of payment, proof of payment required, wire transfer instructions)?	The filing fee is collected by the National Treasury (LDC, Article 27). Parties must access CADE's website to generate a specific collection form, which then can be used to pay the fee at any bank, including internet banking and mobile devices. Proof of payment takes a single business day to be issued. More information can be found at the following links: https://www.gov.br/pt-br/servicos/pagar-taxas-pelo-sistema-de-gru https://www.gov.br/cade/pt-br/assuntos/noticias/cade-lanca-novo-sistema-para-emissao-de-gru

14. Process for substantive analysis and decisions [Please give a brief summary and provide information on relevant Guidance papers]	
A. What are the key procedural stages in the substantive assessment (e.g., screening mergers, consulting third parties)?	After parties notify the transaction, the SG must analyze the documents submitted and request any amendment that might be necessary for the merger review to proceed (RICADE, Article 110). Once the notification is considered complete, the SG makes the transaction and its analysis public by publishing a notice in the Official journal (RICADE, Article 110, sole paragraph). After publication of the notice, those whose rights or interests may be affected by the transaction have 15 days to request to participate in the review as third parties (RICADE, Article 117). Once the SG has analyzed all the documents and information collected (additional requests for information are not seldom), it must decide whether the transaction does or does not qualifies for antitrust review. In the latter case, the transaction does not require CADE's analysis (RICADE, Article 118, II) and the proceeding is concluded. If the opposite decision is made and the SG finds that the transaction qualifies for antitrust analysis, it must then decide whether the merger should be unconditionally approved, approved with restrictions, or blocked (RICADE, Article 120, II).

	In the event the SG decides that the transaction should be blocked or approved with restrictions, it is up to the Tribunal to issue the final decision on the case. In entertaining the request for clearance of the transaction, the Tribunal may then refuse to process the case, clear the transaction unconditionally, block it, or clear it subject to remedies (RICADE, Article 127). If the SG decides that the transaction does not qualify for merger review or if it decides that the transaction should be unconditionally approved, the merger review process is *a priori* closed. Nevertheless, interested third parties or the respective regulatory agency may, within 15 days after publication of such decision, lodge an appeal to the Tribunal (RICADE, Article 121, I). Alternatively, within the same period, CADE's Tribunal may, upon application of one of its members, request the case for adjudication (RICADE, Article 121, II). Due to the eventual appeal or adjudication, parties may not consummate the transaction within 15 days after its complete or partial approval by the SG. In both cases (appeal and adjudication) the Tribunal is then responsible for deciding whether or not it agrees to process the merger review request. If the Tribunal does decide to process the request, it must decide whether the merger is unconditionally approved, approved with restrictions, or blocked (RICADE, Article 127).
B. What merger test does the agency apply (e.g., dominance test or substantial lessening of competition test)?	Instead of necessarily prohibiting mergers that strengthen or create a dominant position in the market, CADE focuses on the effects of the merger on the market and on the possible loss of competition among firms. Qualitative and quantitative information, as well as econometric studies are taken into account in this analysis. By prioritizing the effects of the transaction, rather than the structural issues such as market shares, CADE's analysis bears more similarities with the substantial lessening of competition test.
C. What theories of harm does the agency consider in practice?	CADE assesses the risks related to abuse of market power, abuse of buying power, market entry barriers, competition reduction, market foreclosure, raise of rivals' costs, coordinated effects, portfolio effects, among others.

D. What are the key stages in the substantive analysis? Does this differ depending on the type of transaction (e.g., joint venture)?	CADE adopts the following stages in the substantive mergers analysis:
	• Definition of the relevant market:
	  ○ Identifying the markets affected by the merger.
	  ○ Checking for overlaps or vertical related markets.
	• Verifying concentration levels:
	  ○ Identifying parties' market shares.
	  ○ Examining concentration levels and causal link between market shares and the merger.
	• Probability of market power abuse:
	  ○ Examining market entry barriers.
	  ○ Examining rivalry in the market.
	  ○ Checking for incentives for collusive conducts.
	  ○ Checking for portfolio power (in horizontal mergers).
	  ○ Checking for buying power (in horizontal mergers).
	  ○ Checking for market foreclosure (in vertical mergers).
	  ○ Checking for raise of rivals' costs (in vertical mergers).
	• Examining efficiency gains:
	  ○ Examining the likely and verifiable benefits of the merger.
	  ○ Examining efficiencies that are specific to the transaction.
	  ○ Examining the impact of the merger on consumer welfare.
	  ○ Checking for positive or negative externalities.
	• Net effects analysis
	  ○ Comparing negative and positive effects of the merger.
	
	According to the Guide for Horizontal Merger Review, "when the advantages associated with a transaction are greater than the risk of eliminating competition, that is, when its completion is not expected to reduce consumer welfare, and is likely to provide great benefits to consumers, CADE may choose to clear it unconditionally. When the advantages associated with a transaction are not as great as the risk of eliminating competition, CADE may clear it subject to remedies–whether unilaterally or via an agreement with the parties–whenever it is proved that such remedies will restore

	consumer well-being and economic efficiency. When the risk of eliminating competition cannot be repaired by any condition/remedy, CADE is to block the transaction".
E. Are non-competition issues ever considered (in practice or by law) by the agency? If so, can they override or displace a finding based on competition issues?	No.
F. What are the possible outcomes of the review (e.g., unconditional/conditional clearance, prohibition, etc.)?	In case CADE decides that the transaction qualifies for antitrust review (i.e., notification is mandatory), the possible outcomes of the review are unconditional clearance, conditional clearance (application of remedies), or prohibition.
G. What types of remedies does the agency accept? Is there a preference on any particular type of remedies? How is the process initiated and conducted?	The LDC foresees the following remedies (other remedies can be imposed): • Sale of specific assets or assets comprising a specific economic or industrial activity (Article 61, §2, I). • Split of a company (Article 61, §2, II). • Sale of company control (Article 61, §2, III). • Accounting and financial separation of economic activities (Article 61, §2, IV). • Compulsory licensing of intellectual property rights (Article 61, §2, V). • Any other measures necessary to eliminate the harmful effects of the merger (Article 61, §2, V). Although behavioral and structural remedies are available, the latter are preferable, since they often provide a permanent solution for the competition concerns stemming from the transaction. CADE may accept proposals of merger control agreements from the date of the notification up to 30 days after the case has been assigned to a reporting commissioner (i.e., after the final decision by the SG) (RICADE, Article 124). In the meantime, the merger review analysis is not suspended.

15. Confidentiality	
A. To what extent, if any, does the agency make public the fact that a premerger notification filing was made or the contents of the notification? If applicable, when is this disclosure made?	After the notification (or its amendment, if any) the SG makes the transaction public, by publishing it on the Official Gazette (RICADE, Article 110, sole paragraph) and thereby informing the names of the parties and of their representatives, the type of the transaction filed, and the economic sector involved in it. The publication also informs the number of the merger proceeding, which can be used by anyone to access the public version of the case file.
B. Do notifying parties have access to the agency's file? If so, under what circumstances can the right of access be exercised?	Yes. Anyone can have access to the public version of mergers' case files and right of access can be exercised under any circumstance (RICADE, Article 48, I). Such versions can be easily consulted through CADE's case law research engine. Case files with restricted access, on the other hand, can only be accessed by the parties that submitted them and other persons authorized by CADE (RICADE, Article 48, II). Nevertheless, a party may request that the documents and information submitted by it be included in separate files so as to restrict the other party(ies)'s and third parties' access to them (Article 109, § 2).
C. Can third parties or other government agencies obtain access to notification materials and any other information provided by the parties (including confidential and non-confidential information)? If so, under what circumstances?	Third parties can have access to the entire case files categorized as public, including notification materials and any other information provided by the parties. Additionally, third parties intervening in the merger review (See Question 8H) can have access to the restricted documents and information which they submitted, or to which they received CADE's authorization to access. Government agencies, in their turn, may access restricted files if they are authorized by CADE. As previously mentioned, a party may request that the documents and information submitted by it be included in separate files so as to restrict the other party(ies)'s and third parties' access to them (Article 109, § 2).

D. Are procedures available to request confidential treatment of the fact of notification and/or notification materials? If so, please describe.	Besides categorizing files as restricted or public (See Questions 15B and 15C), CADE can also consider them to be confidential or under seal. While confidential files are only accessible to persons authorized by CADE and to other government authorities responsible for issuing an opinion or decision on the subject (RICADE, Article 48, III), files under seal can only be accessed by judicial order (RICADE, Article 48, IV). Although RICADE foresees that for the benefit of the fact-finding process CADE may ensure confidential treatment to files, documents, information, and procedures (Article 50), such provision does not apply to merger review procedures. In fact, any proceeding that results in the opening of a merger review procedure (See Question 4H, for an example) must be made public once the notification of the transaction has been published in the Official Gazette (Article 50, § 2). Nevertheless, on its own motion or upon request by an interested party, CADE may restrict access to files, documents, and information either to comply with measures that ensure rights to confidentiality granted by law, or to protect information on the business activity of individuals or legal persons under private law which, if disclosed, could give competitive advantage to other economic agents (RICADE, Article 51). Notification materials that fall within that criteria may therefore be treated as restricted. The interested party is responsible for requesting that restricted access be granted to an information or document. The party should prominently display such request on the first page of the submitted document to facilitate its visualization by the authority, indicating any legal provisions that authorize such request (RICADE, Article 53). Moreover, the following provisions apply to requests for restricted access treatment: • Petitioners are to be notified in case their requests for restricted access treatment are denied (RICADE, Article 53, §1). • Once restricted access treatment to documents and information is granted, these must be filed in separate records/files, which must contain a "RESTRICTED ACCESS" tag. Such treatment must also be reported in the main records, including the registry number and date of the request, and the provisions that support the request (RICADE, Article 53, §2). • In case of restricted access information in the body of a petition, statement, request, or opinion, the interested party must present:

	- a complete version of the document, which must contain a "RESTRICTED ACCESS VERSION" tag on the cover and is to be kept in a separate file from the main records, after restricted access is granted (RICADE, Article 53, § 3, I); and - a version of the document containing a "PUBLIC VERSION" tag on the cover, which is to be readily included in the main records, and must contain sufficient elements to allow for the exercise of the right to full answer and defense, including, in the case of market share information, bands with a range of 10 percentage points, and using marks, erasures, or suppressions to omit any numbers, words, or other elements considered of restricted access (RICADE, Article 53, § 3, II). • The interested party must provide, along with the request for restricted access treatment, a public description of the object of the request, or explanation of the impossibility of providing the description (RICADE, Article 53, § 4). • In case information and documents are being presented during testimony, the interested party may orally request it be granted restricted access treatment, in which case it is to be immediately reduced to writing by the authority and signed by the petitioner or attorney (RICADE, Article 53, § 5). In that event, the documents and public description previously referred must be submitted within five days of the oral request, on pain of dismissal. Nonetheless, restricted access is ensured until a final decision is made by CADE (RICADE, Article 53, § 6).
E. Can the agency deny a party's claim that certain information contained in notification materials is confidential? Are there procedures to challenge a decision that information is not confidential? If so, please describe.	CADE may deny a party's request for restricted access treatment (RICADE, Article 55). CADE does not restrict access to information and documents in the following situations: • When the information and documents are, by law, of public nature, including in other jurisdictions, or are in public domain in Brazil or abroad, or they have been previously disclosed by the interested party (RICADE, Article 52, I). • When, in administrative proceedings to impose sanctions for antitrust violations, restricting access to information implies denying the right to full answer and defense (RICADE, Article 52, II).

	• When they pertain to the following categories, amongst others (RICADE, Article 52, III): - Shareholder structure and identity of the controlling shareholder. - Corporate structure of the business group to which the interested parties belong. - Studies, researches or data gathered by institutes, associations, unions, or any other institutions that assembles competitors, except those ordered separately or which include confidentiality clauses. - Product or service lines offered. - Market data related to third parties. - Contracts executed as public instruments before a notary or filed with a notary public or registry of commerce, in Brazil or abroad. - Information that companies are to publish or disclose due to legal or regulatory requirements to which they are subject in Brazil or in another jurisdiction. In case of requests for restricted access treatment to information of expressly public nature, petitioners are subject to pecuniary sanctions (RICADE, Article 52, sole paragraph).
F. Does the agency have procedures to provide public and non-public versions of agency orders, decisions, and court filings? If so, what steps are taken to prevent or limit public disclosure of information designated as confidential that is contained in these documents?	Yes. Once restricted access treatment to documents and information is granted, these must be filed in separate records/files, which must contain a "RESTRICTED ACCESS" tag (RICADE, Article 53, §2). In that case, the interested party must also present a public version of the document containing a "PUBLIC VERSION" tag on the cover. Such document must be readily included in the main records and must contain sufficient elements to allow for the exercise of the right to full answer and defense, including, in the case of market share information, bands with a range of 10 percentage points, and using marks, erasures, or suppressions to omit any numbers, words, or other elements considered of restricted access (RICADE, Article 53, § 3, II). CADE documents and decisions may have a public version or public and non-public versions, as provided the Article 52, RICADE.

16. Transparency	
A. Does the agency publish an annual report with information about mergers? Please provide the web address if available.	Yes. The agency publishes CADE's Yearbook or "Anuário" (Available in Portuguese and English) (See Question 1H).
B. Does the agency publish press releases related to merger policy or investigations/reviews? If so, how can these be accessed (if available online, please provide a link)? How often are they published (e.g., for each decision)?	Yes. Press releases can be accessed in the following website: https://www.gov.br/cade/pt-br.
C. Does the agency publish decisions on why it challenged, blocked, or cleared a transaction? If available online, provide a link. If not available online, describe how one can obtain a copy of decisions.	Yes. Besides been published in the Official Gazette, CADE's case law must also be published on a specific page at CADE's website (www.cade.gov.br) (RICADE, Article 66). In line with that provision, the public version of mergers' case files can be easily consulted by anyone through CADE's case law research engine.
D. Does the agency publish statistics or the number of annual notifications received, clearances, prohibitions, etc.? [if applicable, please provide a link for these figures]	Besides publishing a Yearbook (See Questions 1H and 16A), CADE has also developed a tool called CADE in Numbers (Cade em Números, in Portuguese), which presents relevant data on the agency's activities and competition enforcement in Brazil. Data of public interest are available in the statistical panel, such as information concerning merger reviews, fines imposed by the agency, agreements in merger cases, among others. The panel is dynamic and allows those accessing it to create various graphs and tables, selecting the filters of interest.

17. Cooperation	
A. Is the agency able to exchange information or documents with international counterparts?	Yes. CADE's President is responsible for promoting cooperation and the exchange of information with foreign competition authorities or international institutions, by entering into agreements, or relying on reciprocity between itself and the foreign entity (RICADE, Article 18, XV). Moreover, CADE can only exchange information subject to restricted access if the merging parties grant a waiver of confidentiality to the agency.

B. Is the agency or government a party to any agreements that permit the exchange of information with foreign competition authorities? If so, with which foreign authorities? Are the agreements publicly available?	CADE cooperates with many competition agencies around the world. Bilateral cooperation encompasses exchange of information, experience and best practices on competition law and policy. As a framework for bilateral cooperation, CADE has been signing Memoranda of Understanding (MOU) with foreign agencies and international bodies. MOUs have been signed with competition authorities of the following jurisdictions or groups of countries: Argentina, BRICS countries, Canada, Chile, China, Colombia, Ecuador, Europe, France, Japan, Korea, Mercosur countries, Peru, Portugal, Russia, South Africa, and United States. CADE has also signed MOUs with the Inter-American Development Bank and the World Bank. These agreements are publicly available at https://www.gov.br/cade/pt-br/acesso-a-informacao/convenios-e-transferencias/acordos-internacionais.
C. Does the agency need consent from the parties who submitted confidential information to share such information with foreign competition authorities? If the agency has a model waiver, please provide a link to it here, or state whether the agency accepts the ICN's model waiver of confidentiality in merger investigations form.	CADE can only exchange information subject to restricted access if the merging parties grant a waiver of confidentiality to the agency. According to OECD Peer Review of the Brazilian Competition Law and Policy, CADE's international cooperation has been particularly successful in merger cases, in which the agency makes frequent use of confidentiality waivers. The report states that "the parties involved in a merger review are often willing to grant to the competition authority an authorization to exchange more detailed and/or sensitive information with international counterparts" and that "the success of waivers in Brazil is also due to the fact that CADE has developed and published a draft bilingual version of a model confidentiality waiver, which is available on CADE's website. The model waiver is regularly used by companies and is largely inspired by the work of the OECD and the ICN".
D. Is the agency able to exchange information or documents with other domestic regulators?	Yes. As in the international sphere, CADE usually signs cooperation agreements with the domestic entities with which it exchanges information and documents, establishing a legal landmark that governs the relationship between them and the agency. These agreements are available at: https://www.gov.br/cade/pt-br/acesso-a-informacao/convenios-e-transferencias.

18.Sanctions/penalties	
A. What are the sanctions/penalties for: **i) failure to file a notification;** **ii) incorrect/misleading information in a notification;** **iii) failure to comply with information requests;** **iv) failure to observe a waiting period/suspension obligation;** **v) breach of interim measures;** **vi) failure to observe or delay in implementation of remedies;** **vii) implementation of transaction despite the prohibition from the agency?**	**i) failure to file a notification:** Parties that fail to notify a transaction that fit the criteria for mandatory notification are subject to fines ranging from BRL 60,000.00 to BRL 60,000,000.00. Additionally, CADE may invalidate the already completed merger, as well as initiate an investigation of anticompetitive conduct (Resolution 24/2019, Article 12). **ii) incorrect/misleading information in a notification:** Parties that submit incorrect/misleading information in a notification are subject to fines ranging from BRL 5,000.00 to BRL 5,000,000.00 (LDC, Article 43). Additionally, if the case is still under CADE's analysis, the request for approval may be rejected for lack of evidence, in which case the petitioners may only complete the transaction after filing a new notification (LDC, Article 62). If the merger has been approved, that decision may be reviewed (LDC, Article 91) and the merger proceeding reopened (RICADE, Article 133). **iii) failure to comply with information requests:** Parties that fail to comply with information requests are subject to daily fines ranging from BRL 5,000.00 to BRL 100,000.00 (LDC, Article 40). Additionally, the request for approval may be rejected for lack of evidence, in which case the petitioners may only complete the transaction after filing a new notification (LDC, Article 62). **iv) failure to observe a waiting period/suspension obligation:** Parties that fail to observe a waiting period/suspension obligation are subject to fines ranging from BRL 60,000.00 to BRL 60,000,000.00. Additionally, CADE may invalidate the already completed merger, as well as initiate an investigation of anticompetitive conduct (Resolution 24/2019, Article 9). **v) breach of interim measures:** Parties in breach of interim measures are subject to daily fines ranging from BRL 5,000.00 to BRL 250,000.00 (LDC, Article 39).

	vi) failure to observe or delay in implementation of remedies: Parties that failure to observe or delay in implementation of remedies are subject to daily fines ranging from BRL 5,000.00 to BRL 250,000.00 (LDC, Article 39). Also, if the merger has been approved, that decision may be reviewed (LDC, Article 91) and the merger proceeding reopened (RICADE, Article 133). **vii) implementation of transaction despite the prohibition from the agency:** Parties that implement a transaction despite the prohibition from the agency are subject to daily fines ranging from BRL 5,000.00 to BRL 250,000.00 (LDC, Article 39).
B. Which party/ies (including natural persons) are potentially liable for each of A(i)-(vii)?	Both individuals and companies are potentially liable for the offenses listed on Question 18A. However, since companies are normally the subject of the obligations established by law or by the agency, they are the ones most commonly liable for abiding by those obligations.
C. Can the agency impose/order these sanctions/penalties directly, or is it required to bring judicial action against the infringing party? If the latter, please describe the procedure and indicate how long this procedure can take.	The agency can impose the above-mentioned sanctions directly.
D. Are there any recent or significant fining decisions?	Recently, CADE imposed two of its highest fines for gun jumping. In the case involving Cisco and Technicolor (Ato de Concentração nº 08700.011836/2015-49), parties were required to pay R$ 30 million, whereas in the case involving IBM and Red Hat (Ato de Concentração nº 08700.003660/2019-85), parties were fined in R$ 35 million.

19. Independence	
A. Is there possibility for any ministry or a cabinet of ministries to abrogate, challenge or change merger decisions issued by the agency or by a court? If yes, to which merger decisions does this apply (e.g., any decision, prohibitions, clearances, remedies)?	No ministry or cabinet of ministers may abrogate, challenge or change merger decisions issued by CADE (LDC, Article 9 § 2).
B. What are the grounds for such ministerial intervention?	N/A
C. Please provide any description or guidance regarding the ministerial intervention process and procedures [If applicable]	N/A

20. Administrative and judicial processes/review	
A. Describe the timetable for judicial and administrative review related to merger transactions.	A judicial appeal against CADE's decision on a merger case does not have a predictable timetable.
B. Describe the procedures for protecting confidential information used in judicial proceedings or in an appeal/review of an agency decision.	Judicial appeals against CADE's decision on merger cases are confidential proceedings, only accessible to the parties.
C. Are there any limitations on the time during which an appeal may be filed?	Yes. There is a five-year limitation period for parties to file an appeal, the *a quo* term of which is computed from the date that the final decision is effectively published at the Official Gazette

21. Additional filings	
A. Are any additional filings/clearances required for some types of transactions (e.g., sectoral or securities regulators or national security or foreign investment review)?	Yes. Mergers may also be subject to the approval of other sectoral regulators, such as the Central Bank of Brazil (BACEN in the Portuguese acronym), the Brazilian Electricity Regulatory Agency (ANEEL in the Portuguese acronym), and the National Telecommunications Agency (ANATEL in the Portuguese acronym).

22. Closing Deadlines	
A. When a transaction is cleared or approved, is there a time period within which the parties must close for it to remain authorized? If yes, can the parties obtain an extension of the deadline to close?	There is no legal provision imposing a time period within which parties must implement a transaction for it to remain authorized. Nevertheless, in cases in which the clearance of a transaction is conditioned to the observance of restrictions, parties are given a time period to implement the foreseen remedies. That time period is stated in the merger agreement signed by CADE and the parties and may be extended upon the parties request.

23. Post Merger review of transactions	
A. Can the agency reopen an investigation of a transaction that it previously cleared or allowed to proceed with conditions? If so, are there any limitations, including a time limit on this authority?	Yes. CADE can reopen an investigation of a transaction that it previously cleared or allowed to proceed with conditions, if the agency's decision is based on false or misleading information provided by the parties, in case parties do not comply with their obligations, or if the intended benefits are not achieved (LDC, Article 91 and RICADE, Article 133). In such cases, CADE has a five-year limitation period to reopen the merger review proceeding (Law n. 9.784/1999, Article 54).
B. Does the agency publish studies regarding ex-post analysis of reportable transactions which have been cleared by the agency? Are these studies publicly available? How does the agency obtain data for carrying out these studies?	In 2019 CADE published an ex-post study of a transaction that was approved in 2011, involving the food sector. The study is publicly available at the agency's website. Upon CADE's request, companies composing the markets affected by the transaction provided the data used in the study.