

Brazil Big Tech probe could lead to restrictions on acquisitions, affect merger notification threshold

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By Flavia Fortes and Ana Paula Candil

In Brief

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Information collected from deals from the past 10 years will also inform discussions of whether the merger threshold for notification in Brazil is adequate, Alexandre Cordeiro said in an interview with MLex.

To learn about transactions that flew under the radar of competition regulators, the Administrative Council for Economic Defense, or CADE, opened an investigation in June into acquisitions by the main players in the digital market in Brazil.

The agency has the authority to review transactions that didn't meet the merger notification threshold if it has concerns about their impact, but only until one year after the deal's closure.

Cordeiro said that even though he wouldn't be able to seek a formal review with notification for older deals, he can still adopt administrative measures to determine whether a company engaged in anticompetitive conduct. "Beyond that, by asking for information for the past ten years, I can create a database about how many companies the [investigated] company bought."

"Maybe the company bought about 30 other companies, and all deals were looked at under the fast track procedure, or some weren't not even notified; but if you add everything up, the company may have 25 percent market share. That's what we are concerned about," he said.

"We had in the past adopted provisions [in settlement agreements] of 'you will not buy,' " Cordeiro said.

Such provisions prohibit a company from making further acquisition in its sector. "There were companies that

were buying several companies and at a certain point we had to say that's it, [CADE] won't approve any further transactions."

One transaction where CADE did this was Prosegur's acquisition of Transvip. The private security firm received clearance only after agreeing to not buy other players in the market for transportation of valuables for three years (see [here](#)).

Similarly, meat processing giant JBS committed to CADE that it would not make further deals without notifying the regulator because of its significant presence in the fresh meat market (see [here](#)).

The investigation sent out requests for information to 19 companies, including tech giants Google, Facebook, Apple and Amazon, but also some large Brazilian players such as 99 Taxi and Submarino Viagens. Cordeiro said that they are not interested in other companies at the moment.

"At first we are not interested in others. We are focused on closing those 19 and then, if necessary, start studying other possibilities."

Cordeiro said that there hasn't been a complaint or specific concern about the market that led the agency to open the investigation, but rather it is part of CADE's prerogative to monitor transactions to make sure CADE's enforcement is not falling short.

"Killer acquisitions, potential competition and fringe-firm acquisitions are issues that in general we are not too concerned about when we look at a single transaction; but when you look at the history of acquisitions of a company in the past years, then you start to get a yellow or red light for these types of transactions," Cordeiro said. "The tendency is for the market to further consolidate if we allow these things to happen."

— Request for all acquisitions —

CADE asked companies to submit all of their acquisitions in the past 10 years, whether they were made in Brazil or abroad.

Cordeiro explained that the reason for such a broad request is to learn whether transactions closed abroad could have an impact in Brazil. He said it's possible the companies don't have enough revenue in Brazil and escaped notification, but their transactions could still have effects in Brazil.

He said the competition law gives CADE jurisdiction over transactions entered into in Brazil or that have effects in the country.

— Merger threshold —

The investigation into acquisitions in the tech sector will also inform consideration of whether the agency's threshold for notification is sufficient or needs to be adjusted.

He said CADE still must determine whether the current threshold has led to a failure to review transactions that

should be examined.

"Our current filter is a bit weird, because if you are two companies each with 745 million reais of revenue, there's no need to notify the transaction to CADE," he said. Under CADE's current threshold for review, one company must have at least 750 million reais in revenue, while the other has to have at least 75 million reais.

"My question is, are there any of these companies with revenue of 745 million reais that are not notifying and creating a competition problem? That is what we need to see," Cordeiro said.

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