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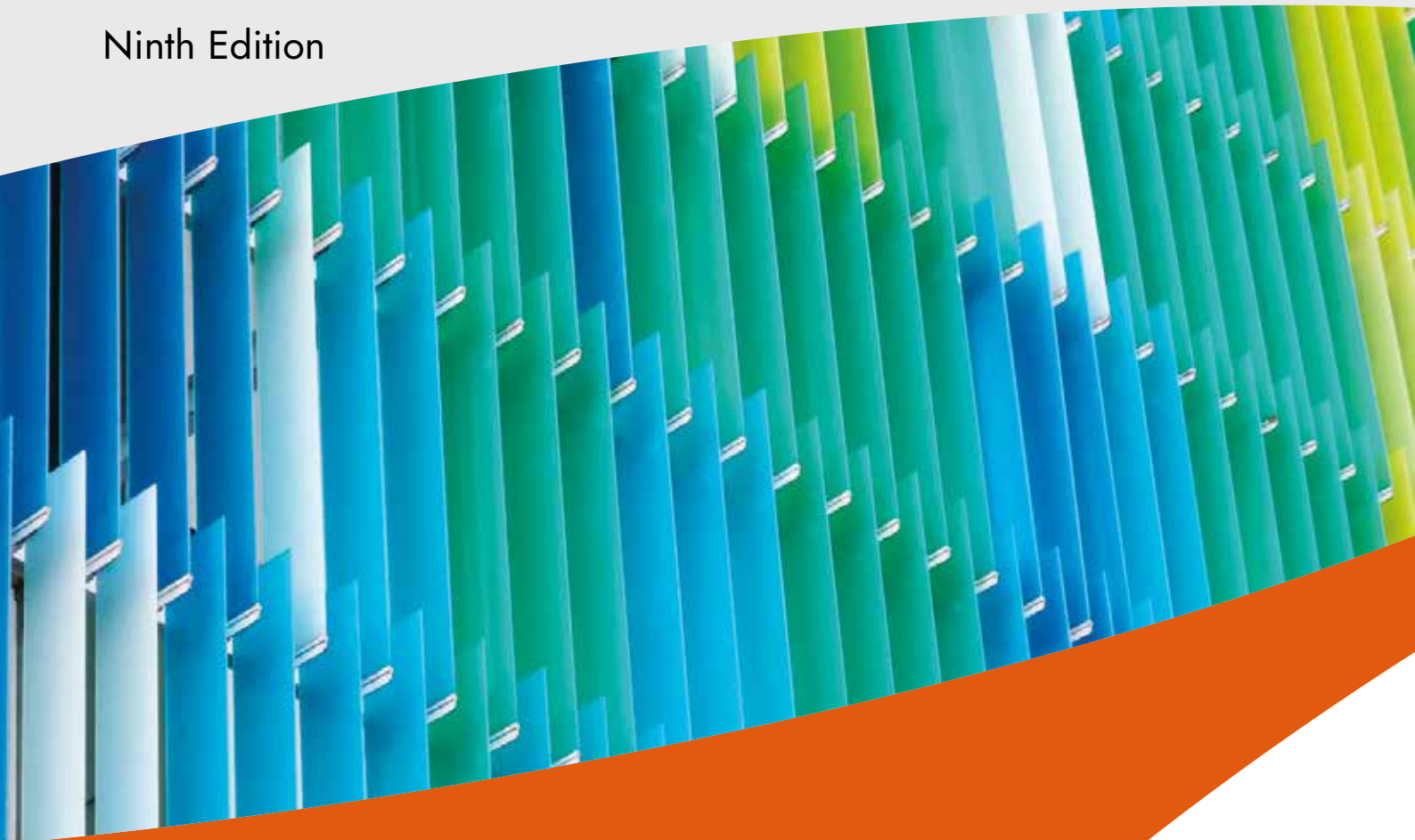
# Vertical Agreements and Dominant Firms 2025

Ninth Edition



Contributing Editor:
**Charles F. (Rick) Rule**
Rule Garza Howley LLP

glg Global Legal Group

# Q&A Chapters

# Brazil

Campos Mello Advogados

Luciana Martorano

## 1 General

### 1.1 What authorities or agencies investigate and enforce the laws governing vertical agreements and dominant firm conduct?

The Administrative Council for Economic Defense (CADE) is the agency responsible for handling and enforcing the laws governing vertical agreements and dominant firm conduct. CADE's structure is divided into three departments: the General Superintendence (investigative body); the Department of Economic Studies (DEE) (technical body); and the Tribunal (the ruling body).

### 1.2 What investigative powers do the responsible competition authorities have?

CADE's powers to conduct investigations on antitrust infringements are extensive. The Brazilian Antitrust Authority can make use of several investigative tools, such as: phone taps; "Pen registers" (a device that intercepts incoming and outgoing telephone numbers); surveillance (including video surveillance); undercover informants; dawn raids; whistle-blowers; and reporting channels, etc.

### 1.3 Describe the steps in the process from the opening of an investigation to its resolution.

The General Superintendence – CADE's investigative body – is responsible for initiating and conducting investigations into antitrust infringements. An investigation can be opened on CADE's own initiative (*ex officio*) or through a third-party claimant, such as a third interested party, and/or upon the request of another governmental entity (e.g., the Federal Police). After formally opening the investigation, the General Superintendence can opt to perform dawn raids (through judicial orders) as well as impose interim measures to prevent anticompetitive practices from continuing. After being properly notified of the investigation, companies and individuals have 30 days to present their defences and indicate the evidence to be produced during the fact-finding phase. After concluding the fact-finding phase, the General Superintendence issues a non-binding opinion for the case dismissal or condemnation of the defendants. The case is then sent to CADE's Tribunal, composed of seven members – one president and six reporting commissioners, who are in charge of ruling on anticompetitive conduct cases during a public trial session. At the end, the Tribunal may decide to dismiss the case if it finds no clear evidence against the defendants, or impose penalties and order the defendants to immediately cease the antitrust infringement.

### 1.4 What remedies (e.g., fines, damages, injunctions, etc.) are available to enforcers?

The Brazilian Antitrust Law (Law No. 12,529/2011) permits CADE to impose the following fines:

- **Companies**: a fine from 0.1% to 20% of the gross sales of the company, group or conglomerate, in the last fiscal year before the establishment of the administrative proceeding, in the branch of business activity in which the violation took place. CADE's Resolution 3/2012 establishes 144 fields of activities based on an industrial classification used by government authorities. When it is not possible to define the business activity, CADE may revert back to the total turnover approach.
- **Individuals, public or private legal entities, association of persons or *de facto* or *de jure* entities, trade unions and other legal entities**: a fine from R$50,000 to R$2 billion.
- **Administrators, managers and employees in managerial positions**: a fine of 1% to 20% of that applied to companies.

In addition to fines, CADE is also permitted to impose other remedies such as prohibiting companies from taking part in public bids for at least five years, publication of CADE's decision in local newspapers, among other sanctions of lower impact in accordance with article 38 of Law No. 12,529 of 2011.

### 1.5 How are those remedies determined and/or calculated?

The base for calculation will always be the total gross revenue registered by the company in the Financial Statement of the last fiscal year before the establishment of the administrative proceeding. The Special System for Settlement and Custody (SELIC) is the index to be applied in the adjustment calculation.

### 1.6 Describe the process of negotiating commitments or other forms of voluntary resolution.

Defendants can negotiate settlements with CADE upon the following conditions: (i) specification of the defendant's obligations not to practise the investigated activity, or its harmful

effects, as well as obligations deemed applicable; (ii) the setting of fines to be paid in case of failure to comply, in full or in part, with the undertaken obligations; and (iii) the setting of fines to be paid to the Diffuse Rights Defense Fund (when applicable – only obliged when related to cartel practices).

### 1.7 At a high level, how often are cases settled by voluntary resolution compared with adversarial litigation?

Historically, CADE's investigations have resulted in more settlement agreements than condemnations. In 2024, CADE collected R$249.6 million through settlement agreements and imposed R$161.6 million in fines resulting from condemnations. These figures show a partial recovery of enforcement activity compared to 2023, though it is still below the exceptional levels recorded in 2022.

CADE's strengthening of the enforcement possibly correlates with the recent recommendation made by the Organisation for Economic Co-operation and Development (OECD) Peer Reviews of Competition Law and Policy Brazil 2019 indicating that CADE should "rely less on settlement negotiations to conclude cases in order to generate a body of case law in this area" (page 4 of the report available at https://web-archive.oecd.org/2019-04-17/505848-oecd-peer-reviews-of-competition-law-and-policy-brazil-ENG-web.pdf).

### 1.8 Does the enforcer have to defend its claims in front of a legal tribunal or in other judicial proceedings? If so, what is the legal standard that applies to justify an enforcement action?

On an administrative level, defendants must defend themselves before CADE's Tribunal. Defendants will usually defend themselves only in CADE's cases that are the subject of appeals to the Brazilian federal courts – see question 1.9 below.

### 1.9 What is the appeals process?

There are no appeals of CADE's decisions on an administrative level and decisions finding abuse can be challenged only before the federal courts. CADE's decisions are usually only reviewed by Brazilian courts in relation to procedural aspects of the decision rather than its material aspects.

### 1.10 Are private rights of action available and, if so, how do they differ from government enforcement actions?

Companies and consumers harmed by antitrust infringements are permitted to seek indemnification in courts that have the power to adopt any necessary measure to compensate damages – such as making void contractual clauses and/or ordering a firm to grant access to intellectual property (IP) rights. Private actions are still in an incipient phase in Brazil and started gaining force with the exchange rate cartel (PT and Forex investigations).

### 1.11 Describe any immunities, exemptions, or safe harbours that apply.

According to article 31, the provisions of Law No. 12,529/2011 are applicable to individuals or public or private entities, as well as any associations of entities or individuals, whether *de facto* or *de jure*, even if created temporarily, incorporated or unincorporated, or engaged in business under a legal monopoly system. There are no exemptions under the Brazilian antitrust regime. Even governmental entities are subject to Law No. 12,529/2011.

### 1.12 Does enforcement vary between industries or businesses?

Not in general. It might be the involvement of regulatory agencies in investigations involving regulated markets, but enforcement is equally applied to all industries and businesses.

### 1.13 How do enforcers and courts take into consideration an industry's regulatory context when assessing competition concerns?

CADE has entered into cooperation agreements with all regulatory agencies in Brazil. When CADE's investigations involve regulated markets, it usually establishes a technical cooperation between the governmental organs in order to have a case better reviewed and investigated. In the oil and gas sector, for example, the parties involved in a transaction subject to merger control are permitted by the National Petroleum, Natural Gas and Bio-fuel Agency (ANP) to initiate the regulatory transference procedure before having the merger control procedure duly approved by CADE. However, the parties can only complete the transference of oil and gas rights following CADE's clearance.

### 1.14 Describe how your jurisdiction's political environment may or may not affect antitrust enforcement.

This is not applicable.

### 1.15 What are the current enforcement trends and priorities in your jurisdiction?

As a general overview, abuse of dominance investigations remain less common than cartel investigations in Brazil. In 2024, CADE launched 60 new administrative proceedings, including 19 cartel investigations, 27 abuse of dominance cases, and 14 inquiries into other anticompetitive practices. During the same year, the authority issued final rulings in 20 cases, of which 15 involved cartel conduct and five referred to other forms of antitrust infringements, including unilateral practices. These figures illustrate CADE's continued focus on collusion, while also reinforcing its growing attention to exclusionary conduct and vertical restraints.

In 2024, CADE maintained its strict approach to gun-jumping. At least six decisions were issued, sanctioning parties for early implementation of transactions prior to CADE's approval, with fines imposed across a variety of sectors, including agribusiness, automotive distribution, and retail. Notably, several decisions addressed failures to notify structural transactions in a timely manner, reinforcing the authority's zero-tolerance policy on merger clearance violations.

### 1.16 Describe any notable recent legal developments in respect of, e.g., vertical agreements, dominant firms and/or vertical merger analysis.

This is not applicable.

## 2 Vertical Agreements

### 2.1 At a high level, what is the level of concern over, and scrutiny given to, vertical agreements?

Considering the difficulties in CADE obtaining information on the content of vertical agreements – due to their private nature – it is rare to see investigations with this type of contract as the main focus.

### 2.2 What is the analysis to determine (a) whether there is an agreement, and (b) whether that agreement is vertical?

CADE has not yet issued a specific guideline and/or soft law establishing rules to assess vertical agreements and relies only on Brazilian legislation and its own case law to review vertical agreements.

### 2.3 What are the laws governing vertical agreements?

Law No. 12,529/2011 determines that any practice with the aim and/or potential effect of jeopardising competition (article 36) constitutes an antitrust infringement subject to penalties. Vertical agreements are assessed based on Law No. 12,529/2011, as well as on the Brazilian Civil Code (Law No. 10,406/2002).

### 2.4 Are there any types of vertical agreements or restraints that are absolutely ("*per se*") protected? Are there any types of vertical agreements or restraints that are *per se* unlawful?

CADE's case law has generally followed the rule of reason assessment and an effects-based approach when investigating cases of dominance abuses. With respect to resale price maintenance (RPM), however, CADE adopted a stricter approach when reviewing the *SKF* case (2013), in which it presumed this practice to be *per se* illegal and left the efficiencies burden of proof on the defendants. There is an uncertainty in case law on whether this *per se* approach will still be followed by CADE in upcoming investigations, so companies must take extra care when establishing their pricing policies. See question 2.16 below for more details.

### 2.5 What is the analytical framework for assessing vertical agreements?

To perform an assessment on when certain conduct may be considered anticompetitive, CADE first verifies whether the investigated company or a group of companies has/have a dominant position in the markets in which they operate. Law No. 12,529/2011 presumes dominant position when a company or a group of companies can individually or jointly change market conditions or when it controls 20% or more of the relevant market (article 36, § 2º). When appropriate, CADE has the power to establish other specific thresholds for specific sectors of the economy. A presumption of dominance is not absolute, however. CADE must also consider the whole market structure to define whether the companies are able to exercise market power through their dominant position. To do so, CADE must verify:

- The definition of the relevant market.
- The relevant market structure.
- The investigated party's market share.
- The market conditions, such as barriers to entry, rivalry, innovation relevance and possible efficiencies arising from the conduct (by balancing its negative/anticompetitive against its positive/procompetitive effects in the market).

However, market dominance is not illegal, as such. What is illegal under the legal framework, however, is the abuse of dominance – a practice that takes place when a company makes use of its dominant position in order to exercise market power, harming and/or restricting competition. CADE usually performs a case-by-case assessment approach (rule of reason) in dominant position cases. In March 2021, the DEE launched the study, "The problematic binary approach to the concept of dominance", analysing the complex concepts of dominance and market power. In this study, the DEE considers that a simplistic, discrete and binary definition of dominant firms and non-dominant firms actually conceals a great continuum of possibilities, characterised by the same variables that help to frame these concepts. In the study, the DEE stated that the so-called "adequate" market power necessary for a dominant player to be identified as such varies greatly, depending on the situation and who is analysing a specific competitive problem. The study (in English) is available at https://bit.ly/CADEDominance.

### 2.6 What is the analytical framework for defining a market in vertical agreement cases?

The "hypothetical monopolist test" (Resolution 20/99) is the economic tool usually used by CADE for market definition in dominance investigations. In general terms, it defines the relevant market as the smallest group of products and geographic area in which a sole profit-maximising seller (a hypothetical monopolist) would impose and maintain a small but significant and non-transitory price increase (SSNIP) above competitive levels without significantly losing market share due to a demand deviation (e.g., consumers acquiring another product to substitute it or buying it in another region). Law No. 12,529/2011 determines that any practice aiming at and/or having the potential effect of jeopardising competition (article 36) constitutes an antitrust infringement subject to penalties. Antitrust rules in Brazil apply not only to companies, but also to individuals and/or public entities, with no exemptions (article 31).

### 2.7 How are vertical agreements analysed when one of the parties is vertically integrated into the same level as the other party (so-called "dual distribution")? Are these treated as vertical or horizontal agreements?

In situations involving two or more products/services, all relevant markets for each component need to be defined separately and there will be a multitude (at least two) of "relevant markets". Depending on the case, so-called "dual distribution" can be assessed as vertical and/or horizontal agreements.

### 2.8 What is the role of market share in reviewing a vertical agreement?

As suggested in the answer to question 2.5 above, as the first indication, CADE evaluates companies' market shares in order

to determine dominance. In addition to the market shares, other criteria will need to be taken into account, such as the market environment (number and size of competitors), its dynamic (whether shares are static over time or rapidly changing), and ease of entry into the market (done on a case-by-case assessment). A dominant position is assumed when the entity has a market share equal to 20% or higher. To arrive at the correct market shares, the definition of the "relevant market" is critical.

### 2.9 What is the role of economic analysis in assessing vertical agreements?

The DEE has been playing a very effective role in complex cases in Brazil and is the body in charge of producing economic analysis of mergers and anticompetitive conduct.

### 2.10 What is the role of efficiencies in analysing vertical agreements?

The analysis of abuse of a dominant position requires information regarding the actual or potential effects of the investigated conduct. Under such analysis, a defence on efficiency gains can be presented by a dominant company in order to prove that potential anticompetitive effects of the conduct can be outweighed by efficiencies such as the reduction of transaction costs, free riding deterrence or protection of investments made in research and development. If those efficiency gains are deemed to outweigh the potential jeopardising effects generated from the conduct, CADE may conclude that there is no abuse and that the conduct is legal from a competitive and legal perspective. In practice, however, CADE has yet not decided a case based on efficiency gains arguments.

### 2.11 Are there any special rules for vertical agreements relating to intellectual property and, if so, how does the analysis of such rules differ?

There are no special rules. In addition to the market power assessment, the antitrust analysis also takes into consideration whether the involved IP rights can be considered essential facilities or standard essential patents (SEPs).

### 2.12 Does the enforcer have to demonstrate anticompetitive effects?

In theory, yes, because abuse of a dominant position must be reviewed under the rule of reason approach. However, in practice, CADE has been imposing the burden of proof on the defendants. As such, it is recommended that companies perform a preventive mapping of the sectors in which the company holds a market share equal to or higher than 20% when acting in the Brazilian market to preventively check if the commercial policies currently applicable in such markets are strictly in compliance with the antitrust rules and case law.

### 2.13 Will enforcers or legal tribunals weigh the harm against potential benefits or efficiencies?

Yes – as detailed in question 2.9 above, even if a potential abuse of dominance is demonstrated, companies can still raise defences to allegations of benefits or efficiencies to outweigh the competition harm.

### 2.14 What other defences are available to allegations that a vertical agreement is anticompetitive?

In addition to efficiencies, companies can argue the protection of their brands as a strong argument to justify anticompetitive contractual obligations. This can be applied, for example, in cases involving luxury brands and selective distribution.

### 2.15 Have the enforcement authorities issued any formal guidelines regarding vertical agreements?

The enforcement authorities have not yet issued any formal guidelines regarding vertical agreements.

### 2.16 How is resale price maintenance treated under the law?

As stated in question 2.4 above, with respect to RPM, CADE adopted a stricter approach when reviewing the *SKF* case (2013), and presumed this practice to be *per se* illegal and left the efficiencies burden of proof on the defendants. There is an uncertainty in the case law on whether this *per se* approach will still be followed by CADE in the next investigations. Following the *SKF* case (2013), responding to a voluntary consultancy submitted by Continental in 2018 in relation to an agreement, six of CADE's seven commissioners understood that Continental's "minimum announced price policy" – related to its tyres division – should be deemed lawful under the Brazilian competition law perspective. CADE's conclusion was based mainly on three conditions to be re-assessed in 2023 (after the term of five years): (i) lack of dominant position in the relevant markets affected by the price policy; (ii) no interference or influence from Continental's retailers; and (iii) the price policy should be applied to all retailers, without any discrimination.

### 2.17 How do enforcers and courts examine exclusive dealing claims?

There is no specific provision regarding exclusivity in Law No. 12,529/2011 and, as detailed above, any behaviour that has the effect (actual or potential) of harming competition may be considered an antitrust infringement subject to fines and other penalties.

In October 2022, CADE's Tribunal voted to confirm a preliminary injunction limiting exclusivity agreements for distribution of beer entered by brewery Ambev (part of the Anheuser-Busch InBev Group) with bars, restaurants, and nightclubs. The investigation was initiated by a complaint from rival brewery Heineken, which alleged that Ambev's exclusivity agreements harmed competition and foreclosed the market for premium points of sales in various relevant cities. The preliminary injunction prohibits Ambev from entering into or renewing exclusivity agreements in certain locations where a high degree of market foreclosure was identified. The decision is also applicable to Heineken in locations where it holds a market share higher than 20%.

### 2.18 How do enforcers and courts examine tying/supplementary obligation claims?

Law No. 12,529/2011 defines tying and bundling as conduct whereby a company conditions the sale of goods or the

provision of services to the acquisition or use of another good or service, considering the practice an antitrust infringement (article 36, § 3, XVIII). Tying and bundling practices can be used as a strategy for a company to leverage its dominance into new markets, for example. CADE's case law has stipulated throughout the years four cumulative requisites to verify when tying and bundling conduct may result in an antitrust infringement: (i) whenever the tying and the tied goods can be considered two distinct products; (ii) whenever the joint purchase of both products is followed by any sort of coercion (e.g., sales refusal in relation to only one of the products); (iii) whenever the seller holds a dominant position in the tying market; and (iv) whenever the tying and bundling conduct can generate sufficient efficiencies to outweigh the produced anticompetitive effects. Despite benefitting from previous tying and bundling investigations to establish an assessment criterion, CADE has dismissed all related investigations in recent years by judging that the investigated conduct did not meet the above-mentioned requisites.

### 2.19 How do enforcers and courts examine price discrimination claims?

Law No. 12,529/2011 classifies discriminatory prices as an antitrust infringement (article 36, § 3, X). The practice can, however, be tolerated when it is duly justified, e.g., when based on volume owing to economies of scale. As with all other potential antitrust infringements related to dominance, CADE will perform a case-by-case analysis when assessing price-fixing practices.

### 2.20 How do enforcers and courts examine loyalty discount claims?

The most relevant cases involving implicit exclusivity clauses in loyalty/rebates programmes involved Ambev and its "Tô Contigo" loyalty programme in Brazil. Such case assessed the anticompetitive effects created from Ambev's "Tô Contigo" loyalty programme, which awarded advantages to retailers purchasing Ambev products with discounts and points that could be exchanged for prizes. In its decision, CADE acknowledged that despite the fact there was not a formal exclusivity clause in the loyalty programme agreement, the lock-in effect caused by the loyalty programme in the downstream market (point of sales) generated anticompetitive effects that outweighed possible efficiencies due to Ambev's market power. As such, CADE condemned Ambev for antitrust infringement in 2009, imposing a fine of R$352 million (€140.3 million – based on the exchange rate on 31/12/2009, whereby €1 = R$2,507.33). Ambev challenged CADE's decision in court and, in July 2015, reached an agreement with CADE, agreeing to pay a fine of R$229 million (€91.3 million – based on the exchange rate on 31/12/2015, whereby €1 = R$4,2504). Considering this previous antitrust condemnation, we recommend Ambev to take extra precautions with exclusivity clauses in Brazil, since the company is currently under CADE's spotlight and any other condemnation in the future will be subject to double fines (recurrence).

### 2.21 How do enforcers and courts examine multi-product or "bundled" discount claims?

There has been case law in Brazil involving multi-product or "bundled" discount claims to date.

### 2.22 What other types of vertical restraints are prohibited by the applicable laws?

Any other types of abuse may fall under article 36 of Law No. 12,529/2011 and amount to antitrust infringement, provided they have the object of or are able to produce the effects of restraining competition, dominating a relevant product or service market, arbitrarily increasing profits or abusing a dominant position. This could include the use of "broad" parity clauses, for example.

One specific price restriction that seems to be in fashion at present is the Minimum Advertised Price (MAP).

Although CADE recognises the possibility of having pro-competitive effects arising from this type of practice, case law in Brazil has been unanimous in concluding the high potential of MAP generally resulting in: (i) intra-brand competition lessening; (ii) an increase of a product's final price; and (iii) the facilitation of coordinated practices between (a) manufacturers, as uniform and controlled prices could facilitate collusion between manufacturers, and (b) resellers, insofar as greater transparency and uniform prices can help cartels and prices monitoring.

CADE's case law has established the criteria below to assess and decide on the legality of MAP policies:

| Legal Requirement | Description |
|---|---|
| Market Power | Absence of unilateral or coordinated market power in the markets affected by the conduct: it will not be considered potentially harmful if the practising company does not have market power. The characterisation of market power implies a complex and successive analysis that follows these steps: (i) the existence of a dominant position – legally presumed in Brazil when the market share of the company under investigation is equal to or greater than 20%; (ii) the existence of barriers to entry; (iii) rivalry; and (iv) efficiencies. |
| Unilateral | The MAP policy must be unilaterally developed and implemented by the undertaking, without having any interreference from retailers/distributors. |
| Non-Discriminatory | Discrimination on the basis of the type of business is not permitted (e.g., online and brick-and-mortar stores). The MAP policy must apply on a non-discriminatory approach to all retail channels. |
| Mandatory | When mandatory, the MAP policy results in anticompetitive effects similar to RPM. Monitoring retail prices and punishing distributors/retailers that do not follow the MAP policy will prove the mandatory nature of the practice. |

In conclusion, to be legally implemented in Brazil, one MAP policy must fit in the above-mentioned requirements.

**2.23 How are MFNs treated under the law?**

MFN clauses are reviewed in the same way as other vertical restraints and might be analysed as an implicit exclusivity if they are able to provoke a lock-in effect.

In February 2022, in the context of an investigation of alleged abuse of a dominant position in the market for corporate wellness platforms, CADE's Tribunal granted a preliminary injunction requested by gym aggregator TotalPass to suspend exclusivity provisions and Most Favoured Nation (MFN) clauses in agreements entered by rival (and alleged dominant player) GymPass with independent gyms. In September, CADE signed a Settlement Agreement with GymPass to restrict the extent of exclusivity and MFN provisions in agreements to affiliate independent gyms. Per the Settlement Agreement, GymPass: (i) cannot introduce MFN clauses that prevent gyms from offering daily passes for lower prices than those charged by GymPass; (ii) must limit exclusivity agreements to a maximum of 20% of the total number of affiliated gyms in its network; and (iii) must only renew or enter into new exclusivity agreements where exclusivity is relevant to support investments made by GymPass on affiliated gyms.

Recent enforcement actions have highlighted CADE's growing concern with practices such as MAP and MFN clauses in platform markets. In particular, cases involving GymPass and other aggregators have triggered commitments limiting the scope and duration of exclusivity and pricing parity provisions.

## 3 Dominant Firms

**3.1 At a high level, what is the level of concern over, and scrutiny given to, unilateral conduct (e.g., abuse of dominance)?**

The level of concern is the same as described in the answer to question 2.1 above.

**3.2 What are the laws governing dominant firms?**

Law No. 12,529/2011 determines that any practice with the aim and/or the potential effect of jeopardising competition (article 36) constitutes an antitrust infringement subject to penalties.

**3.3 What is the analytical framework for defining a market in dominant firm cases?**

The analytical framework is the same as described in the answer to question 2.5 above.

**3.4 What is the market share threshold for enforcers or a court to consider a firm as dominant or a monopolist?**

As explained in the answer to question 2.8 above, a dominant position is unlikely when equal to or lower than 20% of market shares and assumed when equal to or higher than 20%. To arrive at the correct market shares, the definition of the "relevant market" is critical.

**3.5 In general, what are the consequences of being adjudged "dominant" or a "monopolist"? Is dominance or monopoly illegal *per se* (or subject to regulation), or are there specific types of conduct that are prohibited?**

As explained in the answer to question 2.9 above, market dominance is, as such, not illegal. What is illegal under the legal framework is the abuse of dominance – a practice that takes place when a company makes use of its dominant position in order to exercise market power, harming and/or restricting competition. CADE usually performs a case-by-case assessment approach (rule of reason) in dominant position cases.

**3.6 What is the role of economic analysis in assessing market dominance?**

The role of economic analysis in assessing market dominance is the same as described in the answer to question 2.5 above.

**3.7 What is the role of market share in assessing market dominance?**

The role of market share in assessing market dominance is the same as described in the answers to questions 2.5 and 2.8 above.

**3.8 What defences are available to allegations that a firm is abusing its dominance or market power?**

The defences available to allegations that a firm is abusing its dominance or market power are the same as described in the answer to question 2.8 above.

**3.9 What is the role of efficiencies in analysing dominant firm behaviour?**

The role of efficiencies in analysing dominant firm behaviour is the same as described in the answer to question 2.10 above.

**3.10 Do the governing laws apply to "collective" dominance?**

Yes, the governing laws apply to "collective" dominance in the same way as described at section 2 above.

**3.11 How do the laws in your jurisdiction apply to dominant purchasers?**

There are no specific guidelines for dominant purchasers and the applied criteria are the same as described in the answer to question 2.5 above.

**3.12 What counts as abuse of dominance or exclusionary or anticompetitive conduct?**

What counts as abuse of dominance or exclusionary or anticompetitive conduct is the same as described in the answer to question 2.5 above.

### 3.13 What is the role of intellectual property in analysing dominant firm behaviour?

The role of IP in analysing dominant firm behaviour is the same as that described in the answer to question 2.11 above.

### 3.14 Do enforcers and/or legal tribunals consider "direct effects" evidence of market power?

Yes; however, in general, the applied criteria are the same as those described in the answer to question 2.5 above.

### 3.15 How is "platform dominance" assessed in your jurisdiction?

There are no specific guidelines, and the applied criteria are the same as those described in the answer to question 2.5 above.

### 3.16 Are the competition agencies in your jurisdiction doing anything special to try to regulate big tech platforms?

There is no single comprehensive law in Brazil specifically regulating big tech platforms. However, various legal frameworks – such as the Brazilian General Data Protection Law (Law No. 13,709/2018), the Internet Civil Framework (Law No. 12,965/2014), and pending legislative proposals targeting digital platforms – apply to and increasingly affect the conduct of large technology companies operating in the country.

In a landmark decision in June 2024 (Theme 987), the Brazilian Supreme Federal Court (STF) ruled that digital platforms may be held jointly and severally liable (*responsabilidade solidária*) for harmful content posted by third parties, provided they are judicially notified and fail to promptly remove the offending content. The ruling reinforces the duties of large digital intermediaries and is expected to significantly impact content moderation and platform liability standards in Brazil.

On an administrative level, CADE issued a soft law in 2021 entitled "Digital Platform Markets" presenting an overview on potential antitrust issues involving digital market. The legislation focuses on: online retail of agricultural products; online retail of pet products; online retail of beverages; online retail of medicines; cosmetics and personal care products; freight forwarding and road freight brokerage applications; gym aggregator platforms; healthcare applications; electronic games distribution platforms; car-sharing platforms (including for individuals); and supermarket item delivery platforms.

Recent investigations opened by CADE's General Superintendence against Apple, Facebook, Google, and iFood further indicate that digital platforms remain under increased scrutiny in Brazil.

In relation to cases, it is important to mention that in March 2022, CADE opened an investigation against iFood (meal delivery platform) based on a complaint filed by *Associação Brasileira das Empresas de Benefícios ao Trabalhador* (ABTT) alleging that iFood would be using a database obtained from its activities in the digital platforms market to prospect its business in the market of benefit vouchers; as well as using revenues earned in the digital ready-meal delivery platform to finance discounts and other advantages for corporate clients in the benefit voucher market (cross-subsidy). While CADE's General Superintendence initially found no evidence of gatekeeping behaviour or discriminatory practices by iFood, one of CADE's Commissioners requested the reopening of the investigation to further assess potential discrimination against competitors and possible leveraging of market power across segments. The case was reverted to the investigative phase and is still under review.

In September 2022, CADE closed a 2016 investigation into whether Google abused its dominant position in the general search market to favour its own local services in Brazil. CADE understood that the elements available did not allow the conclusion of the existence of anticompetitive conduct by Google, ruling out the understanding that the prominent position of Google's organic search could be considered an essential input for local search engines. CADE also concluded that Google search engine results occupy a limited space, being inaccessible to all agents who wish to appear in the top positions.

As of mid-2025, the complaint filed by Mercado Livre in December 2022 against Apple has advanced considerably. In November 2024, CADE converted the matter into a full administrative proceeding and issued preliminary injunctions requiring Apple to allow alternative payment methods and in-app steering, under daily fines of R$ 250,000. These injunctions were upheld by CADE in May 2025 and reinstated by the Federal Regional Court (TRF-1) in March 2025 with an extended 90-day compliance deadline. Most recently, in June 2025, CADE's technical team recommended that the Tribunal impose formal sanctions and remedies. The case remains pending final adjudication by CADE's Tribunal.

In June 2025, CADE's General Superintendence issued a Statement of Objections recommending the condemnation of Apple for allegedly abusing its dominant position in the iOS ecosystem. The investigation, which originated from a complaint filed by Mercado Livre, challenges Apple's App Store rules that require developers distributing digital goods or services to use Apple's proprietary in-app payment system and prohibit redirection to external payment platforms. CADE found that these restrictions may amount to tying, excessive pricing, and unjustified limitations on price differentiation, ultimately raising rivals' costs and restricting consumer choice. The conduct was preliminarily characterised as an abuse of dominance under article 36 of Law No. 12,529/2011. The case now proceeds to CADE's Tribunal for a final decision.

### 3.17 Under what circumstances are refusals to deal considered anticompetitive?

Refusal to deal and denial of access to essential facilities are deemed a potential antitrust infringement, pursuant to article 36, paragraph 3, V and XI of Law No. 12,529/2011. According to Resolution 20/99, refusals to deal and denial of access to essential facilities can increase the barriers to entry in the market and create foreclosure effects. At the same time, such conduct can help reduce transaction costs and avoid free riding so they must be overweighted in a case-by-case approach. According to CADE's precedents, in order for such practices to be found to be an antitrust infringement, access to the facility must be considered essential for entrance into the market and its replication must be either impossible or not reasonably feasible. CADE has dismissed all investigations for refusals to deal in recent years. In the *Thyssenkrupp* case (2014), for example, CADE dismissed an accusation against Thyssenkrupp for an alleged refusal to supply spare parts to independent maintenance companies that could possibly jeopardise their entry into the market for software to repair elevators. In its assessment, CADE stated that it found no evidence that Thyssenkrupp

had refused access to its software and concluded that independent maintenance companies could find other suppliers of spare parts to provide their services and to act in the market. In 2018, the biggest Brazilian Banks (*Banco do Brasil*, *Bradesco* and *Itau Unibanco*) together with Celo and RedeCard settled an investigation in the payment card processing market to: (i) stop refusing to read the receivables of commercial enterprises that use Rede's (controlled by *Itaú Unibanco*) and Cielo's (respectively controlled by *Banco do Brasil* and *Bradesco*) competitors' card-processing companies; and (ii) creating obstacles for smaller banks to access Rede's and Cielo's credit card receivables data. In 2019, CADE's Tribunal settled an investigation against Correios – the Brazilian postal company that allegedly holds a legal monopoly for delivering specific types of documents (e.g., letters, magnetic stripe cards and check books). Correios was investigated for abuse of a dominant position and for discrimination practices against customers by refusing to provide services to competitors in order to defend its legal monopoly. CADE's General Superintendence, CADE's Attorney General and the Public Prosecutor's Office stated in their opinions that Correios would in fact impose unjustifiable restraints to provide services to some competitors, even though it had provided the same required services to non-competitors over the same period. The settlement agreement signed between CADE's Tribunal and Correios suspended the investigation after Correios had paid a fine of R$21.9 million and agreed in refraining from imposing discriminatory prices and commercial conditions on customers, among other commitments.

In July 2022, CADE opened an investigation against Linx due to Cielo's formal complaint. According to Cielo, Linx would be promoting the combined sale of its management software with its payment solutions, by offering bundled services. In addition, it would also be creating difficulties for the integration of Cielo and other acquirers competing with Linx Pay (Linx's payment solution), in an attempt to transfer its power in the management software market to the means of payment market. Also, according to Cielo, the conquest of a dominant position by Linx in the retail management software market was not due to efficiency, but to the aggressive commercial policy, which would consist of a strategy of eliminating competitors (killer acquisitions). After analysing the case, CADE decided to close the investigation against Linx. According to CADE, it was not possible to presume the existence of a dominant position. Based on the analysis, CADE understood there was no opportunity in which Linx would have, in any way, offered or conditioned the contracting of its business management software to the contracting of its own payment solution, with no official company informing the occurrence of alleged pressures or suggestions by Linx aiming to break their contract with Cielo to contract the Linx Pay payment solution. In addition, CADE identified that the software integration difficulties raised by Cielo were isolated and did not derive competition concerns.

## 4 Miscellaneous

**4.1 Please describe and comment on anything unique to your jurisdiction (or not covered above) with regard to vertical agreements and dominant firms.**

This is not applicable.

**Luciana Martorano** is a dual-qualified Brazilian and European competition lawyer with over 19 years of experience advising on antitrust law, merger control, and regulatory strategy. She has successfully led the approval of more than 150 merger control filings before CADE, including complex cross-border transactions involving global market leaders.

Her practice encompasses high-stakes cartel investigations, dominance cases, and the design of robust compliance programmes, often in scenarios where sensitive information, reputational exposure, and regulatory pressure intersect.

Luciana is also a trusted advisor on crisis management, clean team structuring, and ESG-aligned competition strategies, helping clients navigate legal risks while preserving commercial flexibility.

Whether representing companies before CADE, coordinating multi-jurisdictional filings, or advising boards on strategic conduct, she is known for delivering precise, pragmatic counsel with measurable business impact.

Consistently recognised in national and international rankings – including *Leaders League*, *The Legal 500*, *Thomson Reuters*, *Best Lawyers*, and *Análise Advocacia* – Luciana combines legal excellence with global perspective and negotiation acumen.

**Campos Mello Advogados**
Av. dos Tajurás, 333 - 3° andar,
Edifício Varanda Cidade Jardim, Cidade Jardim,
São Paulo, SP – CEP: 05670-000
Brazil

Tel: +55 11 3077 3500
Email: Luciana.martorano@cmalaw.com
LinkedIn: www.linkedin.com/in/lucianamartorano

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