

# STATUTES OF CADE

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## PART I

### BOOK I

#### ORGANISATION, NATURE, AND JURISDICTION OF CADE

Article 1. The Administrative Council for Economic Defense (CADE) is an adjudicative agency with jurisdiction over the Brazilian territory. It is linked to the Ministry of Justice, with headquarters and forum in the Federal District. The purpose of CADE is the prevention and suppression of antitrust violations, as per Law 12529/2011 and the constitutional principles of free enterprise, free competition, social responsibility of property rights, consumer protection and prevention of abuse of market power.

Article 2. The organisational structure of CADE is composed by:

I. bodies of direct and immediate assistance to the President of the Administrative Council for Economic Defense:

a) Office of the President;

b) International Unit; and

c) International Unit; and

II. supplementary bodies:

a) Management Office;

b) Internal Audit Unit;

c) Office of the Attorney General at CADE; and

d) Internal Affairs Office.

III. autonomous bodies:

a) Office of the Superintendent General;

b) Department of Economic Studies; and

IV. collegial body: Administrative Tribunal for Economic Defense.

(1) The organisational structure, jurisdiction, and operation of any departments subordinated to the bodies named in this Article are to be established in a specific regulation.

### TITLE I

#### BODIES OF DIRECT AND IMMEDIATE ASSISTANCE TO THE PRESIDENT

Article 3. The Office of the President shall:

I. assist the President of CADE with the supervision and coordination of the activities performed by each and every one of its units;

II. assist with the social and political representation of the President of CADE and with any administrative supporting matters related to the Tribunal;

III. track and control documents and administrative proceedings submitted to the Office of the President of CADE;

IV. monitor the disclosure of regulations and orders of the President of CADE;

V. monitor the activities of the Information Centre; the Head of the Office of the President

is the authority responsible for ensuring and monitoring compliance with the Access to Information Law within CADE; and

VI. monitor the activities of the Ombudsman of CADE, tracking complaints, requests, claims, suggestions, and compliments regarding the policies and public services provided by CADE.

Article 4. The International Unit shall:

- I. assist the President of CADE with matters related to CADE's international presence;
- II. contribute to the implementation of measures to prevent and fight cross-border antitrust practices suitable to the Brazilian reality; and
- III. promote international cooperation with foreign competition regulators.

Article 5. The Communications Unit shall:

- I. plan, coordinate, establish, and supervise internal and external communications both within CADE and outside the organisation;
- II. manage CADE's relationship with the press and mediate communications between CADE's spokespersons and journalists;
- III. update CADE's websites;
- IV. produce institutional publications and supervise their disclosure; and
- V. support the dissemination of information related to events organised by CADE.

## TITLE II SUPPLEMENTARY BODIES

Article 6. The Management Office shall:

- I. assist CADE's units with matters related to strategic planning, management of any special projects, and monitoring of government programmes under CADE's responsibility; CADE;
- II. plan, coordinate, and supervise, within the scope of CADE, any activities related to the following Federal Government systems: Civil Service Systems, Management System of Information Technology Resources, General Services Systems, Federal Budget and Planning System, Federal Accounting System, Federal Financial Management System, Federal Government Institutional Organisation and Innovation Systems, and Management System of Archives;
- III. coordinate with the central bodies of the federal systems referred to in Item 2, in addition to informing and guiding CADE's units with respect to compliance with the established administrative rules;
- IV. arrange the rendering of the accounts of civil servants responsible for expenses approval, and of any other parties responsible for public goods and assets or who are responsible for losses, misplacements, or other irregularities that result in losses to the Treasury;
- V. promote, organise and guide actions related to the production of knowledge and the management of information regarding planning and administrative activities, within the scope of CADE;
- VI. coordinate the preparation of activity reports, including the annual management report.

Article 7. The Internal Audit Unit shall:

- I. carry out the accounting, financial, budgetary, and operational inspection at CADE, in addition to monitoring, reviewing, and measuring the effectiveness of the controls in place;
- II. monitor, through audits, CADE's budget performance in every aspect and throughout all

stages, including acquisition, as well as throughout any processes to protect and control its assets;

III. evaluate the internal controls related to key elements for the achievement of organisational objectives;

IV. evaluate risk management, ethics, and integrity, suggesting preventive and corrective measures aimed at dealing with any irregularities detected, if applicable;

V. arrange and carry out studies related to internal audits, and introduce best practices into CADE's internal control framework;

VI. adopt other measures provided for in the legislation in force; and

VII. perform other works related to internal control, as requested by the President.

Article 8. The Office of the Attorney General at CADE shall:

I. serve as legal counsel and provide CADE with advice upon questions of law;

II. represent CADE both in and out of court;

III. rule on constitutional issues, as well as laws, treaties and other regulations providing the interpretation to be uniformly observed in any activities carried out by the agency and during their coordination, should there be no guidance on the matter by the Attorney General of Brazil or the Prosecutor General of Brazil;

IV. interpret judicial decisions within its competence, specifying the enforceability of the ruling, and establishing CADE's parameters for compliance with any such decisions;

V. take any legal action as requested by the Tribunal or the Office of the Superintendent General, which are deemed necessary to stop the perpetration of antitrust violations or obtain evidence during the discovery phase of any administrative proceedings;

VI. reach settlements in lawsuits concerning antitrust violations, pursuant to authorisation by the Tribunal;

VII. decide whether cases within CADE's competence should be taken to court;

VIII. confer with judges and justices regarding matters of interest to CADE;

IX. issue opinions prior to the filing of civil lawsuits of public interest, or legal actions for misfeasance in public office, -and prior to any intervention by CADE in such matters- or in class action suits, in compliance with the guidelines established by the President of CADE;

X. keep the President of the Tribunal, the Commissioners, and the Superintendent General, up to date on the progress of lawsuits and legal actions;

XI. issue, whenever expressly requested by a Commissioner or the Superintendent General, opinions on cases within CADE's competence, without staying or interfering otherwise in procedural time limits, and without prejudice to the ordinary course of proceedings;

XII. ensure compliance with Law 12259/2011;

XIII. assist CADE's authorities and officials with internal control matters related to the lawfulness of the administrative activities which have been or are to be undertaken, as well as with control matters related to activities within its competence;

XIV. examine, previously and conclusively, within the scope of its duties:

a) drafts of procurement notices, drafts of calls for public comment, and similar documents;

b) drafts of contracts and any amendments;

c) requests for procurement waivers or exemptions;

d) drafts of covenants, similar documents, and any amendments;



- e) drafts of consent orders, agreements, and similar documents;
  - f) other documents that involve legal analysis, as per the provisions of specific laws, executive orders, CADE's regulations or other applicable regulations.
- XV. examine whether credits inherent to the activities carried out by CADE are accurate in terms of amounts and legality, registering them as outstanding debts for collection purposes;
- XVI. ensure the judicial enforcement of decisions and other rulings issued by CADE;
- XVII. represent CADE's authorities and officials, should a case be tried in trial courts or specialised courts of first instance within its competence, as per the provisions of Article 22 of Law 9028 of 12 April 1995;
- XVIII. provide, whenever it is possible, professional training for incumbent Federal Prosecutors of Regional, State, and Sectional Federal Prosecution Services, on topics related to CADE's core activity;
- XIX. assist in drawing up and editing regulations and interpretative rules, together with CADE's competent bodies, observing any legal guidelines and understandings set forth by the Prosecutor General of Brazil, and the Attorney General of Brazil;
- XX. assist CADE's managers and authorities in any procedures launched at the Federal Court of Accounts, assisted by the Consulting Services of the Prosecutor General of Brazil, whenever there is no conflict with the instructions provided by the Offices of the Attorney General and the Prosecutor General of Brazil, or of the Office of the Attorney General at CADE;
- XXI. report to the Offices of the Attorney General or the Prosecutor General of Brazil, as appropriate, any case of malfeasance in office by one of its officials;
- XXII. prepare management reports of its activities;
- XXIII. intervene in any lawsuits which directly or indirectly involve the disclosure of any of the restricted documents and information referred to in Article 2 of Resolution 21 of 12 September 2018;
- XXIV. request, should the Tribunal so determine, under the provisions of Article 313, Item 5b of the Code of Civil Procedure, request the suspension of proceedings in and out of court which might compromise the national policy for fighting antitrust violations, until a final decision is issued by the Tribunal of CADE; and
- XXV. perform any other tasks assigned to it by these Statutes.

### TITLE III AUTONOMOUS BODIES

Article 9. The Internal Affairs Office, a supplementary body of the Internal Affairs System of the Federal Government, shall:

- I. plan, coordinate, and carry out at CADE all tasks related to the Internal Affairs System of the Federal Government;
- II. monitor the activities and performance of the disciplinary committees at CADE; and
- III. coordinate with the central body of the Internal Affairs System of the Federal Government to provide information and assist CADE's units with respect to compliance with the established rules.

Article 10. The Office of the Superintendent General shall:

- I. ensure compliance with Law 12259/2011, monitoring and tracking market practices;
- II. monitor, permanently, any commercial activities or practices carried out by individuals

or legal persons that hold a dominant position in any relevant market for goods and services in order to prevent antitrust violations; for this purpose, the Office of the Superintendent General might request any necessary information and documents, always ensuring confidentiality should it be applicable;

III. launch, whenever there is any indication of an antitrust violation, a preliminary enquiry and an administrative enquiry into the alleged antitrust violation;

IV. decide for the lack of substantial evidence, dismissing the administrative enquiry or preliminary enquiry;

V. launch administrative proceedings to impose sanctions for antitrust violations, procedures for investigating mergers and acquisitions, administrative proceedings for merger review, and administrative proceedings to impose ancillary sanctions, in order to prevent, investigate, or suppress antitrust violations;

VI. for the purpose of carrying out the proceedings referred to in Law 12529/2011:

a) request information and documents from any individuals or legal persons, government or private bodies, authorities and entities, ensuring confidentiality, if applicable, as well as take any measures deemed necessary to perform its duties;

b) request oral explanations from any individuals or legal persons, government or private bodies, authorities and entities, as per the provisions of Law 12529/2011;

c) carry out inspections at the registered office, and any establishments, offices, affiliates or branches belonging to a firm under investigation, examining any stocks, objects, documents of any sort, as well as ledgers, computers and electronic data, with the ability of extracting or requesting copies of any documents or electronic data;

d) request from the judicial branch, through the Office of the Attorney General at CADE, search and seizure warrants for objects, documents of any sort, as well as ledgers, computers and electronic files belonging to firms or individuals, which are of interest to any administrative enquiry or administrative proceedings launched to impose sanctions for antitrust violations;

e) request examination and copy of documents and objects included in investigations and administrative proceedings initiated by federal government bodies and entities; and

f) request examination and copy of documents related to police investigations, legal proceedings of any sort, as well as investigations and administrative proceedings initiated by other federal entities, in which case CADE is responsible for observing whichever confidentiality requirements have been set in the original proceedings;

VII. inform the Tribunal, on its own motion, whenever it decides to dismiss an administrative proceeding to impose sanctions for antitrust violations;

VIII. direct to the Tribunal, for adjudication, any administrative proceedings launched, in which the understanding is that an antitrust violation has been committed;

IX. propose Cease and Desist Agreements for antitrust violations, submit them to the Tribunal for approval, and monitor compliance;

X. make suggestions to the Tribunal with respect to conditions related to merger control agreements and monitor compliance;

XI. adopt preventive measures to stop any antitrust violations, establishing a time limit for compliance and the daily fines applicable in case of non-compliance;

XII. launch, investigate and clear or direct to the Tribunal any administrative proceedings related to merger review;

XIII. guide government bodies and agencies with respect to the adoption of any necessary measures for compliance with Law 12529 of 2011;

XIV. carry out studies and research to inform the establishment of policies for preventing antitrust violations;

XV. educate the public with regard to the several forms of antitrust violations and to how they can be prevented or stopped;

XVI. provide the Judiciary, whenever requested, with all information regarding investigations, even offering copies of case files in order for judicial proceedings to be launched;

XVII. adopt all administrative measures necessary for the enforcement and compliance with any decisions by the Tribunal;

XVIII. establish, within the Office of the Superintendent General, which areas and facilities contain documents with classified information of any level of confidentiality, legally or judicially protected, or which demand protection due to its intended use or purpose, as per the provisions of Articles 42-47 of Executive Order 7845/2012.

Article 11. The Department of Economic Studies shall prepare studies and expert opinions concerning economic matters, on its own motion or when requested by the Tribunal, the President, the Rapporteur of a case, or the Superintendent General, ensuring CADE's decisions are accurate and up to date with any technical and scientific developments.

#### TITLE IV

### THE COLLEGIAL BODY: THE ADMINISTRATIVE TRIBUNAL FOR ECONOMIC DEFENSE

Article 12. The Tribunal, an adjudicatory body, is composed by a President and six Commissioners chosen amongst citizens aged 30 or older, whose legal or economic knowledge is undisputed and whose reputation is unblemished, appointed by the President of Brazil after being approved by the Senate.

(1) The President and Commissioners are appointed to four-year terms, non-concurrent, and unrenovable.

(2) The President and Commissioners are not allowed to take up other employment or hold another office, except when otherwise constitutionally authorised.

(3) In the event of resignation, death, judicial disqualification, absence, or loss of office of the President of the Tribunal, the most senior Commissioner, by order of appointment, or the eldest, must succeed, until a new appointment is made, without detriment to their duties and responsibilities.

(4) In the event of resignation, death, or loss of office of a Commissioner, a new appointment must be made to fulfil the term of the former Commissioner.

(5) Should one of the situations listed in Paragraph 4 of this Article come to pass, or should the end of the term of any Commissioner cause the Tribunal to not meet the quorum of justices required per the provisions of Article 9, Paragraph 1 of Law 12529/2011, the time limits established by the aforementioned Law must all be suspended, as must be any ongoing proceedings currently under review by the Tribunal. The suspension must be immediately lifted as soon as the quorum is restored.

Article 13. The President of CADE and its Commissioners will only lose their terms of office in the situations provided for by Article 7 of Law 1259/2011.

Article 14. The President, Commissioners, Superintendent General, Chief Economist, and Attorney General are subject to the conflict of interest situations provided for by Articles 18 and 20 of Law 9784 of 29 January 1999, and Articles 144, 145, and 147 of Law 13105 of 16 March 2015 (Code of Civil Procedure).

(1) At any moment, the authorities mentioned in the head provision may recuse themselves from a case *sua sponte*, being thereafter forbidden from partaking in any part of the proceedings.

(2) As soon as an opportunity arise, any interested party may claim conflict of interest, by filing a specific motion to disqualify, including the reasoning for the claim. The petitioner is allowed to attach any pertinent documents and a list of witnesses to substantiate the claim.

(3) Should any authorities admit to a conflict of interest, they must recuse themselves from the case and order the records be remitted to their substitute or, in the case of Commissioners, the case be reassigned.

(4) Should any authorities not admit to a conflict of interest, they must request the motion be assessed separately and, in 15 days, must present their reasons, with any documents and a list of witnesses, if applicable, and order the motion be remitted back to the Tribunal.

(5) At the Tribunal, the motion is to be assigned to a rapporteur, who must not be the authority against whom the claim of conflict of interest was made.

(6) In case the claim of conflict of interest has been made against the President, a Commissioner or the Superintendent General, the rapporteur must determine whether or not the main proceeding will be stayed:

- I. should the rapporteur decide not to issue a stay, the main proceeding will be resumed;
- II. should the rapporteur decide to issue a stay, any further process in the main proceeding will be halted until the incidental proceeding is resolved.

(7) If a stay has been issued or is under consideration, any urgent matters will be decided by the statutory substitute.

(8) In case the claim of conflict of interest has been made against the Chief Economist or the Attorney General, the incidental proceeding will be assessed without staying the main proceeding.

(9) Should the Tribunal conclude the claimed conflict of interest is unfounded, it must dismiss it.

(10) Should the Tribunal conclude there is indeed a conflict of interest, it must determine at which point the authority should have been out of the case.

(11) The Tribunal must declare null and void any actions taken by the authority as from when the grounds for recusal were already present, and proceed to reassign the case.

Article 15. Should, amongst the members of the Tribunal, there be spouses, blood relatives or relatives by marriage, whether lineal or collateral up to the third degree, the first one to become aware of the fact will impede the participation of the other in the proceeding and hearings.

Article 16. The Commissioners will be called to act in hearings and to substitute each other according to seniority as follows:

- I. by investiture;
- II. by appointment; and
- III. by age.

Article 17. Any meetings granted to the parties and their legal representatives or attorneys, as well as to the public in general, are to be registered with indication of date, place, time, matter, and participants, and published on the website of CADE ([www.cade.gov.br](http://www.cade.gov.br)).

(1) The authorities who grant the meetings are to determine the date, place, duration, and participants.

(2) Should a meeting involve confidential or restricted access information, access to it may be restricted, in which case it must be indicated with a "restricted access" tag on the calendar, and all non-confidential information must be disclosed.

(3) Unscheduled meetings and changes to scheduled appointments must be registered on the

calendar within two working days after they have been held.

Article 18. The Tribunal shall:

- I. ensure compliance with Law 12529/2011, its own regulations and these Statutes;
- II. decide whether an antitrust violation has been committed and impose the sanctions provided by law;
- III. adjudicate on administrative proceedings to impose sanctions for antitrust violations which have been launched by the Office of the Superintendent General;
- IV. impose measures to deter antitrust violations, within a set time limit.
- V. ratify the terms of Cease and Desist Agreements and Merger Control Agreements, and order the Office of the Superintendent General to monitor compliance;
- VI. consider, on appeal, preventive measures imposed by the Rapporteur or the Office of the Superintendent General;
- VII. notify interested parties of its decisions;
- VIII. request that the bodies and agencies of the Federal Government, and that the authorities of States, Cities, the Federal District, and Territories, impose the necessary measures to ensure compliance with Law 12529/2011;
- IX. have professionals hired to carry out analyses, surveys, and studies, ratifying on a case by case basis, their fees and any additional expenses, which must be incurred by the defendant firm, if it is found guilty as per the provisions of Law 12529/2011;
- X. adjudicate on administrative proceedings for merger review, as per the provisions of Law 12529/2011, negotiating Merger Control Agreements whenever deemed appropriate;
- XI. order the Office of the Superintendent General to implement the administrative measures necessary for the strict enforcement of its decisions;
- XII. request services and personnel from any bodies of the Federal Government;
- XIII. request that the Office of the Attorney General at CADE take administrative and legal measures;
- XIV. educate the public with regard to the several forms of antitrust violations;
- XV. draft and ratify CADE's Statutes, providing for its application, the decision-making process, procedural rules, and the operation of its internal services;
- XVI. outline the personnel plan of CADE, as per the terms of Item 2 of the head provision of Article 37 of the Constitution of Brazil;
- XVII. outline a budget proposal under the terms of Law 12529/2011;
- XVIII. request information from any persons, bodies, authorities, and government or private agencies, ensuring confidentiality, when applicable, and establishing the necessary actions to be taken for its operations to be carried out;
- XIX. rule on matters related to compliance with decisions and agreements, as well as on any matters which could implicate in changes to these decisions and agreements;
- XX. standardize, following a proposal by any Commissioner, the Superintendent General or the Attorney General, by a majority of the entire membership, the administrative case law, by issuing statements numbered in ascending order which are to be published thrice in the Official Gazette of Brazil, comprising CADE's Precedent; and
- XXI. perform other duties provided by Law 12529/2011, and these Statutes.

## TITLE V AUTHORITIES' DUTIES

### *CHAPTER I*

#### *THE PRESIDENT OF THE ADMINISTRATIVE TRIBUNAL FOR ECONOMIC DEFENSE*

Article 19. The President of the Tribunal shall:

- I. act as the legal representative of CADE in Brazil and abroad, in and out of court;
- II. preside at Tribunal sessions, having the right to vote and give the casting vote;
- III. carry out the random assignment of cases to Commissioners;
- IV. schedule sessions and establish their respective agendas;
- V. request, at their own discretion, that the Office of the Superintendent General assist the Tribunal with out-of-court measures necessary for the enforcement of the decisions of the Tribunal
- VI. monitor the actions taken by the Office of the Superintendent General to enforce the rulings of the Tribunal;
- VII. sign any agreements ratified by the Tribunal;
- VIII. submit the budget proposal and the personnel plan for the Tribunal's approval;
- IX. guide, coordinate, and monitor CADE's administrative activities;
- X. manage CADE's expenses, with the exception of expenses managed by the Office of the Superintendent General;
- XI. enter into contracts and agreements with Brazilian bodies and agencies;
- XII. submit to the Ministry of Justice and Public Security, in advance, proposals of contracts and agreements to be entered into with foreign partners;
- XIII. enter into contracts and agreements with foreign partners upon authorization of the Ministry of Justice and Public Security;
- XIV. act as the central authority with regards to requests for international legal cooperation related to the defence of competition, without prejudice to the duties and responsibilities of the Department of Asset Recovery and International Legal Cooperation (within the Ministry of Justice), or to duties and responsibilities established by international agreements to which Brazil is a party;
- XV. promote mutual cooperation and the exchange of information with foreign competition authorities or international institutions on matters related to the defence of competition and of free trade, as per the provisions of the agreements referred to in Item 13 and, in the absence of an agreement, based on reciprocity;
- XVI. order the Office of the Attorney General at CADE to arrange for the judicial measures requested by the Tribunal to be implemented;
- XVII. resolve administrative matters, submitting them to the Tribunal when deemed necessary;
- XVIII. conduct the inauguration of the civil servants of CADE;
- XIX. grant requests for vacations and leaves of absence made by a Commissioner, the Attorney General, and the Chief Economist of CADE;
- XX. maintain order and discipline within CADE and impose sanctions to its civil servants, following the conclusions of the Commission of Enquiry designated by the President;
- XXI. present to the Tribunal a detailed annual report on the work developed throughout the

year;

XXII. coordinate and regulate the internal work carried out by the Office of the President of the

XXIII. guide the Chief Economist with respect to the priority in issuing the technical opinions listed in Article 19, Item 6, as well as in responding to other requests made by the Commissioners;

XXIV. ensure compliance with these Statutes; and

XXV. perform other duties provided by Law 12529/2011, and these Statutes.

(1) The provisions of Item 15 may apply to confidential information, under the law, provided that the foreign partner grants similar treatment to the information exchanged and that its use is in accordance with other conditions established by the President of the Tribunal.

(2) Confidential information must not be made public or provided to third parties by foreign partners unless CADE has expressly authorised it.

(3) CADE may refuse to cooperate with foreign competition authorities and foreign institutions, as per the provisions of Item 15 of this Article, in order to protect the public interest.

## *CHAPTER II THE COMMISSIONERS*

Article 20. The Commissioners of the Tribunal shall:

- I. vote on proceedings and matters submitted to the Tribunal;
- II. issue orders and judgements in proceedings in which they serve as the Rapporteur;
- III. request information and documents from any individuals or legal persons, government or private bodies, representatives and institutions, ensuring confidentiality, if applicable, and take any measures deemed necessary to perform their duties in proceedings in which they serve as the Rapporteur, and when they request access to the records or a postponement to allow for additional evidence to be gathered, as per the provisions of Article 94(4) of these Statutes;
- IV. request, at their own discretion, that the Office of the Superintendent General take the necessary investigative measures and gather evidence deemed relevant to the administrative proceedings, as per the provisions of Law 12529/2011;
- V. request that the Office of the Attorney General at CADE issue legal opinions in proceeding in which they serve as the Rapporteur, when deemed necessary, by a reasoned order, as per Item 7 of the head provision of Article 15 of Law 12529/2011;
- VI. request that the Chief Economist, when deemed necessary, issue expert opinions in proceedings in which they serve as the Rapporteur, without staying or interfering otherwise in procedural time limits, and without prejudice to the ordinary course of proceedings;
- VII. propose agreements, including Cease and Desist Agreements, and submit them to the Tribunal for approval;
- VIII. provide the Judiciary, whenever requested, with all information regarding proceedings, even offering copies of case files in order for judicial proceedings to be launched;
- IX. issue orders that need not be ratified by the Tribunal, as well as judgements and official communications, subject to approval by the Tribunal; and
- X. perform other duties provided by Law 12529/2011, and these Statutes.

Article 21. The Assistants to the Offices of the Commissioners shall:

- I. ensure compliance with Law 12529/2011, and these Statutes;

- II. plan, manage, coordinate, guide, monitor, evaluate and perform the administrative tasks necessary for the regular activities of their respective Offices to be performed;
- III. ensure the uniformity and standardisation of the procedures and routines of the Tribunal;
- IV. suggest standards and routines to improve the productivity of their respective Offices;
- V. assist the Commissioners in supervising and coordinating the activities performed under their responsibility;
- VI. track and control documents and administrative proceedings submitted to their respective Offices;
- VII. assist the Commissioners in drafting orders, judgements, and votes; and
- VIII. perform other duties assigned to them by the Commissioners during their term of office.

### *CHAPTER III THE RAPPORTEUR*

Article 22. The role of Rapporteur must be assigned to a Commissioner through random or special assignment or to whomever wrote the prevailing opinion, whether on the merits of the case or a preliminary matter that leads to dismissal of proceedings.

(1) Should it be defeated, either on the merits or a preliminary matter that leads to its dismissal, the role of Rapporteur is to be performed by whichever Commissioner rendered the first dissenting opinion.

Article 23. The Rapporteur shall:

- I. order and chair the sessions of the Tribunal;
- II. order administrative authorities to implement any measures related to the progress and launching of proceedings, as well as to the execution of their orders;
- III. submit to the Tribunal any points of order raised for the appropriate progress of proceedings;
- IV. request the proceedings assigned to them be included in the tribunal hearing calendar;
- V. decide on requests for confidentiality and for restricted access to information and order their extraction into separate case records, when deemed necessary;
- VI. present to the Tribunal any proceedings which need not be previously included on the agenda;
- VII. deny requests or appeals which have been filed untimely, have been considered inappropriate or unfounded, or when it is clear the matter is not within the jurisdiction of CADE, subject to approval by the Tribunal;
- VIII. impose preventive measures, under the provisions of Article 84 of Law 12529/2011, and establish a daily fine for non-compliance with them;
- IX. forward to the Tribunal, as a temporary and summary measure, the completion of mergers and acquisitions;
- X. submit to the Tribunal any preventive measures necessary for the protection of rights susceptible to harm which could end up being irremediable, and those intended to ensure the enforceability of any subsequent decision arrived at in the first Tribunal hearing after the announcement of the measure;
- XI. order, in urgent cases, the imposition of the measures listed in the previous item, subject to approval by the Tribunal, which must assess the matter in the first subsequent session; and



XII. perform other duties assigned to them by these Statutes.

*CHAPTER IV  
LEAVES, REPLACEMENTS AND VACANCIES*

Article 24. The Rapporteur must be replaced:

- I. in case of occasional absence or obstacle, medical leaves, vacation, or justified absence, by the most senior Commissioner as per the order established in Article 15 of these Statutes;
- II. in case of absence lasting for a period over 30, in which case it must be reassigned observing that the same number of cases must be assigned to each Commissioner;
- III. at the end of their term of office, due to its expiration, or due to loss of office, and when the vacancy results from resignation or death:
  - a) by the Commissioner who fills their seat in the Tribunal; or
  - b) by the Commissioner who cast the first vote in support of the Rapporteur's vote, for the purpose of ruling on requests for clarification and other occasional issues arising from hearings conducted before the vacancy.

Article 25. Should there be more than one vacant seat, the new Commissioner is to be assigned to a randomly selected office, becoming responsible for the proceedings of the respective former Commissioner.

(1) Should there be more than one Commissioner to take office, the seniority order established in these Statutes must be observed in the random selection of their offices.

*CHAPTER V  
OF THE SUPERINTENDENT GENERAL*

Article 26. The Superintendent General is chosen amongst citizens aged 30 or older, whose legal or economic knowledge is undisputed and whose reputation is unblemished, appointed by the President of Brazil after being approved by the Senate.

(1) The Superintendent General is appointed to a two-year term, renewable only once.

(2) The Superintendent General is subject to the same rules with respect to judicial disqualification, loss of office, replacement, and restrictions as the President and Commissioners, as per the provisions of Articles 7 and 8 of Law 12529/2011.

(3) The Superintendent General and the Assistant Superintendents are not allowed to take up other employment or hold another office except when otherwise constitutionally authorised.

(4) During the vacancy period prior to the appointment of a new Superintendent General, one of the Assistant Superintendents, appointed by the President of the Tribunal, must provisionally fill the position until a new Superintendent General, appointed as per the head provision of this Article, takes office.

(5) Should there be no appointed Assistant Superintendent at the Office of the Superintendent-General during a vacancy period such as the one mentioned in Paragraph 4 of this Article, the President of the Tribunal must appoint one of the Coordinators-General of Antitrust Analysis at the Office of the Superintendent General at CADE, with undisputed legal or economic knowledge in antitrust matters and unblemished reputation, to provisionally fill the position until a new Superintendent General takes office.

(6) The Superintendent General is to appoint the Assistant Superintendents, the Coordinators-General of Antitrust Analysis and the occupants of other direct reports.

Article 27. The Superintendent General shall:

- I. attend Tribunal sessions when deemed necessary, without voting rights, and present oral arguments, as per the provisions of these Statutes;
  - II. comply with and enforce the decisions of the Tribunal as requested by its President;
  - III. request that the Office of the Attorney General at CADE take the judicial measures necessary to perform the duties and responsibilities of the Superintendent General;
  - IV. request that the Chief Economist issue studies and expert opinions;
  - V. manage the expenses of the Office of the Superintendent General;
  - VI. coordinate and regulate the internal work carried out by the Office of the Superintendent General, including the duties and responsibilities of the Assistant Superintendents;
  - VII. elaborate and supervise the implementation of the action plans of the Office of the Superintendent General;
  - VIII. make decisions regarding proceedings, procedures and administrative appeals submitted to them;
  - IX. coordinate the activities performed by the units of the Office of the Superintendent General;
  - X. assign the proceedings at the Office of the Superintendent General to the Coordinations General of Antitrust Analysis as deemed necessary;
  - XI. express their opinion in response to consultations sent to the Office of the Superintendent General;
  - XII. direct to the Tribunal any administrative proceedings launched by the Office of the Superintendent General;
  - XIII. make decisions regarding cases not provided for in the law and doubts arisen while they are the highest authority with jurisdiction over the case; and
  - XIV. perform other duties provided by Law 12529/2011, and these Statutes.
- (1) The Superintendent General is allowed to delegate to the Assistant Superintendents and to the Coordinators-General of Antitrust Analysis actions within the duties and responsibilities of the Superintendent General, as per the provisions of Article 12 of Law 9784 of 29 January 1999.
- (2) The Superintendent General must issue Regulations in order to fulfil the provision contained in Item 6 of this Article.

## *CHAPTER VI*

### *THE ATTORNEY GENERAL*

Article 28. The Attorney General is appointed by the President of Brazil, after being approved by the Senate, and is to be chosen amongst Brazilian citizens aged 30 or older, whose legal knowledge is undisputed and whose reputation is unblemished.

- (1) The Attorney General is appointed to a two-year term, renewable only once.
- (2) The Attorney General has the ability to attend Tribunal sessions, without voting rights, providing assistance and clarifications when so requested by the Commissioners, as per the provisions of these Statutes.
- (3) The Attorney General is subject to the same rules with respect to judicial disqualification as the Commissioners, except regarding attendance to sessions.
- (4) The Assistant Attorney General is responsible for provisionally filling the position of Attorney General in case of absence, judicial disqualification, vacation and leaves of absence, and is named

by the Tribunal and appointed by the President of CADE, being chosen amongst the members of the Office of the Attorney General at CADE, after their name is suggested by the Attorney General.

Article 29. The Attorney General shall:

- I. manage, guide and coordinate the activities performed by the Office of the Attorney General at CADE, and supervise its units;
- II. receive services of process, summonses and legal notices of interest to CADE;
- III. oversee any acts, opinions and legal documents produced by the Attorneys;
- IV. serve as legal counsel to CADE's units;
- V. propose to the Tribunal legal measures that serve the public interest, including legal actions and civil lawsuits of public interest;
- VI. articulate with the other units of CADE in order to perform the duties and responsibilities of the Office of the Attorney General at CADE;
- VII. prepare an annual report of the activities performed by the Office of the Attorney General at CADE;
- VIII. delegate to the incumbent Federal Attorneys of the Office of the Attorney General at CADE actions within the duties and responsibilities of the Attorney General, as per the provisions of Article 12 of Law 9784/1999;
- IX. appoint Federal Attorneys to the positions of Coordinators-General and Heads of the Office of the Attorney General; and
- X. make decisions regarding cases not provided for in the law and doubts arisen while they are the highest authority with jurisdiction over a case.

## *CHAPTER VII THE CHIEF ECONOMIST*

Article 30. There is to be a Department of Economic Studies at CADE, headed by a Chief Economist, who shall:

- I. prepare economic studies, on its own motion or when requested by the Tribunal, the President, the Rapporteur or the Superintendent General;
- II. assist CADE's units;
- III. issue expert opinions on ongoing proceedings when requested by the Tribunal, the President, the Rapporteur or the Superintendent General; and
- IV. request, for the purpose of producing studies and expert opinions within the duties and responsibilities of the Chief Economist, information and documents from any individuals or legal persons, government or private agencies, ensuring confidentiality, if applicable.

(1) Items 1 and 3 are applicable to Commissioners who request access to the records and a postponement to allow for additional evidence to be gathered, as per the provisions of Article 94(4) of these Statutes.

Article 31. The Chief Economist and the Assistant Chief Economist are to be appointed by a joint decision of the Superintendent General and the President of the Tribunal, and chosen amongst Brazilian citizens whose reputation is unblemished and whose economic knowledge is undisputed.

(1) The Chief Economist is allowed to attend Tribunal sessions, without voting rights.

(2) The Chief Economist is responsible for making decisions regarding cases not provided for in the law and doubts arisen while they are the highest authority with jurisdiction over the case.

(3) The Assistant Chief Economist is responsible for provisionally filling the position of Chief Economist in case of absence, judicial disqualification, vacation and leaves of absence.

## TITLE VI THE FEDERAL PROSECUTION SERVICES

Article 32. The Prosecutor General of Brazil, after hearing the position of the Superior Council, is to appoint a member of the Federal Prosecution Services to, in such capacity, issue opinions in administrative proceedings to impose sanctions for antitrust violations, either on its own motion or when requested by the Rapporteur.

(1) The member of the Federal Prosecution Services is to attend Tribunal hearings, without voting rights, and voice an opinion when deemed necessary.

(2) CADE and the Federal Prosecution Services may sign cooperation agreements to perform the duties and responsibilities provided by law.

## PART II PROCEEDINGS

### TITLE I GENERAL PROVISIONS

#### *CHAPTER I FILING, REGISTERING AND CLASSIFYING PROCEEDINGS*

Article 33. The proceedings are to be filed and registered at the Registration Office at CADE.

Article 34. The President of the Tribunal is to resolve any doubts related to the classification of proceedings and documents, observing the following rules:

I. files that do not fall into any distinct category and are neither an ancillary proceeding nor incidental, are to be classified as a Petition, should they include a request, or as a Communication, in any other case;

II. the classification of proceedings is not to be changed due to Requests for Clarification, Requests for Reconsideration, or appeals against the clearance of mergers and acquisitions.

#### *CHAPTER II ASSIGNMENT*

Article 35. The cases at CADE are to be randomly distributed amongst the Commissioners, according to the specific rules established for each type of proceeding.

Article 36. The President must hold open tribunal sessions, preferably on Wednesdays, to distribute the proceedings equally amongst the Commissioners, at random. The President may, on occasion and at his discretion, call a special session.

(1) The proceedings are to be distributed in lots, being randomly assigned to the Commissioners, excluding the names of those previously selected, until only one name remains, thus ensuring each Commissioner is given the same number of proceedings.

(2) The assignment may be carried out using mechanisms to compensate for occasional unevenness in the cases provided for in these Statutes.

(3) The distribution of cases in the Tribunal may be carried out automatically, by random selection, using information technology systems, upon issuance of a Resolution, subject to approval by the Tribunal, relinquishing the open tribunal sessions required per the head provision of this Article.

(4) The minutes of the distribution sessions are to be published within 2 days after the open tribunal sessions required per the head provision of this Article. In case of automatic distribution, a weekly document is to be published, indicating the proceedings assigned to each Commissioner.

Article 37. The proceedings are to be distributed amongst all Commissioners, including those on leave for up to 30 days.

(1) Should the Rapporteur be recused from the case, a new Rapporteur must be randomly selected, in which case the resulting unevenness in the number of proceedings assigned to each Commissioner must be compensated.

(2) Should a case be distributed to a Commissioner through special assignment, it may be compensated.

(3) Should the vacancy result from resignation, death or expiration of the Commissioner's term of office, the Commissioner's cases are to be distributed to the Commissioner filling the seat through special assignment.

(4) Commissioners are to be excused from assignment procedures 30 days prior to the expiration of their term of office.

(5) Should a Commissioner withdraw the request to be excused from assignment procedures, any resulting unevenness in the number of proceedings assigned to each Commissioner must be compensated.

(6) In case the Rapporteur is defeated, the Commissioner who first issued a dissenting opinion concurring with the majority, as indicated in the minute of the hearing, has jurisdiction over motions and appeals.

(7) In case jurisdiction over the case is not conceded, on its own motion or upon request by the Office of the Attorney General at CADE, it must be requested by any of the parties no later than 10 days after the assignment, under penalty of forfeiture of right to question the matter subsequently.

(8) The proceedings can be distributed through special assignment to the Rapporteur of a connected case, in which case the resulting unevenness in the number of proceedings assigned to each Commissioner must be compensated.

Article 38. Should a Commissioner be on leave:

I. for a period of 30 days or less, the President may choose to reassign any urgent cases, *sua sponte* or upon application of an interested party, in which case the resulting unevenness in the number of proceedings assigned to each Commissioner must be compensated; or

II. for a period longer than 30 days, the absent Commissioner must be excused from assignment procedures and the proceedings to which the absent Commissioner serves as the Rapporteur are to be reassigned, in which case the resulting unevenness in the number of proceedings assigned to each Commissioner must be compensated.

Article 39. In the event the term of office of a Commissioner expires and a new Commissioner is not immediately invested, the proceedings are to be reassigned as follows:

I. all administrative proceedings for merger review are to be reassigned in the first assignment session after the expiration date.

II. all other proceedings are to be reassigned if a new Commissioner is not invested within 30 days, in the following assignment session, in which case the resulting unevenness in the number of proceedings assigned to each Commissioner must be compensated.

Article 40. The assignment of cases involving appeals against decisions by the Superintendent General granting or denying Preventive and Interim Measures automatically grants the Rapporteur jurisdiction over any future proceedings and measures, except in the event the case is requested by someone else.

*CHAPTER III*  
*ACTS AND FORMALITIES*

**Section I**  
**General Provisions**

Article 41. The Administrative Tribunal for Economic Defense goes into recess on 20 December and resumes on 6 January.

(1) During the recess mentioned in the head provision of this Article, the Registration Office is to operate as usual and procedural time limits are not to be suspended.

Article 42. All activities are to be suspended at CADE on public holidays and privilege days granted to federal civil servants.

(1) Should one of the situations listed in the head provision of this Article come to pass, the President of CADE or the General Superintendent, according to their duties and responsibilities, or their respective legal substitutes, are to make decisions regarding any urgent matters.

Article 43. The performance of procedures by those named in Article 50 of Law 12529/2011, are to be limited to the situations in which the Rapporteur or the Superintendent General deem it timely and suitable for the proceedings and to protect the public interest.

Article 44. The original or a certified copy of each of the following documents must be presented to CADE:

- I. powers of attorney, accompanied by any corporate documents that validate them;
- II. any documents that formalise a merger; and
- III. other documents, at the discretion of the authority to whom the documents are addressed.

(1) The copies of documents are to be certified either by a notary or by the attorney of the party presenting them, in which case the attorneys must present a declaration that they are true copies of the originals, under their own responsibility.

(2) The authorities to whom documents are addressed may request, at any time, in accordance with their jurisdiction, that the originals be presented, establishing a time limit for compliance.

(3) The authorship, authenticity and integrity of documents and signatures in electronic administrative proceedings must be verified by means of digital certificates issued by the Brazilian Public Key Infrastructure (ICP-Brasil), observing the standards established by this institution.

(4) The provisions of the previous Paragraph do not impede other means be used to verify the authorship and integrity of electronic documents, including those relying on usernames and passwords for identification.

(5) The documents listed in the head provision of this Article are preferably to be presented in electronic format.

Article 45. If a file or document is transferred by facsimile, electronic mail, or any other means authorised by the President of CADE, the petitioner is responsible for the quality and fidelity of the material transferred and for the confirmation of receipt by the Registration Office of CADE, which may require the

original be sent within 5 days, on pain of it being considered untimely.

Article 46. The currency unit used in any information provided to CADE is to be the Brazilian Real (BRL), and the informant is to indicate, when applicable, the exchange rate, choice criteria, and reference date.

(1) For the purpose of calculating the revenue mentioned in Article 88 of Law 12529/2011, it is to be used the exchange rate referent to the last working day of the year prior to the merger.

Article 47. The following documents, amongst others, are only to be entered into the records in a foreign language if accompanied by its translated version in Portuguese:

- I. all contractual documents related to the transaction;
- II. shareholders' agreements;
- III. non-compete agreements; and
- IV. articles of incorporation.

(1) The authority may at an time require the presentation of other documents in Portuguese.

(2) The translated versions of documents in Portuguese are to be certified either by a sworn translator or by the attorney of the party presenting them, in which case the attorneys must present a declaration that they are true translations of the originals, under their own responsibility.

(3) CADE may certify the authenticity of any translated versions in Portuguese of documents produced by the agency itself or other documents of its interest, except in the situation presented in Paragraph 2 of this Article.

(4) As long as it is duly justified by the interested party and authorised by the authority to whom the document is addressed, the translated version in Portuguese may be presented and entered into the records at a later date than the original document in a foreign language.

(5) If false or unreliable information is provided to CADE or included in documents or translations submitted to the agency, those responsible are subject to the sanctions established in these Statutes, without prejudice to other sanctions.

(6) Failure to present a translated version in Portuguese of the aforementioned documents may result in the situations provided for in Article 53(1) of Law 12529/2011.

Article 48. Access to the records, in all procedures, are to be regulated by Resolutions and carried out by the Office of the Coordinator-General of Proceedings, observing any restrictions to access, if applicable, and the records must not leave the precincts of CADE.

## **Section II**

### **Confidentiality and Restricted Access**

#### **Subsection I**

#### **General Provisions**

Article 49. CADE gives the following treatment to records, information, data, communications, objects, and documents related to all sorts of administrative proceedings:

- I. public, when it may be accessed by any persons;
- II. restricted access, when access is only granted to the party that presented it, to Principals, according to the case, and other persons authorised by CADE;
- III. confidential, when access is only granted to persons authorised by CADE and to the government authorities responsible for issuing an opinion or decision; or

IV. under seal, when limited access is granted only by judicial order.

Article 50. CADE gives to documents, objects, and information used as evidence which have been borrowed from legal cases, whichever treatment has been ordered by the court or authority with jurisdiction over the case.

### **Subsection II Confidentiality**

Article 51. As far as investigations and discoveries are concerned, CADE ensures confidential treatment to records, documents, objects, information, and procedures, to the extent needed to clarify the facts and protect the public interest, in the following cases:

- I. preliminary enquiries into antitrust violations;
- II. administrative enquiries into antitrust violations;
- III. administrative proceedings to impose sanctions for antitrust violations;
- IV. administrative procedure for investigating antitrust reports;
- V. administrative procedure for investigating mergers and acquisitions; and
- VI. administrative proceedings to impose ancillary sanctions. Administrative Proceedings to Impose Ancillary Sanctions.

(1) Without prejudice to the head provision and according to the right to full answer and defence, the parties are granted full access to all documents considered in CADE's decision before the end of the discovery phase of administrative proceedings to impose sanctions for antitrust violations.

(2) CADE makes public all administrative procedures for merger review and/or administrative procedures for investigating mergers and acquisitions which result in the launching of administrative proceedings for merger review, after the notice of the respective proceedings has been published. CADE may choose to also make public other procedures related to enquiries and investigations into mergers and acquisitions, provided that it is considered timely and suitable, that it is in the public interest, and that there are safeguards in place to protect the rights of any involved parties, and to ensure reasonable requests for confidentiality, at the agency's discretion.

### **Subsection III Requests of Restricted Access**

Article 52. On a case by case basis, as far as investigations and enquiries are concerned, to comply with measures to ensure rights to confidentiality granted by law or 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 (Article 22 of Law 12527/2011, and Articles 6, Item 1, and Article 5(2) of Executive Order 7724/2012), CADE may, on its own motion or upon application by an interested party, restrict access to records, documents, objects, data and information pertaining to:

- I. accounting records;
- II. economic and financial standing of companies;
- III. financial or bank statements;
- IV. corporate secrecy;
- V. production process and industrial secrets, especially industrial processes and trade secrets pertaining to product manufacturing;
- VI. revenues of interested parties;



- VII. dates, amount transacted and payment method;
- VIII. documents that formalise reported mergers and acquisitions;
- IX. the last annual report for shareholders or partners, except when the documents are of public nature;
- X. value and volume of sales and financial reports;
- XI. customers and suppliers;
- XII. nameplate capacity;
- XIII. production costs and expenses with research and development of new products or services; or
- XIV. other cases, at the discretion of the granting authority, observing the provisions of Article 22 of Law 12527/2011, and Articles 6, Item 1, and 5(2) of Executive Order 7724/2012.

Article 53. CADE does not restrict access to information and documents when:

- I. they 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;
- II. in administrative proceedings to impose sanctions for antitrust violations, restricting access to information implies denying the right to full answer and defence; or
- III. they pertain to the following categories, amongst others:
  - a) shareholder structure and identity of the controlling shareholder;
  - b) corporate structure of the business group to which the interested parties belong;
  - c) 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;
  - d) product or service lines offered;
  - e) market data related to third parties;
  - f) contracts executed as public instruments before a notary, or filed with a notary public or registry of commerce, in Brazil or abroad; and
  - g) information companies are to publish or disclose due to legal or regulatory requirements to which they are subject in Brazil or in another jurisdiction.

(1) In case of requests for restricted access to information of expressly public nature, petitioners are subject to the penalties provided for by Articles 40 and 43 of Law 12529/2011, as the case may be.

Article 54. The interested party is responsible for elaborating the request for restricted access to information, objects and documents, and prominently displaying it on the first page of the request or petition to facilitate its visualisation by the authority, indicating any legal provisions that authorise such request.

(1) Petitioners are to be notified in case their requests for restricted access are denied.

(2) Once restricted access to documents, objects, and information is granted, these must be filed in separate records, which must contain a "RESTRICTED ACCESS" tag, and the incident must be reported in the main records, including the registry number and date of the request, and the provisions that support the request.

(3) In case of restricted access information in the body of a petition, statement, request, or opinion, the interested party must present:

I. 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 by the competent authority. Access to it must be restricted until further decision; and

II. 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 defence, 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.

(4) The interested party must provide, along with the request for restricted access, a public description of the object of the request, or explanation of the impossibility of providing the description.

(5) 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.

(6) In the situation described in Paragraph 5, the documents and public description referred to in this Article must be submitted within five days of the oral request, on pain of dismissal, and restricted access is ensured until a final decision is made by the competent authority.

Article 55. Failure to follow any provisions in this section may subject interested parties to have the information, objects and documents submitted by them included in the public records, even if eligible to receive restricted access treatment.

(1) After CADE's final decision, as per the provisions of Article 7 of Law 12529/2011, any information not covered in the situations listed in Article 51 of these Statutes may be granted restricted access treatment by an order of the President or competent authority, in accordance with the provisions of Law 12527/2011 and Executive Order 7724/2011.

### **Section III**

#### **Knowledge of Proceedings and Procedural Time Limits**

Article 56. Summonses and notices are served, in accordance with the provisions of Article 26(1) of Law 9784/1999, by any means that ensure interested parties' knowledge of proceedings, as:

- I. by post, either with or without acknowledgement of receipt.
- II. by telefram, facsimile, and electronic means;
- III. Access to case files;
- IV. Declaration of acknowledgement entered in the records;
- V. Certificate by a civil servant attesting receipt of a copy of the document; or
- VI. By public notice in a newspaper of general circulation in the area in which the party to be served is domiciled or based, and in the Federal Official Gazette of Brazil.

(1) In case of administrative proceedings to impose sanctions for antitrust violations, service of the initial process must be made upon a defendant by post with acknowledgement of receipt, accompanied by a copy of the order that determined its commencement, the expert opinion that motivated it, the complaint, as the case may be, and the warning referred to in Paragraph 3.

(2) If service cannot be effected by post, it must be done by public notice in the Federal Official Gazette of Brazil and in a newspaper of general circulation in the area in which the party to be served is domiciled or based, with a set time limit of 20 to 60 days for the party to respond.

(3) The service of the initial process must include a warning stating that any future service of process may be effected by public notice in the Federal Official Gazette of Brazil.

(4) With the exception of administrative proceedings to impose sanctions for antitrust violations, any service of initial process and notices are preferably served by electronic means, and, if that is not possible, by public notice in the Federal Gazette of Brazil, which may be only a summary of the decision or proceedings, including the name of the party to be served, case number, and attorneys of records.

(5) The provisions of Paragraph 1 are not applicable to administrative enquiries resulting from preliminary enquiries, nor to administrative proceedings to impose ancillary sanctions against a party that has already received service of process pertaining to the main proceedings.

(6) Interested parties in any administrative proceedings are responsible for keeping their contact information (e.g. telephone number, fax, and address), as well as the information of their attorney, as the case may be, up to date in the records.

Article 56. Public notices used for the purpose of knowledge and service of process, are to include, besides the names of the parties, the names of their attorneys, observing restricted access requirements, if applicable.

(1) In these notices, it suffices to mention the agent expressly chosen by the party to be named in publications;

(2) In case the party has not expressly chosen an agent to be named in publications, it suffices to mention any of the agents in the records.

(3) In the case of foreign companies, all services of process must be served to the person responsible for their affiliate, branch, establishment, or office in Brazil, regardless of powers of attorneys and contractual or regulatory provisions.

(4) In the case of proceedings involving third parties, the notices are to include the name of said third parties and their attorneys of records, as the case may be.

Article 58. Services of process by publication require:

I. issuance of a declaration stating the location of the party to be served is unknown, uncertain, or inaccessible;

II. the public notice be displayed on the bulletin board at the Registration Office at CADE;  
and

III. the notice be published 15 fifteen days from the issuance of the declaration referred to in Item 1 of this Article;

(1) The notice is to be published in the Federal Official Gazette of Brazil and in a newspaper of general circulation in the area in which the party to be served is domiciled or based.

(2) A copy of each publication is to be entered into the records, along with a copy of the notice referred to in Item 2 of this Article.

(3) Notices served by publication in newspapers of general circulation must also observe the requirements of the Code of Civil Procedure and may include only a summary containing information deemed essential for the right to full answer and defence to be exercised.

Article 59. At any stage of proceedings, defaulting parties may file their answers, without the right to request reconsideration of matters already decided.

Article 60. The agenda of sessions is established by the President, who is to have it published at least 120 hours in advance.

(1) The agenda is to include the reasoning behind the President's decision to have sessions be carried out via electronic means, as per the provisions of Article 74(1).

Article 61. Procedural time limits, whether established by law or by the competent authority, are stated in calendar days, in which weekends and holidays are counted.

Article 62. Time limits are subject to legal requirements, in particular:

I. time limits are counted from the first working day after the publication of the notice in the Federal Official Gazette, or after the document, notice, or receipt is entered into the records, or even yet after the confirmation of electronic access to the records, or any other proof of unequivocal knowledge of proceedings;

II. time limits are counted from the working day after the end of the time limits established by the authority, considered from the first publication of the public notice;

III. time limits are established excluding the day of the event that triggers the period, and including the last day of the period;

IV. in case of proceedings not exclusively carried out by electronic means, procedural time limits for co-parties with different attorneys of records from different law firms to file their answers are doubled.

V. should a procedural time limit not be established by law or by the competent authority for an action to be carried out by the parties, it is to be done within five days;

VI. parties may waive time limits established solely for their benefit; and

VII. services of process must be executed at least three working days prior to the scheduled date of appearance.

Article 63. In the situations provided for by Article 6(5) of Law 12529/2011, any procedural time limits are suspended and proceedings are adjourned until quorum is restored and they may be resumed.

(1) The submission of mergers and acquisitions referred to in Article 88 of Law 12529/2011, is not to be suspended or interrupted in any case, therefore, administrative proceedings for merger review are to follow their regular course within the Office of the Superintendent General, and are only adjourned in case of remittal to the Tribunal.

(2) The time limits for the Tribunal to request proceedings must remain suspended until quorum is restored.

(3) In case there is a lack of quorum to hear a specific case, its processing is suspended at the Tribunal, as are suspended any procedural time limits pertaining to it, including those for requesting the proceedings related to the review provided for in Article 88 of Law 12529/2011; however, it does not prevent its processing within the Office of the Superintendent General.

#### **Section IV Precedents**

Article 64. The Tribunal's decisions may be collected in Precedents.

(1) The President, Commissioners, Superintendent General, and Attorney General may suggest the compendium of cases that agree with a same position in a Precedent.

(2) A Precedent may be established when:

I. at least 10 judgements decided by a majority of the Tribunal agree with the same position;

II. at least 10 final decisions issued by the Office of the Superintendent General and not overturned by the Tribunal agree with the same position.

Article 65. The standardisation of CADE's precedents must be a decision of a majority of the

Tribunal. The precedents are to be listed with a date and number in ascending order, published in the Federal Official Gazette of Brazil, and made available at CADE's website ([www.cade.gov.br](http://www.cade.gov.br)).

(1) The President, Commissioners, Superintendent General, and Attorney General, may propose that a Precedent be reviewed. Amendment or suppression of any statements are subject to approval by a majority of the Tribunal, as per the provisions of Article 63 of these Statutes.

Article 66. The citation of a Precedent by its corresponding number waives the reference to other cases in which the Tribunal had the same position.

## **Section V** **Publication of Case Law, Motions, Studies, and Opinions**

Article 67. CADE's case law must be published via the following means, amongst others:

- I. the Federal Official Gazette of Brazil; and
- II. the internet, on a specific page at CADE's website ([www.cade.gov.br](http://www.cade.gov.br)).

## **TITLE II** **COURSE OF PROCEDURES**

### *CHAPTER I*

#### *OPINIONS OF THE OFFICE OF THE ATTORNEY GENERAL AND OF THE DEPARTMENT OF ECONOMIC STUDIES*

Article 68. The President, Rapporteur, and the Office of the Superintendent General may make case records available to the Office of the Attorney General at CADE and the Department of Economic Studies, establishing a time limit for them to issue their opinions.

(1) The request for opinions referred to in the head provision of this Article does not implicate in the suspension of time limits for reviewing the case or alter the ordinary course of proceedings.

(2) Should an opinion not be issued by the established time limit, the Attorney General or Chief Economist may render their opinion orally during the hearing.

(3) The opinions referred to in the head provision of this Article may be requested by any Commissioner who have made a request to have access to the records or have a judgement postponed to allow for additional evidence to be produced, as per the provisions of Article 94(4) of these Statutes.

(4) The remaining members of the Tribunal not mentioned in the head provision or in the previous paragraph of this Article may request opinions provided they have express consent of the Tribunal.

### *CHAPTER II*

#### *INFORMATION AND INVESTIGATIVE POWERS*

Article 69. All information requests made by competent authorities must include a time limit for response, a warning on the penalties established in Article 40 of Law 12529/2011, and must be made by any means that ensure interested parties' knowledge of proceedings, as:

- I. by post, with acknowledgement of receipt;
- II. by facsimile, with acknowledgement of receipt;
- III. by telegram, with acknowledgement of receipt; and
- IV. by any other electronic means, with acknowledgement of receipt.

(1) A response to requests for information is authorised per the provisions of Article 44 of these

Statutes.

Article 70. The President, Commissioners, Superintendent General, Assistant Superintendent Generals, Coordinators-General, and other competent authorities may request, for the purpose of carrying out any administrative proceedings within their duties and responsibilities:

- I. documents, objects and information, written or oral, from individuals or legal persons, government or private agencies, ensuring confidentiality, if applicable; and
- II. oral explanations from any individuals or legal persons, government or private agencies and authorities.

Article 71. The document for the request must include:

- I. in the situations provided for by Item 1 of Article 69, a precise description of the request object, the time limit for compliance and a warning stating that any refusal, omission, deceit, or unjustified delay, regarding the time and manner indicated, is an infraction punishable by daily fines in the amount established by the requesting authority, as per the provisions of this Article and of Article 40 of Law 12529/2011, without prejudice to other applicable civil and criminal sanctions; and
- II. in the situations provided for by Item 2 of Article 69, the place and date of the meeting and a warning that an unjustified absence will result in a fine established by the requesting authority, as per the provisions of Article 41 of Law 12529/2011, without prejudice to other applicable civil and criminal sanctions.

(1) All fines and daily fines must be set in the document for request.

Article 72. The Office of the Superintendent General may carry out inspections at the registered office, establishment, office, affiliated, or branches belonging to a firm under investigation, examining any stocks, objects, documents of any sort, as well as ledgers, computers and electronic data, bringing along experts and technicians.

(1) Inspections may be carried out *sua sponte* or when requested by the President or the Rapporteur of a case.

(2) The notice served on the investigated firm informing of the decision of the Office of the Superintendent General to carry out an inspection must include:

- I. the place and date of the inspection, which must be initiated during the day between 6:00 and 20:00;
- II. the purpose of the inspection; and
- III. a warning that, once the inspection is authorised or not expressly contested, if a party happens to impede, obstruct, or hinder it in any way, they will be subject to a fine as per the provisions of Article 42 of Law 12529/2011.

(3) The fine must be set in the decision to carry out the inspection.

Article 73. After an inspection has been carried out by the Office of the Superintendent General, a report must be produced with a full description of the action, detailing facts and any incidents, including any copies extracted and/or requested, as well as expert testimonies, and copies of electronic files. The report must include the authorisation to carry out the inspection, whether express or tacit, or state the absence of express opposition to it.

Article 74. Requests for reconsiderations, extensions, or changes of date and place, do not trigger the suspension of time limits for compliance with the requests referred to in Article 70, and the absence of a decision on the requests does not exempt the required party to comply with them in the indicated time and manner.

## TITLE III TRIBUNAL SESSIONS

### *CHAPTER I GENERAL PROVISIONS*

Article 75. Tribunal sessions are to be carried out in the previously scheduled dates, although special sessions may be extraordinarily convened by the President.

(1) The President may decide to have Tribunal sessions held remotely via electronic means, if the President understands it is justified to do so due to unavoidable events that preclude in-person sessions, provided that said sessions follow the agency's information security protocols, and it is ensured the transparency and public availability of the process, and interested parties are allowed full participation.

(2) Sessions held remotely via electronic means do not require that Tribunal members, representatives of the Prosecution Services, the parties or their attorneys, be present at CADE.

(3) Tribunal sessions held via electronic means are public and are to be broadcasted in real time at CADE's website.

(4) The same rules for in-person sessions apply to those held via electronic means, as deemed appropriate.

(5) Electronic sessions must be suspended in case it is impossible to access the platform due to technical issues related to CADE's system.

Article 76. Regular open tribunal sessions are to be held, preferably on Wednesdays, and must start immediately after distribution sessions, and end at 18:00, subject to occasional time extensions should it be necessary to cover every item on the agenda.

(1) Special hearings may be extraordinarily convened by the President or a majority of the members of the Tribunal.

(2) Regular and special tribunal sessions may happen any day of the week, provided that the date is approved by a majority of the members of the Tribunal.

(3) Should there be a backlog of cases awaiting judgement, the President may propose a session be resumed on the following available date, being all interested parties considered notified by the announcement made in the session.

(4) The President may decide to have Tribunal sessions held remotely via electronic means, if the President understands it is justified to do so, as per the provisions or Article 74.

Article 77. At sessions, the President sits in the middle of the central bench, and the representative of the Federal Prosecution Services sits on the President's right.

(1) The other Commissioners take their sits in order of seniority, alternating between the two lateral benches, starting with the right one.

(2) The Superintendent General, Chief Economist, Attorney General at CADE, and the tribunal clerk in charge of the session must occupy their previously designated seats.

Article 78. Tribunal sessions are open, except when a case is given confidential treatment, in which case the sessions are to be held in private.

Article 79. Sessions must have a quorum of at least four members of the Tribunal, and the decisions are taken by a majority of the voting members.

(1) Judgements must have a quorum of three voting members of the Tribunal.

(2) A majority of the entire membership is reached when the votes of four members of the

Tribunal agree, including the President.

Article 80. The Rapporteur must provide the report in its entirety when including the case in the tribunal hearing calendar.

Article 81. The tribunal stand is used to make a request, provide oral statements, or answer questions from the members of the Tribunal.

(1) Attorneys and legal representatives of a firm may request that their attendance is entered on the minutes and may provide clarification on matters of fact whenever the Tribunal deems necessary.

(2) Should attorneys, legal representatives of firms, or other persons given special agency by a firm, intend to provide oral statements, they must register to do so beforehand; they may also require, before the session, that the case be heard as a matter of priority, without prejudice to the Tribunal's rules for determining the order for proceedings to be heard.

(3) Requests by interested third parties to make oral statements are subject to the provisions of Article 42 of these Statutes.

(4) Under the terms of Article 78 of Law 12529/2011, the Rapporteur of a case, when requesting said case to be included in the tribunal hearing calendar, may request certain persons be invited to clarify matters pertaining to the case, providing their full personal information, in which case the Office of the President is responsible for the invitation, which must include the date, place, and subject matter.

(5) In case a session is carried out via electronic means:

I. oral statements are to be provided via a media file sent to the Office of the Tribunal Clerk, who is to present them at the proper moment;

II. the request must be voiced during the session, in real time, in the virtual environment; and

III. attorneys of record must be given real-time access to the virtual hearing environment, to be able to orally intervene to clarify misunderstandings or doubts pertaining to facts, documents, or claims that may influence the decision, as well as to address any eventual accusations or reprimands.

(6) Media files with oral statements must be submitted up to 24 hours before the virtual hearing starts.

(7) The contributions mentioned in Paragraph 5 may be effected via electronic equipment

(8) CADE must provide, along with the agenda for the virtual hearing, a channel for attorneys, parties, or interested third parties to express their intention to make their contributions to the hearings, and to send their media files.

Article 82. The Superintendent General, Chief Economist, Attorney General, and the parties, are to be granted the opportunity to speak in a hearing, in this order, upon application.

(1) The President of the Tribunal, after presenting the report of the case or in case said report is waived, will grant the floor to each requesting party for a maximum of 15 minutes, as per the head provision of this Article.

(2) In case there are co-parties with different attorneys of record or legal representatives, the speaking time is to be doubled and then equally divided, unless otherwise agreed.

(3) Interested third parties authorised to take the floor, as per the provisions of Article 42 and Article 80 of these Statutes, are allowed to do so before the parties and for the same length of time.

(4) The representative of the Federal Prosecution Services at CADE, as a law enforcer, is allowed to take the floor right after the parties, for a maximum of 15 minutes as well.

(5) Oral statements are not allowed in sessions related to Leniency Agreements, Requests for Clarification, Restoration of Case Files, and Cease and Desist Agreements.



Article 83. Once a case is being heard, it must be finalised in the same session, even if it exceeds the regular hours of the Tribunal.

Article 84. The Rapporteur of a case is allowed to postpone its hearing for a maximum of two regular sessions, unless the Tribunal expressly authorises further postponements.

(1) Postponed cases are to be included on the agenda of the following session, whether or not the Rapporteur of each case requests so, until it is finally heard within the time limit established by the head provision of this Article or as authorised by the Tribunal.

## *CHAPTER II ORDER OF PROCEDURES*

Article 85. Tribunal sessions must be carried out in the following order, as appropriate:

- I. verification of the number of Commissioners present;
- II. adjudication of proceedings, in the following order:
  - a) provisional clearance of mergers and acquisitions;
  - b) administrative proceedings for merger review;
  - c) proceedings with filed priority treatment requests;
  - d) requests for access to the records;
  - e) postponed proceedings;
  - f) proceedings presented during the session; and
  - g) other proceedings.
- III. appointments and proposals; and
- IV. reading, discussion and approval of the minutes of the session.

(1) In order to determine the order in which the cases are to be heard, the President must take into consideration any requests for presenting oral statements, per the provisions of Article 80(2) of these Statutes.

Article 86. The following may be included to be heard in the session, regardless of whether they were included on the agenda:

- I. requests for clarification;
- II. appeals against preventive measures;
- III. provisional clearance of mergers and acquisitions; and
- IV. objections to administrative proceedings to impose ancillary sanctions.

Article 87. Cases to which priority is not given by law or by these Statutes must be carried out, whenever possible, according to the order they have been included on the agenda.

(1) The President may, after consulting the members of the Tribunal and having assessed the relevance of hearing a given proceeding, alter the order of adjudication, including the order of the procedures presented during the session, and the order of priority.

## *CHAPTER III VOTES AND ANNOUNCEMENT OF THE JUDGEMENT*

Article 88. An opinion that understands a violation has been committed must include the following, as applicable, in addition to the provisions of Article 79 of Law 12529/2011:

- a) the penalties provided for in Article 38 of Law 12529/2011;
- b) the time limit for compliance with imposed duties; and
- c) the fine for noncompliance with imposed measures.

Article 89. In case the expert opinions reach the same conclusion and the Rapporteur is sufficiently convinced by them, the Rapporteur is allowed to issue an abridged version of the decision, exposing the rationale for the decision.

(1) In the situation mentioned in the head provision, the Rapporteur is dismissed from reading the opinion and other similar cases on the agenda may be collectively heard.

Article 90. Should there be need for discussion, the President must open the debate after the opinion is read.

(1) During the debate, the members of the Tribunal may:

- I. request clarifications from the Rapporteur, the parties, or the attorneys of record, if they are present, about facts, and circumstances relevant to the matter under discussion; or
- II. request access to the records, in which case the hearing is to be adjourned.

(2) Once the opinions are being discussed, the Federal Prosecution Services, the Office of the Attorney General at CADE, and the attorneys of record may solely express themselves regarding the clarification of facts.

Article 91. Once concluded the oral debate, the President takes the opinions of the Rapporteur and the Commissioners in agreement in the reverse order of seniority.

(1) In matters that, due to their nature, do not require a Rapporteur, the President is automatically designated as the Rapporteur and must read the opinion, followed by the other Commissioners in the order established in the head provision of this Article.

(2) Once the opinions have been read, the President announces the decision.

Article 92. If the opinions are divergent, and there is no majority opinion for any matter, even after the President gives the casting vote, the debate is reopened, and the votes are collected again.

(1) In case there is divergence of opinions regarding the fines, and a majority opinion is not reached on a matter that cannot be further sectioned, the President must arrange the proposed numbers in descending order, where the amount with more similar or higher proposals is chosen.

(2) If, due to divergent standpoints, the opinions are divided between three or more different interpretations on a matter that cannot be further sectioned, the President may adopt one of the following matters, according to the circumstances:

- I. carry out a second voting, in which everyone must choose between one of the two most voted interpretations in the previous voting; or
- II. carry out a voting between two randomly selected standpoints, excluding the defeated one and then subjecting the winning vote to a new voting against one of the remaining standpoints, repeating this procedure until the last two are voted on and the winning standpoint is announced as the Tribunal's decision.

Article 93. The President, even in the situation referred to in Article 11(3), has the right to vote and, whenever the Tribunal is unable to reach a majority, to have the casting vote.

(1) The casting vote is to be counted in the total of votes in addition to the President's vote.

Article 94. Upon the application of any of its members, the Tribunal may postpone a judgement and order additional evidence to be gathered.

(1) Once the Tribunal has ordered additional evidence to be gathered, the records are

forwarded to whichever Commissioner made the application, who must then perform the duties of Rapporteur during the postponement.

(2) The Commissioner who made the application is responsible for writing the opinion once the Tribunal has agreed to the request.

(3) Once the measures are concluded, the parties must be duly notified and reply within 15 days from the notification.

Article 95. Requests to have access to the records may be made both during the debate stage mentioned in Article 89, and during the issuance of the opinion, as per the provisions of Article 90.

(1) Requests to have access to the records do not impede the members of the Tribunal to anticipate their votes if they feel able to do so.

(2) The member of the Tribunal who requested access to the records must return them for adjudication within 60 days of the request. Afterwards, it is to be automatically included on the agenda and the remaining opinions are to be gathered.

(3) In the adjudication of any kind of proceedings, the Tribunal may order the records requested be seen within the same hearing, temporarily adjourning the session for the examination to be done.

(4) The Commissioner may, during the time limit mentioned in Paragraph 2, request a postponement for additional evidence to be gathered, or for the Department of Economic Studies to provide an expert opinion, which must be duly specified, provided they have express consent of the Tribunal.

(5) In the situation listed in the previous Paragraph, the proceedings must be automatically included on the agenda for adjudication within 90 days. The Tribunal may authorise an extension and determine a new time limit for additional evidence to be gathered or an opinion be issued.

(6) After the Commissioner who made the application issue their statement, the voting order must observe the provisions of Article 90 of these Statutes.

Article 96. If a hearing has been adjourned due to a request to have access to the records, when adjudication resumes, the votes previously issued by the Commissioners are to be counted, even if they are not present or their terms of office have expired.

(1) The head provision does not apply when, after the voting, new relevant facts or evidence have arisen which may on their own significantly change the decision context, and, therefore, the votes themselves, in which case, the Commissioner with the records must raise a point of order about it.

(2) Points of order must be previously submitted to the Tribunal, which then decides whether or not it falls under the exception provided in the previous Paragraph.

(3) Should the majority of the Tribunal's membership accept the point of order, the previously issued votes are cast out, and the case is taken off the agenda and forwarded to the Rapporteur to draw up a new report and then include it on the agenda again.

(4) If the Rapporteur is not in office, the case is given to the Commissioner who raised the point of order.

(5) In the situation referred to in Paragraph 3, oral statements may be presented again, when the case is back on the agenda, as per the provisions of Article 80.

Article 97. Members of the Tribunal who were absent from the presentation of the case, and did not participate in the discussion of the report and oral statements, are not allowed to vote, unless otherwise fully informed.

(1) If, in order to assemble the quorum referred to in Article 78(1), it is necessary that members included in the situation presented in the previous Paragraph cast their votes, the report must be read again, and, when possible, the oral statements must be presented again as well, and any previously issued votes

must be computed.

Article 98. After the announcement of the decision by the President, the Commissioners are no longer allowed to change their votes.

Article 99. The decisions of the Tribunal are final within the scope of the Executive Branch, and only Requests for Clarification or Requests for Reconsideration are accepted, under the terms and limits set in these Statutes.

*CHAPTER IV*  
*TRIBUNAL SESSIONS, MINUTES, AND SUMMONSES*

Article 100. The minutes of the hearing must include the records and outcomes of adjudications, and any other rulings of the Tribunal.

(1) The minutes of the sessions must also include, besides the place and date of the session, the names of:

- I. the Commissioners that were present at the session and the President, or the Commissioner who chaired the session;
- II. the absent Commissioners;
- III. the Representative of the Federal Prosecution Services present at the session, if applicable; and
- IV. the Attorney General at CADE, of the representative named by the Office of the Attorney General at CADE.

(2) The minutes must be signed by the President or the President's statutory substitute.

Article 101. For each case or procedure decided by the Tribunal in a hearing, the minutes must state:

- I. the type of procedure or motion;
- II. the case number;
- III. the names of the parties, their representatives and attorneys of record, observing the provisions of Article 57(1) of these Statutes;
- IV. the information on whether or not the Federal Prosecution Services, the Attorney General at CADE, the Superintendent General, and the Chief Economist have presented any statements;
- V. the names of any Commissioners recused from the case;
- VI. the names of the original Rapporteur of the case and the one later designated, if applicable;
- VII. the announcement of the Tribunal decision;
- VIII. information on whether the decision was unanimous or by a majority, in which case it must include which Commissioners wrote dissenting opinions, and who cast the first majority opinion; and
- IX. information on whether the President has been recused from the case and which Commissioner chaired the session.

Article 102. Opinions may be issued orally or in writing, in which case they must include a syllabus in the form to be set forth in a Resolution, and be attached to the records in its entirety and made available on the internet at CADE's website ([www.cade.gov.br](http://www.cade.gov.br)).

(1) The Rapporteur must always issue a written opinion.

(2) The opinion of the Rapporteur and all other opinions must be attached to the case files

within four working days after the session.

Article 103. The minutes of hearings, for the purpose of notifying the parties, must be published in the Federal Official Gazette of Brazil, and a copy of the publication must be attached to the records of the respective case.

(1) The minutes of hearings must be published within five working days after the respective session.

Article 104. The time limit for any objections to the Tribunal decision are counted from the day of publication of the minutes.

(1) The publication of minutes suffices as notification to the parties and interested parties regarding the Tribunal decision, provided that the decision is attached to the records, which must be available at the Office of the Coordinator-General of Proceedings.

(2) It must be clearly stated when the publication of the minutes is going to be used for notification purposes.

Article 105. In case a judgement is postponed for additional evidence to be gathered, only an abstract of the minutes is attached to the records, which must be signed by the Tribunal Clerk and the President.

## *CHAPTER V TRANSCRIPTIONS*

Article 106. All sessions are electronically recorded, including the discussions and votes, as well as questions asked to attorneys of record and their answers. The recording may be transcribed and attached to the records with a copy of the publication of the minutes, if deemed necessary, upon the application of the Rapporteur or the President, after being reviewed and signed by the Commissioners and the President, as the case may be.

## TITLE IV TYPES OF PROCEDURES

### *CHAPTER I ORDINARY PROCEDURES*

#### **Section I Administrative Proceedings for Merger Review**

Article 107. The submission of mergers and acquisitions for the review referred to in Article 88 of Law 12529/2011, must be made in advance.

(1) Reports of mergers and acquisitions must be filed, preferably, after the formal document has been signed by the parties, and before the transaction has been consummated.

(2) The parties must keep their physical structure and competitive conditions unmodified until CADE's final assessment, and 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 that binds the parties.

(3) In compliance with the provisions of Article 89(1), in conjunction with Article 90(1), both of Law 12529/2011, the creation of partnership agreements, consortia, and joint ventures aimed at participating in government procurements and auctions, and the resulting contracts, is not considered a merger or an acquisition.

(4) CADE may require mergers and acquisitions that do not fall within the criteria provided in Article 88 of Law 12529/2011 to be reported within one year from the respective date of consummation.

(5) CADE offers a channel of communication for any interested parties to express their opinion regarding any consummated or unreported transactions.

Article 108. In compliance with the provisions of Article 89(1) of Law 12529/2011, transactions involving public offering may be reported after publication and may be consummated without being previously cleared by CADE.

(1) Without prejudice to the head provision of this Article, the exercise of any political rights related to interest acquired through public offering is prohibited until the transaction is cleared by CADE.

(2) CADE may, upon the application of the parties, grant authorisation for the rights referred to in Paragraph 1 to be exercised, should it be necessary to fully protect the value of the investment.

(3) Should a transaction involving transfers of controlling interest require a public offering under Article 2, Item 3 of CMV Directive 361 issued by the Securities and Exchange Commission of Brazil on 5 March 2002, it must be mentioned when the transaction is reported, in which case it need not be reported after its publication.

(4) The public offerings referred to in Article 2, Items 1 and 2, of CMV Directive 361/2002, are not considered mergers or acquisitions under the provisions of Law 12529/2011.

Article 109. Stock exchange transactions and over-the-counter trades do not need to be previously cleared by CADE and are subject to the provisions established in Paragraphs 1 and 2 of Article 107.

Article 110. Applications for merger review submitted to CADE must include the information and documents necessary for the administrative proceedings to be launched, as established in a Resolution by CADE, in addition to the proof of payment pertaining to the procedural fee mentioned in Article 23 of Law 12529/2011.

(1) The application must be submitted, whenever possible, jointly:

- I. in acquisitions involving controlling interest or equity interest, by the acquirer and purchased firm;
- II. in mergers, by the merging companies; and
- III. in other cases, by the contracting parties.

(2) Applicants may request the documents and information are included in separate records so as to restrict access for other applicants and third parties, per the provisions of Article 48 and subsequent Articles of these Statutes.

(3) At the end of the application or any other petition, the petitioners must state that the information and documents provided are true and correct. The petitioner are liable for the accuracy of their statements.

Article 111. Should it be observed that the application failed to include any essential information and documents for CADE to conduct the review, or the proof of payment pertaining to the fee referred to in Article 23 of Law 12529/2011, or even that it has faults and irregularities that may impede a decision on the merits, the Office of the Superintendent General is to order only a single time that it be amended, on pain of dismissal.

(1) After the application for merger review, or its amendment has been filed, the Office of the Superintendent General publishes the notice of the respective proceedings.

Article 112. CADE may impose fines to parties that act towards completing a transaction that fit the criteria for mandatory reporting, thus breaching the provisions of Paragraphs 1 and 2 of Article 106. The fines imposed must amount to at least BRL 60,000.00 and no more than BRL 60,000,000.00, as per the provisions of Article 88(3) of Law 12529/2011.

(1) For the purpose of calculating the fines, CADE considers the size of the applicants, whether or not the actions arose from wilful misconduct and were carried out in bad faith, and the anticompetitive nature of the transaction, amongst other factors that may be deemed relevant.

(2) The fines referred to in the head provision are imposed without prejudice to the invalidation of the already completed merger or acquisition and the investigation of any antitrust practices, as per the provisions of Article 69 of Law 12529/2011.

(3) The launching of administrative procedures for merger review and the notification of administrative proceedings for merger review do not rule out the imposition of the fines referred to in the head provision of this Article.

(4) The imposition of the fines referred to in this Article does not prevent CADE from taking any legal actions or administrative measures to block mergers and acquisitions already completed and ensure that the effects of these transactions are suspended until CADE has arrived at a final decision on the matter, without prejudice to any investigation into alleged antitrust violations.

Article 113. The investigation into mergers and acquisitions unreported to CADE is carried out by means of administrative procedures for merger review, according to the procedures regulated in a Resolution by CADE.

(1) CADE may, at its own discretion, before launching an administrative procedure for merger assessment, launch an administrative procedure for investigating antitrust reports, particularly in cases arising from the reports referred to in Article 106(5) of these Statutes.

Article 114. All parties involved in mergers and acquisitions may reach out to the Office of the Superintendent General before reporting the transaction in order to resolve any doubts, provided that the transaction does not fall within the scope of Summary Cases, as provided for in a Resolution by CADE.

Article 115. Applicants for merger clearance may request, at any moment, provisional clearance to consummate the transaction, provided that the following requirements are met:

- I. there is no risk of irremediable harm to the competitive environment of the market;
- II. the measures to be implemented are completely reversible; and
- III. the applicants demonstrate the acquired firm will face imminent substantial and irreversible financial losses should the provisional clearance be denied.

(1) In order to demonstrate the imminent substantial and irreversible financial losses to which the acquired firm is subject, the applications must include all the documents, financial reports, and declarations necessary to provide unequivocal evidence of the alleged facts.

(2) The Office of the Superintendent General must forward the application to the Tribunal along with an opinion on whether or not provisional clearance should be granted within 30 days after it was filled.

(3) The Tribunal is to consider the application for merger clearance, provided that it has been properly filled, within 30 days after it was forwarded by the Office of the Superintendent General, without prejudice to the regular course of the administrative proceedings for merger review carried out by the Office of the Superintendent General.

(4) In case the provisional clearance referred to in the head provision of this Article is granted, conditions aimed at preserving the reversibility of the transaction must be imposed, when it is deemed necessary because of the characteristics of the case.

(5) The Tribunal Decision is final, and parties are not allowed to file requests for reconsideration.

Article 116. The provisional clearance of mergers and acquisitions remains in effect until a decision on the case is announced, or until is revoked or amended by the Tribunal, which may at any time

reconsider it and include it to be voted in the first subsequent session.

Article 117. If applicants fail to meet any of the conditions established in the decision that granted the provisional clearance for the transaction to be completed, the daily fines set in the decision are to be imposed, in accordance with Article 11 of Law 7347, of 24 July 1985, in conjunction with Article 39 of Law 12529/2011, without prejudice to other applicable sanctions, including the revocation of the provisional clearance that has been granted and return to the situation prior to its granting.

Article 118. Third parties whose interests may be affected by the transaction may petition to intervene by filing a motion within 15 days after the publication of the notice referred to in Article 110(1). The motion will be considered under the provisions of Article 42.

(1) The motion to intervene must contain, at the moment it is filled, all documents and opinions essential to provide unequivocal evidence of the allegations, on pain of dismissal.

(2) At the discretion of the Superintendent General or the President, as the case may be, the time limit mentioned in the head provision of this Article may be extended for up to 15 days, upon the application of an interested third party, should it be strictly necessary for the documents and opinions mentioned in Paragraph 1 to be submitted.

(3) In case the documents and opinions used to substantiate the request for the time limit to be extended, the interested third party may be denied the right to intervene in the case.

(4) Mergers and acquisitions categorised as Summary Proceedings as per the requirements to be established in a specific resolution, may be decided regardless of the time limits referred to in the head provision.

(5) In the situations listed in Paragraph 4, should the Superintendent General issue a decision before the expiration of the time limits referred to in the head provision, interested third parties may submit their motions to intervene directly to the President of the Tribunal, observing the time limits referred to in the provision.

(6) Motions to intervene must be dismissed should they be deemed irrelevant for the purpose of the merger review.

Article 119. After the publication of the notice referred to in Paragraph 1 of Article 110, the Superintendent General may:

I. process the application, issuing a final decision, when it is understood that the case does not require that additional measures be taken, or when the case in question does not have much potential to result in competitive harm, as per the definition established in a specific Resolution issued by CADE;

II. refuse to process the application, issuing a final decision, when it is observed that the case refers to a transaction that do not meet the requirements for mandatory reporting, under the Law and the rules established by CADE; or

III. order that an additional investigation be carried out, specifying the measures to be taken.

(1) Once the additional investigation referred to in Item 3 has been completed, the Superintendent General must state whether or not it was satisfactory and adequate for the case to be assessed, either processing the application or ordering that the investigation be carried out again.

Article 120. The Office of the Superintendent General may, if it understands it is justified to do so, declare the transaction as complex and order that an additional investigation be carried out, specifying the measures to be taken.

(1) Once a transaction is declared to be complex, the Office of the Superintendent General may request the Tribunal to extend the time limits referred to in Paragraph 9 of Article 88 of Law 12529/2011.



(2) The request of the Office of the Superintendent General to have the time limits extended are to be submitted to the President of the Tribunal who is to present it in the next session regardless of whether it has been previously included on the agenda.

Article 121. Once the additional investigation has been carried out at the Office of the Superintendent General, the Superintendent General must:

- I. clear the transaction unconditionally; or
- II. direct the case to the Tribunal, should it come to the conclusion that the transaction must be blocked, cleared subject to remedies, or cleared upon signature of a merger control agreement, or that there are no clear answer as to its effects on the market.

Article 122. Within 15 days after publication of the decision issued by the Office of the Superintendent General that cleared the transaction or refused the application:

- I. an appeal may be lodged to the Tribunal by interested third parties whose motions to intervene have been granted, as per the provisions of Article 117, or by the respective regulatory agency, in case the transaction is related to a regulated market;
- II. the Tribunal may, upon application of one of its members, request the case for adjudication by means of an order which must include the reasoning behind the decision.

(1) The appeal against the decision to clear or not to process the transaction issued by the Office of the Superintendent General must include all documents and opinions essential to the investigation of the facts, and the reasons why the transaction cleared could significantly eliminate competition in the relevant market, strengthen the dominant position held by a firm, or result in the firm holding a dominant position in the relevant market of goods and services.

(2) Should the tribunal decide to request the case for adjudication, per the provisions of Item 2 of the head provision of this Article, it must issue an order explaining the reasoning behind its decision within 15 days of the date of publication of the decision issued by the Office of the Superintendent General that cleared the transaction.

(3) Whichever member of the Tribunal who issues the order requesting the case for adjudication must notify the decision to the Office of the Superintendent General; at which point the case is to be directed to the Tribunal.

(4) The order requesting the case for adjudication is to be submitted to the Tribunal at the session immediately subsequent to the notification.

Article 123. The order issued by the Office of the Superintendent General directing the case to the Tribunal must include the reasoning behind the decision, and mention:

- I. the relevant markets of goods and services assessed by Office of the Superintendent General;
- II. the aspects of the transaction that could significantly eliminate competition in the relevant market, strengthen the dominant position held by a firm, or result in a firm holding a dominant position in the relevant market of goods and services;
- III. which remedies must be imposed or the reasons for the transaction to be blocked; and
- IV. which elements are necessary for a conclusive review on the effects of the transaction on the relevant market to be carried out.

Article 124. The petitioner may, within 30 days after the date in which the Office of the Superintendent General directed the case to the Tribunal, submit a written motion to the Tribunal questioning the decision of the Office of the Superintendent General to direct the case to the Tribunal, in which case the motion must state the reasoning behind it, including any matters of fact and law, as well as any relevant evidence, studies and opinions.

(1) Interested third parties whose motions to intervene have been granted, as per the provisions of Article 117, are also allowed to make their allegations regarding the decision issued by the Superintendent General within the time limit referred to in the head provision, counted from the date the Superintendent General directed the case to the Tribunal.

Article 125. CADE may accept proposals of Merger Control Agreements from the date of submission of the application for merger review up to 30 days after the case has been assigned to a Rapporteur.

(1) The Merger Control Agreement is included in separate records and attached to the administrative proceedings for merger review.

(2) After the expiration of the time limit established in the head provision, the Rapporteur may establish a new time limit for proposals of Merger Control Agreements to be submitted.

(3) Proposals of Merger Control Agreements are to be submitted to the Tribunal for approval.

(4) Merger Control Agreements negotiated with the Office of the Superintendent General must be submitted to the Tribunal for approval along with the decision of the Office of the Superintendent General to direct the case to the Tribunal.

(5) CADE may reject the proposed Merger Control Agreement if it concludes there is insufficient information on record for the proposal to be properly analysed, or at its own discretion, if the proposal is considered inopportune or unsuitable.

(6) The Superintendent General and the Commissioner acting as the Rapporteur of a case may request the assistance of any of CADE's bodies to elaborate, negotiate and execute Merger Control Agreements.

(7) CADE may, at its own discretion, if it is considered opportune and suitable, order that the activities related to the execution of the Merger Control Agreement be carried out by advisory or auditing firms, or other independent institution, at the expense of the parties involved in the transaction.

(8) Once the final version of the Merger Control Agreement is approved by the Tribunal, the parties involved are to be notified to appear at the Tribunal of CADE, before the President, and sign the agreement.

(9) The final proposal of the Merger Control Agreement must be filed by the parties no later than 108 hours prior to the session.

(10) An original of the Merger Control Agreement is given to each party involved and another is entered in the records.

(11) Within five days of the date of its signing, a public version of the Merger Control Agreement will be published at CADE's website ([www.cade.gov.br](http://www.cade.gov.br)) and will remain available for the duration of the Agreement.

Article 126. All administrative proceedings for merger review are to be randomly assigned to a Rapporteur:

I. no later than 48 hours after the Office of the Superintendent General direct the case to the Tribunal as per the provisions of Article 120, Item 2, or propose a Merger Control Agreement, as per the

II. no later than 48 hours after the appeal referred to in Article 120, Item 1, is filed.

III. no later than 48 hours after the hearing in which the decision to request the case for adjudication is approved by the Tribunal; and

IV. whenever the Office of the Superintendent General directs to the Tribunal requests for provisional clearance of mergers and acquisitions, as per the provisions of Article 114(2).

(1) In the situation provided for by Item 4 does not stay the administrative proceedings for

merger review being carried out by the Office of the Superintendent General.

(2) In the situation provided for by Item 4, the Commissioner assigned the role of Rapporteur for the purpose of the request is not given jurisdiction to act as the Rapporteur over the entire case.

Article 127. After the petitioners have made their statements on the matter of the case being directed to the Tribunal, the Rapporteur:

I. is to order that the case be included in the tribunal hearing calendar, in case the Rapporteur understands there is enough evidence to do so; or

II. is to order that an additional investigation be carried out, as deemed necessary, in which case the Rapporteur may, at their own discretion, request the Office of the Superintendent General to carry out the investigation, listing any issues identified and specifying the measures to be taken.

(1) The Rapporteur is allowed to monitor the execution of the measures referred to in Item 2.

(2) After the additional investigation is completed, the Rapporteur is to order that the case be included in the tribunal hearing calendar.

Article 128. In entertaining the request for clearance of a merger or acquisition, the Tribunal may refuse to process the case, clear the transaction unconditionally, block it, or clear it subject to remedies, in which case, it must specify the requirements to be met for the transaction to be valid under the terms of Article 61 of Law 12529/2011.

(1) After a decision on the merits of a case has been issued, the matter is *res judicata*, meaning a new petition related to the same transaction cannot be filed, and the matter cannot be reviewed within the scope of the Federal Executive Branch, except in the situations referred to in Article 91 of Law 12529/2011.

Article 129. In case the applicants unjustifiably delay the presentation, refuse to provide, omit, mislead or misrepresent information or documents requested by CADE, the application for merger review may not be processed for lack of evidence, without prejudice to any other applicable sanctions, in which case the petitioners may only complete the transaction after submitting a new application.

Article 130. No later than five days after an appeal against a decision by the Office of the Superintendent General clearing a transaction or refusing to process the case has been filed, the Rapporteur must:

I. agree to allow the appeal and order it be included in the tribunal hearing calendar;

II. agree to allow the appeal and order that an additional investigation be carried out, in which case Rapporteurs may, at their own discretion, request that the Office of the Superintendent General carry out the investigation, listing any issues and specifying the measures to be taken; or

III. refuse to allow the appeal, ordering that it be dismissed.

(1) Applicants are allowed to express themselves on the matter of the appeal, within five days from the date it was allowed by the Tribunal or the date the report containing the findings of the additional investigation is presented, whichever occurs later.

(2) The Rapporteur is allowed to monitor the execution of the measures referred to in Item 2.

Article 131. Whichever Commissioner issues the order requesting the case for adjudication is given jurisdiction to submit the matter to the Tribunal, which may:

I. affirm the decision issued by the Office of the Superintendent General which cleared or refused to process the transaction, in which case Article 125, item 3, has no effect; or

II. approve the proposal to request the case for adjudication, in which case the Tribunal, as the case may be, is allowed to request that an additional investigation be carried out.

(1) In the situation referred to in Item 2 of this Article, the case must be randomly assigned to a Rapporteur and must follow the procedures provided for in Articles 123 through 128, as applicable.

Article 132. Once the Office of the Superintendent General has cleared a merger or acquisition or has refused to process the application, the transaction may only be completed after the time limit for appeals to be filed and the Tribunal to request the case for adjudication has expired.

(1) Should an appeal be filed against the decision of the Office of the Superintendent General to clear the merger and acquisition or not to process the transaction, or the Tribunal request the case for adjudication, the transaction must not be completed until the Tribunal renders its final decision.

(2) For the purposes of the situation referred to in Paragraph 1, the merger or acquisition is stayed from the moment the appeal is filed with the Registration Office at CADE or the date an order requesting the case for adjudication is issued by a member of the Tribunal.

(3) The information that no action was taken by the end of the time limit referred to in Article 121 of these Statutes must be stated in the records.

Article 133. Failure to comply with the time limits provided for by Paragraphs 2 and 9 of Article 88 of Law 12529/2011, results in the merger or acquisition being tacitly cleared.

(1) For the purpose of compliance with the time limits referred to in the head provision, the case is automatically entered on the agenda of the last hearing before the expiration of the time limit established in Article 88(2) of Law 12529/2011, except in case the time limit has been extended.

(2) Once the time limit extensions referred to in Article 88(9) of Law 12529/2011 have been granted, the case is automatically entered on the agenda of the last hearing before the expiration of the new time limit.

Article 134. In the situations provided for by Article 91 of Law 12529/2011, the administrative proceeding for merger review is reopened by the Office of the Superintendent General or the Tribunal, as the case may be, and the review is entered in the same records.

## Section II

### **Preliminary Enquiries, Administrative Enquiries into Antitrust Violations and Administrative Proceedings to Impose of Sanctions for Antitrust Violations**

Article 135. The Office of the Superintendent General must decide when the procedural types provided for by Law 12529/2011 are applicable.

(1) The decision on whether or not to initiate any of the various proceedings provided for by Law 12529/2011 may be reviewed at any time by the Office of the Superintendent General, provided that it states the reasoning behind the decision.

(2) The proceedings provided for by Law 12529/2011 must not be initiated to ascertain facts related to private disputes that are not in the public interest nor must they be initiated based on a complaint that does not bear a minimum degree of intelligibility in its narrative concerning facts and its reasoning.

Article 136. The procedural types mentioned in this section may be initiated:

- I. *sua sponte*;
- II. based on a reasoned complaint offered by any interested party;
- III. based on evidence collected;
- IV. after preliminary enquiries have been conducted to investigate antitrust violations or administrative investigations have been concluded;
- V. based on a complaint offered by a Congressional Committee or either of its Houses, the Secretariat for Economic Monitoring of the Ministry of Finance, any regulatory agency, the Federal Prosecution Services at CADE, and the Office of the Attorney General or at CADE; or
- VI. based on a decision issued by the Tribunal of CADE.

(1) A complaint offered by a Congressional Committee or either of its Houses, the Secretariat for Economic Monitoring of the Ministry of Finance, any regulatory agency, the Federal Prosecution Services at CADE, and the Office of the Attorney General at CADE does not depend on preliminary enquiries being launched, therefore an administrative investigation or administrative proceedings must be launched as ordered by the Superintendent General.

Article 137. The Office of the Superintendent General may request support from the police, the Prosecution Services, or any other competent public authority to conduct the investigations.

Article 138. The complaint must be submitted along with the relevant documentation and include a clear, precise, and coherent description of the facts to be investigated, and indicate any other elements that may be relevant for clarifying the issue.

(1) The complaint must be filed and included in the records by the registration office and procedural service with jurisdiction over it, and adjudication may be postponed to order that preliminary enquiries, administrative investigations, or administrative proceedings be carried out, in case these procedures may result in sanctions for antitrust violations.

(2) If deemed necessary, the Office of the Superintendent General may order that a discovery hearing be carried out, summoning the complainant to provide oral clarification on the facts mentioned in the complaint, which must afterwards be put in writing and entered in the records.

### **Subsection I Preliminary Enquiries**

Article 139. The purpose of a preliminary enquiry is examining whether the practice to be reviewed is within the jurisdiction of the Brazilian System for the Defense of Competition.

(1) Preliminary enquiries are conducted in secrecy unless the Office of the Superintendent General orders otherwise.

(2) The Office of the Superintendent General must take the measures necessary to examine the matter within the time limit of 30 days.

(3) Should the initial measures taken prove unsubstantial, the Office of the Superintendent General may, at its discretion, take additional measures or decide for the summary dismissal of the preliminary enquiry in case.

(4) Any interested party may appeal the order to dismiss the preliminary enquiry within five working days from the date of communication of the decision, in which case the Office of the Superintendent General must issue the final decision on the matter.

Article 140. Within 15 days from the date of communication of the final decision that ordered the dismissal of the preliminary enquiry, the Tribunal may, upon application of one of its members, request the preliminary enquiry dismissed by the Office of the Superintendent General, by means of an order which must include the reasoning behind the decision.

(1) Whichever member of the Tribunal made the application for requesting the case must report on the facts and present the reasoning behind the request.

(2) In deciding on the matter, the Tribunal may:

I. affirm the decision to dismiss the case;

II. order that the case records be returned to the Office of the Superintendent General in order for an administrative investigation to be launched;

(3) At the discretion of the Rapporteur, and in the interest of the investigation, the Tribunal may grant confidential treatment to the preliminary enquiry and the request for adjudication;

(4) The Office of the Coordinator General of Proceedings must notify the members of the Tribunal of the final decision issued by the Office of the Superintendent General ordering the dismissal of the preliminary enquiry.

## **Subsection II** **Administrative Enquiries**

Article 141. An administrative enquiry is a fact-finding enquiry which must be conducted by the Office of the Superintendent General to investigate antitrust violations when there is insufficient evidence to launch administrative proceedings.

(1) Administrative Investigations may be conducted in secrecy at the discretion of the Office of the Superintendent General and in the interest of the investigation.

(2) When conducting an administrative investigation, the Office of the Superintendent General may take any investigative actions provided for by Law 12529/2011, including requesting written or in-person clarification from the accused or third parties.

Article 142. Administrative investigations must be concluded within 180 days from the date it has been launched

(1) The time limit referred to in the head provision may be extended for 60 days by means of an order stating the reasoning behind the decision.

(2) Every order extending the time limit for an investigation to be conducted must state the reasoning behind it.

Article 143. Within 10 working days from the date the administrative enquiry was concluded, the Office of the Superintendent General must decide whether to initiate administrative proceedings or dismiss the case.

Article 144. Any interested party may appeal the order to dismiss the administrative enquiry within five working days from the date of communication of the decision, in which case the Office of the Superintendent General must issue the final decision on the matter.

Article 145. Within 15 days from the date of the Office of the Superintendent General issued its final decision ordering the administrative investigation to be dismissed, the Tribunal may, upon application of one of its members, request the administrative investigation dismissed by the Office of the Superintendent General, by means of an order which must include the reasoning behind the decision.

(1) Whichever Commissioner made the application to the Tribunal must report on the facts related to the application, stating the reasoning behind it.

(2) In deciding on the matter, the Tribunal may:

I. affirm the decision to dismiss the case;

II. order that the case records be returned to the Office of the Superintendent General in order for the administrative investigation to be resumed, or for an administrative proceeding to be launched, as the case may be; and

III. randomly assign a Rapporteur to make a decision as per the provisions of Article 67(2) of Law 12529/2011.

(3) In the situation described in Item 3 of Paragraph 2, the Rapporteur who is assigned the case has 30 working days to:

I. affirm the decision of the Office of the Superintendent General to dismiss the case, in which case, should it be deemed necessary, the Rapporteur may state the reasoning behind the decision; or

II. order the investigation be converted into administrative proceedings, and that an

additional investigation be conducted, in which case, the Office of the Superintendent General may be requested to conduct the investigation at the Rapporteur's discretion.

(4) Should the Office of the Superintendent General conduct the actions referred to in Paragraph 2, Item 2, it does not imply the reopening of the case within the scope of the Office of the Superintendent General.

(5) The administrative proceeding moves in the Tribunal following the same process set forth within the Office of the Superintendent General.

(6) At the discretion of the Rapporteur, and in the interest of the investigation, the Tribunal may grant confidential treatment to the administrative investigation and the request for adjudication;

(7) In public administrative investigations, the decision published in the Federal Official Gazette of Brazil serves the purpose of notifying the members of the Tribunal.

(8) The Office of the Coordinator-General of Proceedings must notify the members of the Tribunal of the final decision issued by the Office of the Superintendent General ordering the dismissal of any administrative investigation that was moving in secrecy.

### **Subsection III**

#### **Administrative Proceedings to Impose Sanctions for Antitrust Violations**

Article 146. Administrative proceedings to impose sanctions for antitrust violations are initiated by the Office of the Superintendent General, ensuring the right to full answer and defence to the parties involved.

Article 147. The order initiating the administrative proceedings must include the following elements:

- I. as indication of the respondent and, when applicable, the complainant;
- II. a description of the alleged violation committed by the respondent, including the facts to be investigated;
- III. an indication of legal provision related to the alleged violation; and
- IV. a direction requesting that the respondent be notified to file an answer within the legal time limit, specifying the evidence to be produced, or declining to do so, as the case may be, and identifying a maximum of three witnesses, providing the reasoning behind their listing, and, whenever possible, providing their names, occupation, marital status, age, individual taxpayer identification number (the Cadastro de Pessoa Física), identity card number, and full home and work addresses.

(1) The summary of the facts to be reviewed and the reasoning for the decision may be provided by means of a statement of agreement including previous arguments, opinions, information, decisions, or proposals that, in this case, will be entered in the case records.

(2) Any amendment to the order by the Office of the Superintendent General that initiated the administrative proceedings aimed at including new respondents restarts the time limits for all respondents to file an answer.

Article 148. At the discretion of the Office of the Superintendent General and by means of an order including the reasoning behind the decision, an administrative proceeding may be broken down in more proceedings in any of the following situations:

- I. when the antitrust violations have been committed at different times or places;
- II. when there is an excessive number of respondents, and in order not to compromise the reasonable duration of the proceedings or make defence difficult;
- III. when it is difficult to notify one or more respondents; or

IV. when there are other relevant reasons.

Article 149. Service of the initial process must include the entire content of the decision to initiate the administrative proceedings, the expert opinion accepted by the decision, and the complaint, as the case may be, and must be made upon a defendant by one of the following means:

- I. by post, with acknowledgement of receipt signed by the respondent;
- II. by other means that ensure the interested parties' knowledge; or
- III. by mechanisms of international cooperation.

(1) If the attempt of service by post or the request for international cooperation has been unsuccessful, the summons is served by publication in the Federal Official Gazette in the State in which the party to be served is domiciled or based, in case such information is known by the authorities, with a set time limit of 20 to 60 days for the party to file an answer.

(2) In case the respondent is domiciled in a country that accepts the service of process by post, the summons may be served by post with acknowledgement of receipt signed by the respondent.

Article 150. Summons related to any other procedures will be served by publication in the Federal official Gazette of Brazil, which must include the names of the respondent and representative, if any.

Article 151. Respondents have a time limit of 30 days to present their defence and specify the evidence meant to be produced, duly identifying a maximum of 3 witnesses.

(1) The time limit for filing an answer is counted either from the date the last acknowledgement of receipt is included in the records, or the last respondent is served the summons, or the time limit set by the notice referred to in Article 55(2) of these Statutes, as the case may be.

Article 152. Respondents may request a time limit extension of up to 10 days to file their answer, with no further extension, when the complexity of the case requires so.

(1) Once an extension has been granted it includes all respondents, regardless of who requested it.

(2) The extension is counted from the first working day after the expiration of the regular time limit for filing an answer.

Article 153. Respondents who have been served with a summons and failed to file an answer within the legal time limit is in default, thus the factual allegations of the complaint will be taken as true and other time limits apply regardless of whether the respondent is given notice.

(1) At any stage of proceedings defaulting parties may file their answers, without the right to request reconsideration of matter already decided.

Article 154. Respondents may track the status of administrative proceedings via their attorneys, directors, managers, or representatives, whom are granted full access to the records by CADE.

Article 155. Within 30 working days from the expiration date of the time limit for filing an answer, the Office of the Superintendent General is to determine the production of any relevant evidence by issuing an order stating the reasoning behind the decision, in which case it is allowed to take any of the investigative actions provided for by Law 12529/2011, always ensuring confidentiality should it be applicable.

(1) Should a respondent offer evidence that has been illegally obtained, is immaterial, irrelevant, or intended to unduly delay the regular course of proceedings, the Office of the Superintendent General must not allow it, and must issue an order which mentions the reasoning behind the decision.

(2) Testimonies of the parties and witnesses are taken at CADE's facilities by any civil servant in office at the Office of the Superintendent General, except if there is proof that a witness is unable to travel, in which case a civil servant may travel to take the testimony at the expense of the party who listed the witness.



(3) The testimonies mentioned in Paragraph 2 may be carried out by videoconference or via any other technology for real-time audio and video transmission, provided that there are technical conditions for it and the authority deems it opportune and suitable.

(4) Once it is ordered that a testimony be taken, the unexplained absence of the party who listed the witness entails a tacit withdrawal of the party's request that the witness be heard, in which case the Office of the Superintendent General must decide whether or not to carry it out at another time.

(5) Once expert evidence has been gathered, the experts make a commitment to perform their duties well and faithfully, observing the following:

- I. the Office of the Superintendent General establishes what is relevant for the investigation;
  - II. respondents are allowed to make additional requests and ask experts for clarification;
- and
- III. expert evidence may be gathered by authorities or civil servants in office at CADE or any other government body, or by professionals hired solely for this purpose, with the interested party being allowed to appoint an assistant expert.

(6) Documentary evidence may be entered into the records by the end of the discovery phase.

(7) Whenever possible or when expressly ordered by the authority, documentary evidence must be submitted by electronic means.

(8) The Office of the Superintendent General may allow the use of evidence produced in a different administrative or legal proceeding, assigning to it the importance deemed appropriate, ensuring the right to full answer and defence to the parties involved.

Article 156. Within five working days from the date of completion of the discovery phase, the Office of the Superintendent General must notify the respondents to make their defence within five working days.

(1) Within 15 working days from the expiration of the time limit provided for in the head provision of this Article, regardless of whether the defendant has made a defence, the Office of the Superintendent General must forward the case to the President of the Tribunal, along with a detailed report, dismissing the case or establishing that an antitrust violation has been committed.

(2) The detailed report mentioned in Paragraph 1 of this Article must include the following information:

- I. as indication of the respondent and, when applicable, the complainant;
- II. a brief description of the allegations made against the respondent, indicating any violated legal provisions;
- III. a summary of the defence;
- IV. a list of the main incidents that occurred during the course of the proceeding;
- V. the assessment of the evidence; and
- VI. the decision on whether a violation has been committed, with a suggestion on the fine to be imposed and other appropriate sanctions, if applicable.

Article 157. Once the case is received, the President of the Tribunal randomly assigns it to a Rapporteur, who is responsible for requesting an opinion from the Federal Prosecution Services and the Office of the Attorney General at CADE.

(1) The Federal Prosecution Services and the Office of the Attorney General at CADE have 20 days to issue the opinion requested by the Rapporteur;

(2) The request for opinions referred to in the head provision of this Article does not implicate

in the suspension of time limits for reviewing the case or alter the ordinary course of proceedings.

Article 158. The Rapporteur may issue an order, which must include the reasoning behind the decision, determining that additional evidence be gathered, whenever the Rapporteur understands that the information in the records are not sufficient to reach a conclusion.

(1) The Rapporteur may request that the Office of the Superintendent General conduct the production of additional evidence, without entailing the reopening of the case by the Office of the Superintendent General, in which case the Rapporteur must indicate what needs to be clarified and specify the evidence to be produced within the time limit provided.

Article 159. Should the Rapporteur order additional evidence to be produced, as provided for in Article 157, the parties have 15 working days to provide any statements regarding the outcome of the measures.

(1) The Federal Prosecution Services and the Office of the Attorney General at CADE have a time limit of 20 days to present any additional opinion.

(2) Once the measures referred to in the head provision and in the previous Paragraph have been concluded, the case is submitted to the Rapporteur for adjudication.

Article 160. At the invitation of the President and by appointment of the Rapporteur, any person may take the role of amicus curiae and provide an amicus brief to the Tribunal on any matters included in the agenda.

(1) Amicus briefs must be provided before the parties are notified to make their final statements, without prejudice to the oral participation of amici curiae in the judgement session.

Article 161. All Tribunal decisions which declare an antitrust violation has been committed must include the reasoning behind the decision and the following information:

- I. a description of the facts related to the violation and an indication of the measures to be taken by those responsible to cease it;
- II. the time limits by which the measures referred to in Item 1 must be initiated and concluded;
- III. the specified fine, individualised, and the calculation methodology adopted;
- IV. the daily fine to be imposed should the violation continue;
- V. other penalties provided for in Law 12529/2011, if applicable;
- VI. the fine to be imposed in case of non-compliance with the stipulated measures, as the case may be; and
- VII. the time limit for the fine to be paid and for compliance with any other imposed duties.

(1) The Tribunal's decision is to be published in the Federal Official Gazette of Brazil within five working days.

Article 162. In case of non-compliance with the decision, in whole or in part, the fact must be informed to the President of the Tribunal who is to order the Office of the Attorney General at CADE to take the legal measures necessary to enforce the decision.

## *CHAPTER II*

### *SPECIAL PROCEDURES*

## Section I

### Administrative Proceedings to Impose Ancillary Sanctions

Article 163. Once the violations referred to in Articles 40 through 44 of Law 12529/2011 have been identified, in addition to the possibility of imposing ancillary sanctions, the competent authority must order the issuance of a notice of violation that, together with copies of the evidence that prove the violation has been committed, makes up the initial pleading of an administrative proceeding to impose ancillary sanctions.

(1) The issuance of a notice of violation does not suspend the regular course of the main proceeding nor does it prevent a decision on the merits of the case.

(2) The issuance of a notice of violation does not exclude the possibility of dismissal of the administrative proceeding for merger review due to the parties unjustifiably delaying, refuse giving, omitting, misleading, or misrepresenting information or documents requested by CADE, as per the provisions of Article 128.

Article 164. A notice of violation must expressly include:

- I. the complete identification and address of the respondents;
- II. an objective description of the investigated violation;
- III. an indication of the legal provisions violated;
- IV. a notice of fine, stating the fine to be paid, providing the parties the opportunity to contest it;
- V. the time limit for paying the fine or contesting it;
- VI. the case number associated to the proceeding in which the information or documents were requested;
- VII. a warning that all notices of procedures will be served by publication in the Federal Official Gazette of Brazil;
- VIII. a warning that failure to pay the fine may implicate its registration as outstanding debts owed to CADE;
- IX. a warning that the imposition of a fine does not in any way prevent the gathering of information, documents, clarifications—collected orally or by other coercive means admitted by law—nor does it exempt the defaulter from civil and criminal liabilities resulting from their actions;
- X. an indication of the place and date of issuance of the notice of violation; and
- XI. the signature from the requesting authority or the authority who ordered the gathering of additional evidence.

Article 165. Additionally, a notice of violation must expressly include the following:

1. in case of a violation referred to in the head provision of Article 40 of Law 12529/2011:
  - a) the daily fine and the date it starts to be counted;
  - b) a warning that the daily fine will be imposed until the actual date of compliance; and
  - c) the information that notified parties must within five days, comply with the request— in which case they are exempted from the fine—or contest the notice of violation.
2. in case of the violations referred to in Articles 41 through 44 of Law 12529/2011:
  - a) the daily fine imposed by the competent authority, calculated according to the criteria established in Article 45 of Law 12529/2011;

- b) the time limit of five days for it to be paid; and
- c) the information that notified parties may, within the time limit established for payment, contest the notice of violation.

Article 166. Notified parties may contest a notice of violation within five days of its issuance.

(1) Objections must be filed with the Registration Office of CADE and include the acknowledgement of receipt, when sent by post, or observe the provisions of Article 44, when sent by facsimile.

(2) Objections are to be randomly assigned to a Rapporteur, excluding the authority responsible for issuing the notice of violation.

Article 167. The Rapporteur must request that the administrative proceeding to impose ancillary sanctions be included in the tribunal hearing calendar.

Article 168. Notified parties must pay the fines within 10 days from the date of publication in the course of the Incidental Proceeding.

(1) In case the fine is not collected in the time and manner established, the authority must submit the case to the Office of the Attorney General at CADE, which will proceed to register the delinquent debt owed to CADE, and take the legal and administrative measures applicable.

Article 169. In case of a violation for refusing to provide, omitting, or unjustifiably delaying the presentation of information or documents requested by the Office of the Superintendent General, the Tribunal or any other government entity listed in the head provision of Article 40 of Law 12529/2011:

I. the daily fine is counted from the first working day after the end of the time limit set in the request for information or documents to the day the request is fulfilled;

II. compliance with the request by the time limit established for filling an objection extinguishes the penalty.

(1) The day in which the requested documents and information are submitted is considered the day of compliance with the request provided for in Article 40 of Law 12529/2011.

Article 170. The fine is to be directed to the Fund for De Facto Joint Rights (FDD), as established by its Federal Management Board.

Article 171. Once the debt is paid, the notified party must submit, by means of a petition duly registered with the Registration Office, the original proof of payment to be attached to the case records.

(1) The case records are to be checked and certified by the Office of the Attorney General at CADE before being dismissed by the competent authority.

Article 172. The imposition of any penalties provided for in Law 12529/2011 does not in any way prevent the gathering of information, documents, oral clarifications, or the production of evidence by other coercive means admitted by law, nor does it exempt the defaulter from civil and criminal liabilities resulting from their actions;

Article 173. The launching of Incidental Proceedings does not interrupt or suspend the regular course of the main proceeding.

## **Section II**

### **Restoration of Case Files**

Article 174. The original records of cases launched by the Office of the Superintendent General or the Tribunal must be restored whenever lost or destroyed.

(1) In case there is a copy of the original records, the case is to be resumed on it.

(2) In case a certified hard or digital copy is presented, it is considered as the original.

(3) In the absence of a certified hard or digital copy, the President of CADE is to restore the records, *sua sponte* or upon application.

(4) After a proceeding is restarted, it is to be assigned, whenever possible, to the Superintendent General or the Commissioner who had been assigned the role of Rapporteur in the lost or destroyed case, or, should the Commissioner's term of Office have ended, to the substitute.

Article 175. In the order to restart a case, the interested party must be informed of its status at the time it was lost or destroyed, providing the following:

I. a copy of requests and petitions submitted to the Office of the Superintendent General and the Tribunal; and

II. a copy of all documents that contribute to the restoration.

Article 176. Other interested parties, if any, are to be notified to respond to the request within five days, and the Superintendent General or the Rapporteur must request any copies and reproductions of case documents in their possession, under the penalties of Article 40 of Law 12529/2011.

(1) As appropriate, the Superintendent General or the Rapporteur may order CADE's Office of the Coordinator-General of Proceedings to include in the records the copies of documents and papers the Office holds, allowing the interested parties access for five days.

(2) Should the notified parties agree on the restoration of records, the records are to be issued and, signed by the interested parties (and, as the case may be, by the Superintendent General or the Rapporteur), these restored records replace the missing records.

Article 177. The provisions of the Code of Civil Procedure also apply to the ongoing restoration, and, should it be necessary, the authority may order the measure to include regulatory agencies and other bodies as to actions carried out with them.

Article 178. Once the Office of the Attorney General at CADE has issued its opinion and the records are deemed adequate, they are to be included on the tribunal calendar for ratification and, once ratified, the restored records are considered the original records.

(1) In case the original records appear during the restoration procedure, the case resumes on the original records and the restored records are attached to the original.

### **Section III** **Cease and Desist Agreements**

#### **Subsection I** **Applications by Respondents**

Article 179. Any respondent interested in signing a Cease and Desist Agreement, referred to in Article 85 of Law 12529/2011, must submit an agreement application to CADE, addressing it to the Rapporteur of the case if the administrative proceeding has already been submitted to the Tribunal under Article 74 of Law 12529/2011; or to the Superintendent General in case a preliminary enquiry, an administrative investigation, or an administrative proceeding is still pending before the Office of the Superintendent General.

(1) The submission of the agreement application does not suspend the regular course of administrative proceedings, administrative investigations, or preliminary enquiries.

(2) The agreement application is included in separate case records and is to be assessed

separately, regardless of whether the case is pending before the Office of the Superintendent General or the Tribunal.

(3) The Rapporteur Commissioner or the Superintendent General, at their discretion, may grant restricted access to an agreement application regarding its submission, terms, course of proceedings, and process of negotiation.

(4) Petitioners are only allowed to file an agreement application once.

(5) The filing of an agreement application does not imply the respondent is confessing to the matter of fact or acknowledging the unlawfulness of the conduct under consideration in the administrative proceeding, administrative investigation, or preliminary enquiry.

(6) In case the agreement referred to in the head provision of this article is not approved, all documents are to be returned to the applicant and no copy may remain at CADE.

(7) Documents and information submitted by petitioners during the negotiation of Cease and Desist Agreements that are not signed may not be used for any purposes by the authorities who had access to them.

(8) The provisions of Paragraph 7 of this article does not prevent the Office of the Superintendent General from launching and adopting investigative procedures and/or measures to examine facts connected to the application for a Cease and Desist Agreement when evidence or circumstantial evidence coming from an independent source is brought to its attention by any other means.

Article 180. Each respondent must file their own application for a Cease and Desist agreement, and the Rapporteur or the Superintendent General may negotiate different applications related to the same proceeding jointly provided that it is deemed timely and suitable.

(1) In case two or more respondents interested in signing a Cease and Desist Agreement are part of the same business group, a joint application may be submitted for the agreement, with the individualisation of each party, and the Rapporteur or the Superintendent General are to decide on the possibility of a joint negotiation.

## **Subsection II** **Process of negotiation**

Article 181. In case a preliminary enquiry, an administrative enquiry, or an administrative proceeding is pending before the Office of the Superintendent General at the time the application is submitted, the Superintendent General must start the negotiation and appoint three or more civil servants in office at CADE to be part of a technical committee (Negotiation Committee) to assist the Superintendent General with the negotiations.

(1) The negotiation timeframe, which may be extended, is to be defined by an order of the Superintendent General.

(2) The Superintendent General may, at their discretion, order the suspension of the negotiations for additional evidence to be produced.

(3) After the negotiation is concluded, the Superintendent General grants 10 days for applicants to submit a final proposal.

(4) The Superintendent General is to forward the final proposal of the Agreement to the President of the Tribunal, along with an opinion on whether it should be signed or denied. The President then orders, as a matter of emergency, that the case be included on the agenda for adjudication.

Article 182. In case an administrative proceeding has already been sent to the Tribunal, under the terms of Article 74 of Law 12529/2011, the Rapporteur must start the negotiation and appoint three or

more civil servants in office at CADE to be part of a technical committee (Negotiation Committee) to assist the Rapporteur with the negotiations.

(1) The negotiation timeframe is of 30 days and may be extended by the Rapporteur, *sua sponte* or upon application by the Committee, for an additional 30 days.

(2) The Superintendent General may, at their discretion, order the suspension of the negotiations for additional evidence to be produced.

(3) The Office of the Superintendent General, at the Rapporteur's discretion, may be consulted about the application and execution of the agreement.

(4) After the negotiation is concluded, the Rapporteur grants 10 days for applicants to submit a final proposal.

(5) The Rapporteur requests that the final version of the proposal be included in the tribunal hearing calendar as a matter of emergency for examination by the Tribunal.

### **Subsection III Examination of the final proposal**

Article 183. Applicants are legally obliged to conform to the final version of the proposal, and cannot prescribe otherwise, change the conditions of the agreement, or revoke it.

(1) The Tribunal is only allowed to approve or deny the final proposal and may not make a counterproposal.

(2) In case the Tribunal approves the final proposal, the agreement is to be individually signed between CADE and each respondent, who may be represented by an attorney with powers to sign it.

(3) In case the Cease and Desist Agreement includes a financial contribution, it must specify the amount to be paid, the payment conditions, a penalty for late payment or default, as well as any other condition for its making.

(4) The final proposal is to be considered prior to the main proceeding to which it is linked.

(5) In case petitioners withdraw their proposal, they are not allowed to file a new application related to the same case, and the proceeding linked to the application is dismissed by order of the Superintendent General or the Rapporteur.

(6) If the negotiation timeframe has ended and a final proposal is not submitted or is untimely submitted, the petitioner is not allowed to file another application referring to the same case and the proceeding linked to the application is dismissed by order of the Superintendent General or the Rapporteur.

### **Subsection IV Cease and Desist Agreements related to agreements, arrangements, manipulation, or alliances amongst competitors, or related to activities intended to promote, obtain, or influence the adoption of agreements or concerted practices amongst Competitors.**

Article 184. In regard to investigations into agreements, arrangements, manipulation, or alliances amongst competitors, or into activities intended to promote, obtain, or influence the adoption of agreements or concerted practices amongst competitors, Cease and Desist Agreements must necessarily include the obligation of making a financial contribution to the Fund for the De Facto Joint Rights, which is to be established during the negotiation process and cannot amount to less than the minimum provided for in Article 37 of Law 12529/2011.

Article 185. In regard to investigations into agreements, arrangements, manipulation, or

alliances amongst competitors, Cease and Desist Agreements must necessarily contain a statement by all signatories admitting their participation in the conduct under investigation.

Article 186. In regard to investigations into agreements, arrangements, manipulation, or alliances amongst competitors, the final version of the proposal forwarded by the Superintendent General to the President of the Tribunal, per the terms of Article 180(4) of these Statutes, must necessarily include a provision for applicants to contribute to investigations and enquiries.

Article 187. The consideration of the financial contributions to be made by the parties involved in Cease and Desist Agreement applications related to the violations provided for in Article 185 of these Statutes, CADE takes into account, whenever admissible and possible to be calculated, the extent and usefulness of the applicants' contribution to investigations and enquiries, and the moment the proposal was submitted. Should an agreement be signed, the following guidelines also apply:

- I. a 30-50% reduction on the fine for the first Respondent to file an application related to the investigated conduct;
- II. a 25-40% reduction on the fine for the second Respondent to file an application related to the investigated conduct; and
- III. a reduction of up to 25% on the fine for other Respondents to file applications related to the investigated conduct.

Article 188. When reviewing Cease and Desist Agreement applications filed under the terms of Article 181 related to investigations into agreements, arrangements, manipulation or alliances amongst competitors, CADE must take into consideration the status of the administrative proceeding, and, in case the sanction to be imposed on the Respondent can already be estimated, a reduction of no more than 15% of the fine may be granted.

Article 189. Applications filed under the terms of Articles 186 and 187 of these Statutes must not provide for a percentage reduction higher than that established in Cease and Desist Agreements already approved within the scope of the same administrative proceedings.

### **Subsection V**

#### **Proposals of Cease and Desist Agreements put forward by the Office of the Superintendent General**

Article 190. The Superintendent General may, under the provisions of Article 13, Item 9, of Law 12529/2011, put forward a proposal for a Cease and Desist Agreement related to an administrative proceeding, administrative enquiry, or preliminary enquiry pending before the Office of the Superintendent General.

(1) The Superintendent General must notify the Respondents to answer, within 15 days, whether they are interested in signing a Cease and Desist Agreement:

- I. in case a Respondent expresses interest in signing a Cease and Desist Agreement, the Office of the Superintendent General starts the negotiation and appoints three or more civil servants in office at CADE to be part of a technical committee (Negotiation Committee) to assist the Superintendent General with the negotiations; and
- II. in case a Respondent rejects the negotiation, the procedure is to be dismissed by the by an order of the Superintendent General.

(2) The negotiation timeframe referred to in Item 1 is to be defined by an order of the Superintendent General.

(3) The Superintendent General may, at their discretion, order the suspension of the negotiations for additional evidence to be produced.



(4) The acceptance or rejection of the agreement proposed by the Superintendent General does not in any way prevent the Respondent from filing an application for a Cease and Desist Agreement, under the terms of Article 178 of these Statutes.

(5) The Cease and Desist Agreement proposed by the Superintendent General does not suspend the regular course of the administrative proceeding, administrative enquiry, or preliminary enquiry.

(6) The Cease and Desist Agreement proposed by the Superintendent General does not constitute a judgement on the merits of the conduct linked to the administrative proceeding, administrative enquiry, or preliminary enquiry.

(7) The expression of interest in signing the Cease and Desist Agreement does not imply the Respondent is confessing to the matters of fact or recognising the unlawfulness of the conduct linked to the administrative proceeding, administrative enquiry, or preliminary enquiry.

Article 191. After the negotiation is concluded:

I. in case the Respondent accepts the negotiated agreement, the Superintendent General is to submit the final version of the proposal for the Cease and Desist Agreement to the President of the Tribunal, who then orders, as a matter of emergency, that the case be included on the agenda for adjudication.

II. in case the Respondent rejects the negotiated agreement, the Superintendent General is to dismiss the case by issuing an order.

(1) Respondents who accept the agreement negotiated with the Superintendent General are legally obliged to conform to its terms, and cannot prescribe otherwise, change the conditions of the agreement, or revoke it.

(2) The Tribunal is only allowed to approve or deny the final proposal and may not make a counterproposal.

(3) In case the Tribunal approves the final proposal, the agreement is to be individually signed between CADE and each respondent, who may be represented by an attorney with powers to sign it.

(4) In case the final version of the agreement is not ratified by the Tribunal, the administrative proceeding, administrative enquiry, or preliminary enquiry must follow its regular course before the Office of the Superintendent General, in which case it does not in any way prevent the Respondent from filing an application for a Cease and Desist Agreement related to the same proceeding.

## **Subsection VI** **Other provisions**

Article 192. A Cease and Desist Agreement has to be signed in at least two counterparts of identical content and form. One to be given to each signatory and another to be included in the records of the Administrative Proceeding, which must include a tag on its cover stating that a Cease and Desist Agreement has been signed.

(1) Within five days of its signature, the public version of the agreement in its entirety is to be made available at CADE's website ([www.cade.gov.br](http://www.cade.gov.br)) and remain available there for the duration of the agreement.

(2) In case the agreement includes new documents and information, the respondents may be granted a new opportunity to respond.

Article 193. Once the period for compliance with the Cease and Desist Agreement has ended, the Office of the Attorney General at CADE submits an expert opinion to the Superintendent General, who must issue a statement assessing compliance with the agreement.

(1) After the Superintendent General issues the assessment, the President introduces the case to the Tribunal during a hearing, and the Tribunal votes on it, certifying whether the obligations have been fully complied with.

(2) In administrative proceedings to investigate agreements, arrangements, manipulation, or alliances amongst competitors, the certification of compliance with the obligations provided for in the agreement and the consequent dismissal of the administrative proceeding concerning the signatory are carried out when the administrative proceeding is being considered.

(3) In case the instalments of the financial contribution are due after the judgement date, the certification of compliance is only to be issued after the last instalment has been paid.

Article 194. In case all respondents of a same administrative proceeding, administrative enquiry, or preliminary enquiry sign a Cease and Desist Agreement, CADE suspends the case and checks whether the leniency agreement has been complied with, when applicable.

Article 195. The Rapporteur or the Superintendent General, under the terms of Article 180 of these Statutes, may grant the opportunity to intervene to the following:

- I. third parties whose rights or interests may be affected by the decision; or
- II. parties who have standing to bring a lawsuit under Items 3 and 4 of Article 82 of Law 8078/1990.

(1) The opportunity to intervene is granted only after the end of the time limits provided for in Article 180(3) and Article 181(4) of these Statutes, and is advisory as to the terms of the proposal.

(2) Petitioners may respond to statements submitted under the terms of Paragraph 1 of this Article.

(3) Rapporteurs may, as they deem timely and suitable, grant petitioners 10 days to submit amendments to the proposal in case third parties intervene.

Article 196. CADE may accept payment in instalments under the terms of a Cease and Desist Agreement that provides for a financial contribution obligation.

(1) The instalments of all financial contributions must be adjusted for movements in the SELIC rate, as set by the Central Bank of Brazil.

## **Section IV**

### **Leniency Programme**

Article 197. The Leniency Programme is a set of initiatives aimed at:

- I. detecting, investigating, and penalising antitrust violations;
- II. informing and providing ongoing guidance to companies and the general public regarding the rights and interests provided for in Articles 86 and 87 of Law 12529/2011; and
- III. encouraging, guiding, and assisting applicants for leniency agreements.

Article 198. Individuals and firms that committed antitrust violations may apply for leniency agreements as long as they fulfil all of the following requirements:

- I. the firm is the first to be qualified with respect to the reported or investigated violation;
- II. they cease participating in the reported or investigated violation;
- III. at the moment of application for the leniency agreement, the Office of the Superintendent General has insufficient evidence to secure the applicant's conviction;
- IV. they admit their involvement in the violation;

V. they cooperate fully and permanently with the investigation and administrative proceedings, attending, at their expenses and whenever requested, all proceedings, until CADE announces its final decision on the reported violation; and

VI. the cooperation must result in the identification of other parties involved in the violation and in the collection of documents and information that prove the reported or investigated violation.

(1) The effects of the leniency agreement are extended to companies of a same group, de facto or de jure, and to their managers, officers, employees, and former employees involved in the violation, provided they sign the respective document together with the applying firm.

(2) Inclusion in the agreement signed by the applicant, even if formalised in a separate document and at a subsequent time, when allowed by the authority, according to criteria of timeliness and suitability, has the same effect as the joint signature.

(3) Should a firm not apply for a leniency agreement, it does not prevent its employees or former employees from filing an application; in such case, should an agreement be signed, the benefits are not extended to firm.

Article 199. Applicants who do not yet have all needed information and documents to file an application for a leniency agreement may present themselves before the Office of the Superintendent General and request, orally or in written form, a certificate from the Office of the Superintendent General that attests they were the first to appear before that body about a specific violation yet to be reported or already under investigation.

(1) In order to obtain this certificate from the Office of the Superintendent General, applicants must duly identify themselves and indicate all other known parties involved in the violation reported, the affected products or services, the affected geographical area and, whenever possible, the estimated duration of the reported violation.

(2) Once the information referred to in Paragraph 1 of this Article has been provided, the Office of the Superintendent General issues the certificate within five working days.

(3) The certificate is to indicate the time limit for the applicant to submit a proposal for leniency agreement to the Office of the Superintendent General. All time extensions are to be granted according to the intermediate time limits defined on a case-by-case basis by the Office of the Superintendent General.

(4) The certificate may be signed by the Superintendent General, the Coordinator-General of the Antitrust Analysis Unit 10, or another civil servant expressly assigned this role by the Superintendent General, and is to be held either by the Office of the Superintendent General or the applicant, at the discretion of the applicant.

(5) At the discretion of the applicant, the formal written certificate may include only the time, date, and products or services affected by the violation to be reported.

Article 200. In case an applicant is not the first to appear before the Office of the Superintendent General or if, for another reason, it is no longer possible to apply for a leniency agreement related to the reported violation, the Superintendent General, the Coordinator-General of the Antitrust Analysis Unit 10, or another civil servant expressly assigned this role is to inform the applicant of such impossibility, and may certify the applicant is on the waiting queue for a possible leniency agreement related to the same reported violation.

(1) In the case provided for in the head provision of this article, the certificate issued by the Office of the Superintendent General must include the applicant's identification, the identification of all other known parties involved in the violation to be reported, the affected products or services, the affected geographical area and, whenever possible, the estimated duration of the reported violation, in addition to the time and date in which the applicant appeared before the Office of the Superintendent General. The certificate must not include any information on the identity of other applicants or their order in the waiting

queue in relation to other applicants.

(2) The next applicant in the waiting queue referred to in the head provision of this Article is to receive a new certificate as mentioned in Article 198 of these Statutes and be invited to initiate the negotiations for a leniency agreement in the following cases:

- I. if the application for leniency agreement under negotiation is rejected by the Office of the Superintendent General;
- II. if the applicant holding the certificate referred to in the head provision of Article 198 of these Statutes withdraws the proposal under negotiation; or
- III. in case of non-compliance with the time limits provided for in Article 198(3) and Article 204 of these Statutes.

(3) In case the Office of the Superintendent General signs the leniency agreement under negotiation mentioned in Article 198 of these Statutes, CADE offers the guarantees referred to in Article 205 to all information provided by the applicants in the waiting queue who obtained the certificate referred to in the head provision of this Article.

(4) In the situation provided for in Paragraph 3 of this Article, the applicants in the waiting queue for a leniency agreement, who have been issued their own certificates, may negotiate, at their discretion, the Cease and Desist Agreement referred to in Article 85 of Law 12529/2011, on a first come, first served basis, and in accordance with Article 178 and the following provisions of these Statutes.

Article 201. Proposals for leniency agreements may be made orally or in written form.

(1) The proposal is given confidential treatment and access is allowed solely to persons authorised by the Superintendent General.

(2) In the case of a written proposal, it is to be included in the records as confidential, and none of its data is to be inserted in CADE's document management system.

Article 202. Oral proposals are made in a confidential meeting according to the following process:

I. applicants must duly identify themselves and thoroughly explain the reported violation, including the identification of all other known parties involved in the violation, the affected products or services, the affected geographical area, the estimated duration of the reported violation, and describe the documents and information that will be submitted when the leniency agreement is signed;

II. applicants must inform of other applications for leniency agreements related to the same violation which have been presented before other jurisdictions, as long as they have not been prohibited from doing so by the foreign authority;

III. the proposal validity period is extended in every meeting until the signature of the leniency agreement; and

IV. if it is required, the Superintendent General, the Coordinator-General of the Antitrust Analysis Unit 10, or another civil servant expressly assigned this role must prepare a term with the following:

- a) the content of the meeting;
- b) information on whether the Office of the Superintendent General had any prior knowledge of the violation reported at the time the leniency agreement was proposed; and
- c) an indication of the time extension granted for the proposal, which is to be held either by the Office of the Superintendent General or the applicant, at the discretion of the applicant.

Article 203. Written proposals must go through the following process:

- I. applicants are to submit the proposal to the Coordinator-General of the Antitrust

Analysis Unit 10 in a sealed envelope clearly identified with the terms "Leniency Agreement Proposal" and "Restricted Access";

II. applicants must duly identify themselves and thoroughly explain the reported violation, including the identification of all other known parties involved in the violation, the affected products or services, the affected geographical area, the estimated duration of the reported violation, and describe the documents and information that will be submitted when the leniency agreement is signed;

III. applicants must inform of other applications for leniency agreements related to the same violation which have been presented before other jurisdictions, as long as they have not been prohibited from doing so by the foreign authority; and

IV. within 10 days from the date the proposal was submitted, the Office of the Superintendent General is to establish its validity and the time limit for signing the leniency agreement or for adjusting the proposal, if applicable.

(1) If required by an applicant, the Office of the Superintendent General is to issue a term with information on whether the Office of the Superintendent General had any prior knowledge of the violation reported at the time the leniency agreement was proposed.

Article 204. At the moment the proposal is submitted, applicants must declare the following:

I. they were informed about their rights, guarantees, and legal duties;

II. they were instructed to seek legal advice;

III. they are aware that non-compliance with the directions of the Office of the Superintendent General in the time and manner agreed to implicates they have withdrawn their proposal; and

IV. it is in their interest to save the term until the Office of the Superintendent General has issued a decision on the proposal, on pain of losing their rights.

Article 205. The negotiation of a leniency agreement proposal is to be concluded when the intermediary time limits granted by the Office of the Superintendent General expire, under the terms of Article 198(3) of these Statutes.

Article 206. Rejected applications for leniency agreements, which are not to be disclosed in any way, do not imply the respondent is confessing the matter of fact or admitting participation in the wrongdoing.

(1) Applicants may withdraw their leniency agreement proposals at any moment before the respective agreement is signed.

(2) In case the agreement is not signed, all documents are to be returned to the applicant and no copy may remain in the possession of the Office of the Superintendent General.

(3) Documents and information submitted by petitioners during the negotiation of Cease and Desist Agreements that are not signed may not be used for any purposes by the authorities who had access to them.

(4) The provisions of Paragraph 3 of this Article do not prevent the Office of the Superintendent General from launching and adopting investigative procedures and/or measures to examine facts connected to the application for a Leniency Agreement when evidence or circumstantial evidence coming from an independent source is brought to its attention by any other means.

Article 207. Once the legal requirements are met, the leniency agreement is to be signed with CADE through the Office of the Superintendent General in at least one counterpart, and access to the respective records is to be restricted.

(1) The agreement is to establish the necessary requirements to ensure the collaboration is effective and the process bears useful fruits, and must include the following clauses and conditions:

- I. the full identification of the signatories and their legal representatives, including name or corporate name, identity card number, individual taxpayer identification number (the Cadastro de Pessoa Física) or corporate taxpayer identification number (the Cadastro Nacional de Pessoa Jurídica), full address, telephone and facsimile numbers, and electronic mail address;
- II. the full identification of the legal representatives with powers to receive notices during the course of the administrative proceeding;
- III. the information of the facsimile number and electronic mail address to which notices can be sent;
- IV. an explanation of the facts connected to the reported violation, identifying the parties involved, the affected products or services, the affected geographical area, and the estimated duration of the violation reported or under investigation;
- V. the signed confession of involvement in the violation by the signatories of the leniency agreement;
- VI. statements from the signatories of the leniency agreement declaring they are no longer involved in the violation that was reported or is under investigation;
- VII. a list of all documents and information provided by the signatories of the leniency agreement, intended to prove the violation that was reported or is under investigation was committed; 8. obligations of the signatories of the leniency agreement:
  - VIII. obligations of the signatories of the leniency agreement:
    - a) present to the Office of the Superintendent General and other potential signatory authorities of the leniency agreement any and all information, documents, or materials which the signatories have in their possession, custody, or control, and that corroborate that the violation that was reported or is under investigation was actually committed;
    - b) present to the Office of the Superintendent General and other potential signatory authorities of the leniency agreement any and all relevant information, documents, or materials which the signatories come to be aware of during the investigation;
    - c) present any and all information, documents or other materials concerning the reported violation which they have in their possession, custody, or control, whenever requested by the Office of the Superintendent General and by other potential signatory authorities of the leniency agreement;
    - d) cooperate fully and permanently with the investigations and administrative proceedings related to the reported violation that are carried out by the Office of the Superintendent General and by other potential signatory authorities of the leniency agreement;
    - e) attend, at their expenses and whenever requested, all proceedings, until CADE announces its final decision on the reported violation;
    - f) communicate to the Office of the Superintendent General and other potential signatory authorities of the leniency agreement any and all changes in the data included in the leniency agreement, including any aggravations; and
    - g) behave with honesty, loyalty, and in good faith while fulfilling these obligations.
  - IX. a clause providing that should any signatories fail to comply with the obligations established in the leniency agreement, they lose their immunity from fines and other penalties;
  - X. a statement by the Office of the Superintendent General informing that the signatory of the leniency agreement was the first to apply for the agreement related to the violation that was reported or is under investigation, as the case may be;
  - XI. a statement by the Office of the Superintendent General informing that it did not have enough evidence to secure the conviction of the signatory of the leniency agreement for the reported

violation at the time the signatory applied for a leniency agreement;

XII. a statement by the Office of the Superintendent General informing whether it had any prior knowledge of the violation reported at the time the leniency agreement was proposed; and

XIII. other obligations that, given the circumstances of the case, may be deemed necessary.

(2) The Office of the Superintendent General may request that the signatory of the leniency agreement provide additional clarification about any facts referred to in Item 4.

(3) For the purpose of the provisions of Item 12, CADE considers that the Office of the Superintendent General had prior knowledge of the reported violation when, at the time the application for leniency agreement was submitted, any type of proceeding provided for in Law 12529/2011 related to the reported violation was pending before the Office of the Superintendent General.

Article 208. Access to the identity of signatories of leniency agreements is to be restricted for the public until CADE adjudicates the proceeding.

(1) CADE grants restricted access to commercially sensitive documents and information provided by signatories of leniency agreements, observing the requirements of these Statutes and the right of other respondents to have a fair hearing.

(2) CADE must notify the respondents of any administrative enquiries or administrative proceedings to impose sanctions for antitrust violations related to the violation that was reported or is under investigation, informing the following:

I. that respondents are granted access to leniency agreements and attached documents, in addition to any other documents presented by their signatories or to which the agency has granted restricted access, only to exercise their right to full answer and defence and ensure a fair hearing in administrative enquiries or administrative proceedings pending before CADE which involve the violation reported through the leniency agreement;

II. leniency agreements and attached documents, in addition to any other documents presented by their signatories or to which the agency has granted restricted access must not be disclosed to, or shared with, other individuals, firms, or bodies in other jurisdictions, in whole or in part, on pain of administrative, civil, and criminal sanctions.

Article 209. Once CADE declares the conditions of the leniency agreement have been fulfilled, the agency is to order, in favour of the signatories of the leniency agreement:

I. that the administrative penalty be cancelled if the application for the leniency agreement was presented to the Office of the Superintendent General before it had any prior knowledge of the reported violation; or

II. if not, that the administrative penalties be reduced by one to two thirds.

(1) In both the aforementioned situations, CADE automatically renounces the possibility of imposing any penalties for the violations referred to in Law 8137/1990 and other violations directly related to cartel practices, such as those described in Law 8666/1993 and in Article 288 of Decree 2848/1940.

Article 210. Firms or individuals that, during the investigation or the administrative proceeding, is not entitled to sign a leniency agreement regarding a certain violation (Original Leniency Agreement), may sign with the Office of the Superintendent General a leniency agreement regarding a different violation (New Leniency Agreement) of which the Office of the Superintendent General has no prior knowledge, provided that the proceeding has not yet been entered on the agenda to be heard.

(1) In the case referred to in the head provision of this Article, once CADE declares that the conditions of the New Leniency Agreement have been fulfilled, the signatory of this agreement is entitled to a one-third reduction on the penalty applicable in the proceeding related to the Original Leniency Agreement, without prejudice to obtaining the benefits referred to in Article 197 of these Statutes related to the Leniency Agreement signed.

(2) Should CADE happen to hear the Original Leniency Agreement before the New Leniency Agreement, the original administrative proceeding may stipulate that if the conditions of the New Leniency Agreement related to the new administrative proceeding are not fulfilled, the discount granted must be collected as a complimentary financial contribution to the Fund for the De Facto Joint Rights.

(3) In case the signatories of the Leniency Agreement have also applied for a Cease and Desist Agreement regarding to the investigated violation related to the Original Leniency Agreement, CADE grants the benefit provided for in Paragraph 1 of this Article before the discounts established in Article 186 of these Statutes, resulting in the following total discounts:

I. a 53.33% to 66.67% reduction on the fine for the first Respondent to apply for a Cease and Desist Agreement related to the investigations into the first reported violation; and

II. a 50-60% reduction on the fine for the second Respondent to apply for a Cease and Desist Agreement related to the investigations into the first reported violation; and

III. a reduction of up to 50% on the fine for other Respondents who apply for a Cease and Desist Agreement related to the investigations into the first reported violation.

IV. In the case provided for in Paragraph 3 of this Article, the provisions of Articles 178 to 195 of this Statutes apply.

Article 211. Simultaneously to the end of the administrative proceeding to impose sanctions for antitrust violations, the Office of the Superintendent General is to forward the records of the leniency agreement to the Tribunal, with a detailed report on whether the signatories have complied with the obligations.

(1) When assessing whether the obligations provided for in the Leniency Agreement have been complied with, the Office of the Superintendent General must consider the collaboration of each of the signatories individually and certify, as the case may be, that the obligations have been complied with for the purpose of granting the benefits provided for in Article 209 of these Statutes regarding the administrative proceeding related to the Original Leniency Agreement.

(2) In cases involving violations of which the Office of the Superintendent General had prior knowledge, its recommendation to the Tribunal for any reduction on administrative penalties must consider the following criteria:

I. the relevance of the information, documents, and evidence provided by each signatory; and

II. the effectiveness of their cooperation during the investigations.

(3) In case the leniency agreement does not give rise to an Administrative Investigation, the detailed report referred to in the head provision of this Article is analysed after the time limit provided for in Article 139 139 ends or the case is requested for adjudication.

## **Section V** **Preventive Measures**

Article 212. In any stage of administrative enquiries or administrative proceedings to impose sanctions for antitrust violations, the Rapporteur of the case or the Superintendent General—*sua sponte* or upon application of CADE's Attorney General or of any legitimate interested party—may adopt preventive measures if there is any evidence or a reasonable concern that the respondent's actions, directly or indirectly, have caused, or might cause, harm to the market that is irreparable, difficult to repair, or that renders the final result of the proceeding ineffective.

(1) The notices must contain a detailed breakdown of the order to cease the practice and revert the situation, the time limit for compliance with the conditions, and a warning that failure to comply with the



preventive measures subjects the liable parties to a daily fine established under the terms of Article 39 of Law 12529/2011, with no prejudice to other applicable civil and criminal sanctions.

(2) The preventive measures is filed on same records as the administrative proceeding.

(3) Should the respondents fail to meet the obligations listed in the preventive measure, the authority who granted the remedy is to issue a notice of violation, with no prejudice to other applicable measures, and is to send the notice to the Office of the Attorney General at CADE to take the applicable legal measures.

(4) The Rapporteur or the Superintendent General, as the case may be, may revoke or alter the preventive measure which has been granted, in case the assumptions used to support its adoption prove to be insubstantial.

### *CHAPTER III* *APPELLATE PROCEDURES*

#### **Section I** **Appeals**

Article 213. An appeal against a decision of the Superintendent General or the Rapporteur of a case which is intended to impose, bar, alter or revoke the preventive measures provided for in Article 84 of Law 12529/2011 may be filed with CADE's Tribunal within five days from the date the decision was issued. These appeals do not stay the regular course of the proceedings.

Article 214. Appeals are to be filed with CADE including the following:

- I. a statement on the matters of fact and of law;
- II. the reasons behind the request that the decision be changed; and
- III. the full identification of the appellants, along with those of their legal representatives and attorneys, if any, including their full addresses.

Article 215. Except when lodged by a preventive measure adopted by the Rapporteur, an appeal must include:

- I. mandatorily, on pain of nullity, all essential documents for adjudicating the case; and
- II. optionally, any other documents that the appellant finds useful.

(1) Once the appeal has been filed, the appellant must, within three days, notify the authority responsible for the decision appealed of its existence, and provide the authority with all the documents included in the appeal.

(2) The is rendered moot in case the authority that issued the decision appealed revokes the preventive measure adopted.

(3) The Appeal is to be randomly assigned to a Rapporteur within 24 hours after it is filed.

Article 216. The Rapporteur who granted the preventive measure must be the Rapporteur of any appeals that challenge it.

Article 217. Once the appeal has been duly filed and assigned, the Rapporteur may request information from the Superintendent General or any other competent bodies, and from the interested parties, stating they are to be provided within five days.

Article 218. The Rapporteur presents the appeal before the Tribunal, regardless of whether it has been previously included in the calendar, in the first hearing after it has been assigned or, in the case of Article 216, in the first hearing after the end of the time limit to respond.

## **Section II**

### **Requests for Clarification**

Article 219. Requests for Clarification of the decisions issued by the Tribunal may be filed under the terms of Article 1022 and subsequent articles of the Code of Civil Procedure, within five days from the day of publication of the decision in the minutes of the hearing, in a motion addressed to the Rapporteur. The appellant must indicate in the motion the material error to be corrected in the decision; or the misunderstanding to be clarified, contradiction to be eliminated, or omission to be addressed by the Tribunal, on its own motion or upon application.

(1) Absent the Rapporteur of the challenged decision, the procedure is to be forwarded to the Rapporteur's statutory substitute.

Article 220. Should the Rapporteur deem it necessary, they may grant access to the records to the parties or interested parties to whom potential changes may cause encumbrances, who are to respond within five days. Afterwards, the Rapporteur may request the opinions of the Office of the Attorney General at CADE and of the Federal Prosecution Services at CADE.

Article 221. Upon conclusion of the proceeding, the Rapporteur is to present any requests for clarification to be examined, regardless of whether they have been previously included on the agenda.

(1) In case a request for clarification is expressly delaying the proceedings or if it restates other requests for clarification or request for reconsideration which have already been rejected, the Rapporteur is to immediately reject that request and submit the decision to the Tribunal for ratification—along with oral statements by the Attorney General at CADE and by the representative of the Federal Prosecution Services at CADE, if the Rapporteur so desires.

Article 222. Requests for clarification do not stay the proceedings nor interrupt the counting of the time limits for filing requests for reconsideration.

## **Section III**

### **Requests for Reconsideration**

Article 223. The parties may request the Tribunal to reconsider its decision, introducing new facts or documents that by themselves may ensure a more favourable decision for the parties in case, such as a decision which blocked or cleared unconditionally a merger or acquisition, a decision declaring an action is an antitrust violation, or a decision imposing incidental procedural sanctions.

(1) CADE regards as new only the pre-existing facts or documents that the parties became aware of after the date of the judgement or that the parties prove could not be used before the judgement.

Article 224. Requests for reconsideration are to be addressed to the Commissioner who wrote the majority opinion, within 15 days from the date the decision was included in the minutes of the hearing that notified the parties, by means of a motion which must include the following information:

- I. the full identification of the appellant parties;
- II. the new fact or document; and
- III. the reasons for filing the request for reconsideration.

Article 225. The Rapporteur assigned the request for reconsideration is to summarily reject the request, subject to approval by the Tribunal, whenever:

- I. it is submitted after the time limit;

- II. any of the requirements provided for in Articles 222 and 223 are not fulfilled; or
- III. the request is clearly unfounded.

Article 226. The request for reconsideration does not stay the enforcement of the decision appealed.

Article 227. Once the case is ready for adjudication, the Rapporteur must request that it be included on the agenda.

### PART III GENERAL AND TRANSITIONAL PROVISIONS

Article 228. Contingent on the assessment by the Office of the Superintendent General, procedures, preliminary investigations, or pending administrative proceedings may be converted into preparatory enquiries into antitrust violations, administrative enquiries into antitrust violations, or administrative proceedings to impose sanctions for antitrust violations, and the procedural rules prescribed in Law 12529/2011 are immediately applied, except for procedural stages concluded before this Law came into force, in order to preserve all acts performed based upon Law 8884/1994.

(1) The new terms provided for in Law 12529/2011 for preliminary enquiries, administrative enquiries, and administrative proceedings initiate, for pending cases, at the time the conversion referred to in the head provision of this Article is carried out, excluding the effective date and including the expiration date, preserving the procedural acts and stages already concluded.

Article 229. The mergers and acquisitions completed when Law 8884/1994 was in force are to be reviewed according to the provisions in that Law.

(1) The time limits for merger review provided for in Article 54 of Law 8884/1994 must be met.

(2) In merger reviews, the Office of the Superintendent General is responsible for carrying out the investigative duties of the Secretariat for Economic Law and of the Secretariat for Economic Monitoring of the former Ministry of Finance as prescribed in Law 8884/1994.

(3) Mergers and acquisitions reported until 19 June 2012 are considered as completed when Law 8884/1994 was in force.

### PART IV FINAL PROVISIONS

Article 230. Changes to these Statutes are introduced by Amendments, which are to be numbered in ascending order, submitted to Public Consultation, and only decided by a majority of the entire membership of the Tribunal.

(1) Public Consultations on Amendments to the Statutes that merely deal with the organisational structure of CADE are not mandatory.

Article 231. The initiative for proposing Amendments to the Statutes rests with the President, the Superintendent General, and any of the Commissioners.

(1) Once the President receives the draft amendment, it must be numbered and go to Public Consultation, when applicable.

(2) Regardless of whether any contributions were received during the Public Consultation, the draft is to be sent to the Office of the Attorney General at CADE, to issue its opinion.

(3) The draft, along with any contributions received during the Public Consultation and the opinion issued by the Office of the Attorney General at CADE, is then submitted to examination by the Commissioners, to be discussed and voted by the Tribunal.

Article 232. The Tribunal may issue resolutions to regulate acts and procedures related to CADE's functioning, to the Tribunal's own decision-making process, to procedural rules, and to the operation of its internal services.

(1) The process for editing resolutions must follow the rules provided for making Amendments to the Statutes.

Article 233. Decisions regarding cases not provided for in the law and any doubts arisen are to be made by the competent authority per the terms of these Statutes.

Article 234. These Statutes come into force 90 calendar days after its publication, and all provisions to the contrary are thereby revoked.