Administrative Council for Economic Defense

Trustee Manual

CADE
Administrative Council for Economic Defense

Ministry of Justice and Public Security
Administrative Council for Economic Defense

Trustee Manual

CADE's Manual for Trustee Use

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1. Introduction

This Manual for the use of Trustee by the Administrative Council for Economic Defense (CADE) aims to formalize, standardize and improve the monitoring of compliance with decisions, commitments and agreements adopted within the scope of the control of structures or investigations of anticompetitive conducts that presuppose the implementation of remedies whose limitation of resources prevents the volume of additional data/information generated during monitoring from being processed by the competition agency itself and/or requiring expertise that the antitrust authority does not have.

This document was prepared based on a review of CADE's guidelines, studies, and precedents, as well as extensive research on international benchmarks, as part of efforts to improve the institutional supervision of compliance with CADE's decisions, commitments and agreements. This Manual consolidates the best procedures and practices to be observed for the use of Trustees or similar (monitors, independent auditors, representatives, among others; to facilitate the reading of the document, these figures will be generically referred to as "Trustees") to assist in the supervision of the implementation of remedies. In this way, the process will become more uniform, efficient, agile, transparent, and effective. This material should be read together with the normative, regulatory, and institutional framework (Section 2.2), currently in force.

This Manual is a guiding document; therefore, it does not have a normative character and is not binding. The processes, stages of analysis, deadlines, and models indicated in this Manual should be observed when possible. However, the non-strict compliance with this Manual does not entail any nullity in the inspection of compliance with the decisions, commitments, and agreements approved by CADE. CADE is sensitive to the particularities of each case, which may make it convenient or necessary to follow processes, analysis steps, deadlines, and its own documents, which may be different from those proposed in this Manual. Normative or institutional changes may eventually affect the reading and understanding of this Manual and should be updated according to best practices and models, if necessary.

2. Concept

Trustees are independent third parties (which may be consulting and auditing firms, independent consultants, law firms, among others) hired by the party subject to antitrust remedies (generically referred to as Committing Party), at the request of the competition authorities, to assist them in complying with or monitoring decisions adopted, either due to a lack of available resources or the need for *expertise* specific to the execution of some task or the adoption of a measure necessary for the implementation of more complex remedies. In other words, Trustees are designated to carry out procedures, under orders from CADE, in the processes of inspecting compliance with the approved decisions, commitments, and agreements.

The Trustee's figure has been frequently used by antitrust authorities around the world – and notably by CADE – to assist in the fulfilment of decisions adopted that involve the implementation of remedies that result in a volume of additional data/information that faces a possible limitation of resources and/or that require expertise that the antitrust authority does not have. As detailed in Section 2.4, below, Trustees may exercise different roles, in line with the specifics of the case.

2.1. Legal Nature

Trustee is an independent third party formally hired by the Committing Parties [2] (and remunerated by them) to support CADE in the supervision of compliance with decisions, commitments, and agreements. The power of inspection and enforcement, however, is not delegated, and CADE, in the final analysis, is responsible for the attestation of the established obligations.

2.2. Normative, Regulatory, and Institutional Framework

This Manual makes recommendations for Trustee's use based on Law No. 12,529, of November 30, 2011[3] (especially Articles 9, 10, 13, 52, 85, and 91); CADE's Internal Regulations[4] (RiCADE); and CADE's Resolution No. 35, of March 6, 2024[5]; in addition to institutional documents, such as CADE's Antitrust Remedies Guide[6], published in 2018; The Working

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[2] Committing Party is the party that enters into a Merger Control Agreement (ACC) or a Cease and Desist Agreement (TCC) with CADE, in accordance with the powers of the Plenary and President of the Tribunal, and of the General Superintendence provided for in Article 9, items V and X; Article 10, item VII; and, Article 13, items IX and X, of Law No. 12,529/2011.

[3] BRAZIL. Law No. 12,529, of November 30, 2011. *Structures the Brazilian System for the Defense of Competition; provides for the prevention and repression of infringements against the economic order; amends Law No. 8,137, of December 27, 1990, Decree-Law No. 3,689, of October 3, 1941 - Code of Criminal Procedure, and Law No. 7,347, of July 24, 1985; repeals provisions of Law No. 8,884; of June 11, 1994, and Law No. 9,781, of January 19, 1999; and makes other provisions*. Available at: <https://www.planalto.gov.br/ccivil_03/_ato2011-2014/2011/lei/l12529.htm>.

[4] CADE. Internal Regulations of the Administrative Council for Economic Defense. *Approved by CADE Resolution No. 22, of June 19, 2019, and updated by CADE's Amendment No. 01, of April 2, 2020*. Available at: <http://cdn.cade.gov.br/Portal/centrais-de-conteudo/regimento-interno/Regimento-internoCade-versao-14-04-2023.pdf>.

[5] CADE. CADE Resolution No. 35, of March 6, 2024. *Regulates the procedure to be adopted in the processes of inspection of compliance with decisions, commitments and agreements approved by CADE's Administrative Tribunal, pursuant to Article 52 of Law No. 12,529, of November 30, 2011*. Available at: <https://sei.cade.gov.br/sei/publicacoes/controlador_publicacoes.php?acao=publicacao_visualizar&id_documento=1452311&id_orgao_publicacao=0>.

[6] CADE. *Guide to Antitrust Remedies*. Available at: <https://cdn.cade.gov.br/Portal/centrais-deconteudo/publicacoes/guias-do-cade/guia-remedios.pdf>.

Document (*Documento de Trabalho*) No. 002/2020[7]; Working Document No. 003/2023[8]; and, experiences lived by CADE, in addition to guides and best practices adopted by foreign competition authorities.

As provided for in Article 52 of Law No. 12,529/2011 and in CADE's Resolution No. 35/2024, which regulates it, the General Superintendence is responsible for supervising compliance with the decisions, commitments and agreements approved by CADE's Administrative Tribunal and, therefore, for the initial evaluation of Trustee candidates and for the interaction with the appointed Trustee.

2.3. Convenience of Adopting a Trustee

Trustees are, in general, adopted in the absence of resources available to the antitrust authority or due to the need for specific expertise to perform some tasks or adopt a measure necessary for the implementation of more complex remedies stipulated within the scope of Cease-and-Desist Agreements (TCCs) or Merger Control Agreements (ACCs). In this Manual, they are also referred to as the "Agreement(s)".

Trustees should be adopted when strictly necessary, as they impose a financial burden on the Committing Parties and represent one more agent in the scenario of implementing remedies — requiring coordination and efficiency between the parties involved.

The delegation to third parties of procedures for monitoring compliance with decisions, commitments and agreements may involve some risk of capture, principal-agent problems,

[7] CADE. *Working Paper No. 02/2020 - Antitrust remedies at CADE: an analysis of the jurisprudence*. Available at: <https://cdn.cade.gov.br/Portal/centrais-de-conteudo/publicacoes/estudoseconomicos/documentos-de-trabalho/2020/documento-de-trabalho-n02-2020-remedios-antitruste-no-cadeuma-analise-da-jurisprudencia.pdf>.

[8] CADE. *Working Paper No. 003/2023 - Monitoring of Antitrust Remedies: an analysis of CADE's jurisprudence*. Available at: <http://cdn.cade.gov.br/Portal/centrais-deconteudo/publicacoes/estudos-economicos/documentos-de-trabalho/2023/DT_003-Monitoramentoremedios-antitruste.pdf>.

and/or information asymmetry. This risk can be mitigated with the assessment of independence and conflict of interest requirements that arise when the nomination of candidates is submitted to CADE, as well as from the permanent evaluation by the SG throughout the implementation of the remedies and the fulfillment of the obligations assigned to the Trustee. Therefore, it is recommended that the choice to use Trustees should be evaluated with parsimony and the particularities of each decision, commitment or agreement observed.

2.3.1. TCC

In the context of conduct control, when necessary, monitoring Trustees are adopted. The need for their use will be formalized in a TCC signed between CADE and the Committing Parties, which will define the obligations of the Parties and the Trustee's scope of action.

2.3.2. ACC

Within the scope of structural remedies, monitoring, divestment and "operating" Trustees (*hold- separate manager*) can be adopted. The need for their use will be formalized in an ACC signed between CADE and the Committing Parties, which will define the obligations of the Parties and the Trustee's scope of action.

2.4. Types of Trustees

Trustees can perform different roles, including the functions of:

(a) Monitoring;

(b) Divestment; and

(c) Operating (*hold-separate manager*).

In remedies that require several of these roles, there is no prohibition against a Trustee performing more than one of these functions simultaneously. However, to mitigate risks of capture and the principal-agent problem, it is recommended that in the case of decisions, commitments and agreements that require the performance of more than one role, these be carried out by different Trustees.

2.4.1. Monitoring Trustee

Monitoring trustees are adopted in the scope of application of remedies in investigations of anticompetitive conducts and in control of structures.

In general, their functions will include supervising the implementation of remedies and analyzing the fulfillment of obligations (completeness, effectiveness and timeliness) in an impartial manner, preparing periodic reports with their assessment of compliance or non-compliance with obligations, providing elements so that the authority can attest to their compliance or investigate any associated failures, in addition to reporting any third-party complaints of which they are aware.

In the context of investigations of anticompetitive conduct, monitoring Trustees will be adopted to assist in the monitoring of behavioral remedies (*e.g.*, ensuring the maintenance of exclusivity levels, non-discrimination of customers or suppliers, and access to infrastructure).

Within the scope of the control of structures, they may be responsible for the following types of obligations, but are not limited to:

(i) supervising safeguard measures related to the business to be divested in the period between the execution of the ACC and the effective divestment (in relation to its viability, value, ability to be sold, competitiveness);

(ii) in cases of carve-out, monitor the process of separation of assets and reallocation of the staff between the business subject to divestment and businesses retained by the Committing Party(ies), in addition to duplication of any structures, if applicable;

(iii) supervising the commitment of the Parties to find a potential buyer, as well as the transfer of the business, and may be responsible for ensuring that potential buyers receive documentation and information necessary for a robust evaluation of the divested business (*due diligence*) and being responsible for the evaluation of potential buyers (in these cases, once the buyer has been identified, the Trustee submits to the authority a reasoned opinion regarding the suitability of the buyer and whether the sale is being carried out under the terms of the decision, commitment or agreement; in the end, they must oversee the legal and effective transfer of the business); and

(iv) instruct and oversee the activities of the operating trustee/*hold-separate manager* and monitor compliance with behavioral obligations, monitoring the fulfillment of the company's day-to-day obligations, relationship with customers and suppliers and third parties that may be affected by the remedy to be implemented.

In this sense, they may be necessary when certain relationships between the seller and the divested business remain temporarily necessary post-divestment to ensure the competitiveness and viability of the buyer in its entry into the market (*e.g.*, supply contracts, technical assistance). They can also be adopted in vertical combinations in which remedies are adopted to address concerns related to access to sensitive information and the risk of favoring customers or suppliers.

2.4.2. Divestment Trustee

Divestment trustees may be required in connection with the application of structural remedies in structural control and should preferably be used only if the Parties are unsuccessful in independently finding a buyer for the package to be divested.

They can be in charge of evaluating (i) potential buyers for the proposed package of remedies, (ii) proposals for the acquisition of the package received, as well as (iii) monitoring the divestment process negotiated between the Parties and the authority (which may include, for example, the separation of physical structures in a production plant, the segregation of teams responsible for the business, among others). They must submit to the authority a non-binding opinion regarding the financial and technical suitability, as well as independence, of the buyer. In general, they must dispose of the package to be divested at the best value, without being linked to a minimum value or instructions from the Committing Party(ies).

The Divestment Trustee is generally adopted to assist in ensuring that the remedy applied will be effectively implemented, including, but not limited to, the following scenarios:

(i) Failure to find a buyer of the divestment package within the period agreed with the competition authority, especially in cases where an *up-front buyer* is required (i.e., the need to define the buyer of the asset package so that only then can the Parties close the main transaction);

(ii) Failure to find a buyer of a divestment package within the period agreed with the competition authority and consequent need to offer a package considered crown jewel, which would include additional assets or assets of another party involved in the transaction, but in any case, assets that are more attractive for sale; and,

(iii) the need to obtain consent from third parties for the sale of the divestment package and the failure of the Parties to timely comply with this obligation.

It should be noted that the divestment Trustee may also be the one designated to exercise the function of monitoring Trustee.

2.4.3. Operating Trustee (*hold-separate manager*)

Operating Trustees are adopted within the scope of structural control. They may be required to manage and oversee the day-to-day operations of the business to be divested to maintain its independence and competitiveness in relation to the combined company after the transaction under analysis. They may or may not coincide with the figure of the divestment or monitoring Trustee and their functions may overlap with those assigned to the monitoring Trustee (which may also give instructions to the Operating Trustee).

Their role is to preserve the effectiveness of the remedy through powers that will be attributed to them in the period between the determination of divestment by the authority and the actual divestment. They may be responsible for informing the personnel of the business to be divested about the divestment process and its implications for the rights and duties of employees.

During this period, confidential information must not be shared with the Committing Parties and the Operating Trustee must be granted all the rights, powers and authority necessary to exercise its rights and responsibilities. The Committing Party, originally the owner of the package, will no longer exercise any type of control or interference over the assets to be divested.

3. Procedures for the Trustee’s Approval and Appointment

The use of a Trustee or similar entity must follow clear, organized and uniform procedures, regardless of the unit negotiating the agreement (*i.e.*, General Superintendence or Tribunal).

It should be noted that, although the process of indication, analysis, and appointment of the Trustee takes some time from the decision adopted by CADE, the validity of the ACC or TCC and, therefore, of the obligations to implement the remedy undertaken by the Committing Party, are not suspended, and must become effective from the first business day after the publication, in the Official Gazette of the Federal Government , of the minutes of the judgment session of the corresponding decision. In other words, even if there is a provision, in the ACC or TCC, of the need to use a Trustee or similar entity, the obligations imposed on the Committing Parties are not suspended until the Trustee or similar entity is appointed, and the Committing Party, ultimately, are responsible for these obligations and their implementation.

In this sense, the best practice is that the deadlines adopted in the nomination, analysis and appointment procedure be maximum deadlines (*i.e.*, "up to... days") inasmuch as the faster the third party is appointed, the faster the implementation of the decision will be monitored by the third party. In this line, it is also recommended that the wording of the agreement expressly provide a reference for the established deadlines, and it is advisable to use the date of publication of the minutes of the trial session.

Therefore, the texts of ACCs and TCCs must clarify that, in the interval between the adoption of the decision to implement remedies and the effective appointment of the Trustee, any obligations to provide information to CADE must be fulfilled by the Committing Parties and monitored exclusively by the General Superintendence without the assistance of the Trustee.

3.1. Trustee Candidates' Nomination

3.1.1. Deadline

The ACC or TCC must establish a deadline for Trustee candidates' nomination candidates. Ideally, the deadlines should be determined as follows, which may vary depending on the specific circumstances of the case, especially the complexity of the Trustee's scope of action:

(i) ***Monitoring trustee*:** within 30 days from the publication that ratifies the decision, commitment or agreement in the Official Gazette of the Federal Government;

(ii) ***Divestment trustee*:** (a) if a certain period is determined in which the Committing Parties are in charge of finding a buyer for the divestment package, a period of at least 90 days is suggested before the end of this period; (b) if it is determined that a divestment Trustee will be in charge of finding a buyer for the divestment package, a period of up to 30 days from the publication that ratifies the decision, commitment or agreement in the Official Gazette of the Federal Government is suggested; and

(iii) ***Operating trustee*:** within 30 days from the publication that ratifies the decision, commitment or agreement in the Official Gazette of the Federal Government.

3.1.2. Evaluation of Candidates

The agreement must determine that the Parties nominate more than one candidate for the position of Trustee, and at least 3 (three) options are recommended to reduce the risk of delays in the start of the Trustee's activities.

Candidates will be analyzed based on the criteria indicated below (Section 3.2), and must submit, at the time of application, at least: (i) a draft Work Plan with a description of how they intend to carry out the obligations assigned to the Trustee; (ii) the team responsible for the obligations undertaken, indicating its operational capacity and technical qualification; (iii) a draft of the Power of Attorney; (iv) a remuneration proposal; and, (v) a declaration of independence and absence of conflict of interest.

The analysis of the Trustee candidates will go through two different instances within CADE, in line with the provisions of CADE Resolution No. 35/2024:

(i) The General Superintendence will decide whether to approve or reject the candidates by means of a Technical Note[9];

[9] The Technical Note will assess whether the Committing Parties has complied with the obligation to submit in a timely manner the names indicated to perform the function of Trustee together with the respective supporting documents necessary to verify the technical qualifications of the candidates, as well as a draft of the Work Plan; a draft of the Power of Attorney Instrument; a remuneration proposal; and a declaration of independence and absence of conflict of interest.

(ii) The Presidency will then receive the case file and prepare an Order, which is subject to consideration and approval by the Tribunal.

CADE will analyze the entirety of the candidates submitted, approving or rejecting each one, and will not be responsible, at least at first, for the choice among those approved candidates. The General Superintendence may, if it deems necessary, request meetings, information, and documents from the different candidates and/or the Parties as part of its evaluation process.

If none of the candidates are approved, the Parties will have the possibility to indicate an additional list of, ideally, at least 3 (three) candidates, who will be submitted to the same process and analysis criteria.

If, again, none of the nominated candidates are approved, CADE may choose and appoint a Trustee, following, again, and in a motivated manner, the same analysis criteria adopted when evaluating the candidates nominated by the Committing Parties.

It should be noted again that the effective date of the agreed-upon obligations shall be the first business day following the publication in the Official Gazette of the Federal Government which ratifies the decision, commitment or agreement, and will not be suspended due to the time elapsed between such decision and the process of appointment of the Trustee.

3.1.3. Appointment

As indicated above, CADE will decide on the submitted Trustee candidates. Ideally, the Committing Parties should have a period of up to ten (10) days – counted from the first business day following the publication, in the Official Gazette of the Federal Government, of the minutes of the judgment session corresponding to the approval, by the Tribunal, of the Order issued by the Presidency – to indicate the one who, among the approved candidates, will be chosen to act as Trustee. On this occasion, the signed Power of Attorney must be submitted to CADE.

If the Tribunal does not agree with any candidate approved by the General Superintendence, the case file will return to the General Superintendence for further instruction and/or evaluation of new candidates.

Considering that the process of nominating candidates and choosing a *Trustee* will not suspend the validity of the decision, commitment or agreement (and, therefore, compliance obligations), it is recommended that the Committing Parties choose as soon as possible from among the approved Trustees, under penalty of jeopardizing the process of implementing remedies.

3.2. Criteria/Requirements for the Analysis and Approval of a Trustee

3.2.1. Work Plan

Candidates must prepare a draft Work Plan with a description of how they intend to carry out the obligations assigned to them through the decision, commitment or agreement, including, but not limited to, a schedule containing different phases of monitoring, methods and metrics for gathering and processing information for compliance analysis, tools and instruments to be used, among others.

The Work Plan must be developed in accordance with the rights and obligations established by the decision, commitment or agreement and, therefore, must fit within the scope of action provided for (note that, in some cases, not all obligations stipulated for the Committing Parties will be monitored by the Trustee).

The draft Work Plan submitted as part of the application for the position of Trustee does not need to be final, and a definitive Work Plan may be submitted by the Trustee, or as requested by the General Superintendence, after appointment.

It is possible, however, that the draft Work Plan submitted in the Trustee 's application will not be adjusted, if the General Superintendence understands that they are not necessary. It should be noted that there is the possibility that the approval may be conditioned on the improvement or remediation of some point of the Work Plan, and contracting is allowed only when the indicated issues are resolved.

If it deems it pertinent, the General Superintendence may request meetings with the Trustee candidates before deciding whether to approve or reject the candidate.

It is recommended, in any event, that the General Superintendence schedule a meeting with the Parties (including external legal representatives) and with the appointed Trustee to resolve any doubts regarding the Work Plan, including discussing any suggestions for adjustment. In this meeting, it should be sought to ensure that the Trustee clearly understands its role in monitoring the implementation of remedies (*i.e.*, auxiliary function to CADE, although it is remunerated by the Committing Parties) and the detailed scope of its activities (*i.e.*, obligations of the Committing Parties established in a decision, commitment or agreement which must be monitored by it). In this sense, the Trustee must submit in detail – and in line with the Work

Plan – which methods, metrics and instruments will be used in monitoring the implementation of remedies.

If it deems necessary, right before the Trustee's work begins, CADE must schedule additional individual meetings with the Committing Parties (including external legal representatives) and with the Trustee.

In addition, it is recommended that the Work Plan include the provision of periodic meetings between the Trustee and the Committing Parties, the Trustee and CADE and between the three agents, to facilitate communication between them and improve the monitoring of the implementation of remedies. In addition, such meetings are important to consider the possible need for adjustments in the Work Plan originally approved, especially regarding the metrics used to determine compliance with obligations and possible changes in the Trustee's obligations, in case the scope of its action is changed by CADE's determination.

3.2.2. Operational Capacity

The Trustee candidate must have operational capacity (structure, necessary resources, including human resources) compatible with the scope of action defined in the decision, commitment or agreement, either through one or more natural and/or legal persons that will comprise the Trustee. In this sense, if the team responsible for the Trustee’s duties is composed of more than one agent, contractual instruments that bind such parties must be submitted if they do not both integrate the Power of Attorney Instrument.

3.2.3. Technical Qualification

The analysis of the technical qualification, previous experience and reputation of the candidates will be conducted on a case-by-case basis, especially considering the type of remedy to be implemented. Applicants must provide information regarding the individual and/or team that will be responsible for *the* Trustee's obligations, which may include, but is not necessarily limited to:

(i) Education;

(ii) Professional history (which may include references to specific projects);

(iii) Previous experience serving as a Trustee, either before CADE or another government agency, in Brazil or in another jurisdiction;

(iv) Experience in the sector impacted by the investigation or transaction.

The analysis factors indicated above serve as guidelines for CADE's scrutiny and should not be read as requirements that must be compulsorily met for a candidate to be approved. Especially regarding items (iii) and (iv), which can be considered differentiating factors. In this context, the text of the decision, commitment or agreement must specify any qualifications to be met by the candidate that are applicable to the specific case (*e.g.*, knowledge of a specific sector), in addition to other more generic qualifications expected of the Trustee (such as those indicated above).

In the same vein, if it meets the usual analysis requirements and demonstrates the necessary qualifications to do so, there should be no *ex-ante* limitations on one or another type of professional or agent (*e.g.*, auditing and consulting firms, investment banks, law firms, independent consultants, specialists in certain markets, executives) to act as a Trustee.

It is not recommended to create a predetermined list of types or identities of agents who are able to perform one or another function of Trustee, and the analysis of the technical qualification of the candidates to exercise the function stipulated in a decision, commitment or agreement must be made on a case-by-case basis based on information provided in the application. In other words, when evaluating the candidates to perform the function of Trustee, CADE may, in the exercise its judgment of opportunity and convenience, qualify or disqualify a certain type of professional or agent (*e.g.*, auditing and consulting firms, investment banks, law firms, independent consultants, specialists in certain markets, executives) depending on the specificity of the remedy to be monitored.

On the other hand, in principle, there should be no impediments to the formation of a specific multidisciplinary team to act as a Trustee, which involves a combination of different types of agents.

The different professionals and agents, part of the team in charge of the Trustee function, may or may not be signatories of the Power of Attorney Instrument, as long as one of them is so and, therefore, is accountable to CADE and the Parties for the obligations undertaken by the Trustee. Ideally, this team should be featured in the application for the position of Trustee. It is possible, however, that the initially appointed Trustee needs to subcontract third parties to perform its functions after the appointment, however, CADE must be informed before it occurs.

Additional contractual instruments that indicate the responsibility of these additional agents in relation to the obligations undertaken by the Trustee must necessarily be submitted to CADE for evaluation, as well as the supporting documents of the requirements.

CADE has adopted different types of agents to act as Trustee, and no patterns have been identified between the type of obligation and the category of professionals (*i.e.*, auditing and consulting firms, investment banks, law firms, independent consultants, specialists in certain markets, executives).

As a reference, but without the examples below working as limiters, it should be noted that, for the function of divestment Trustee, agents who have knowledge of business, finance, structuring and implementation of a merger and acquisition transaction are usually required, which may involve the performance of an auditing and consulting firm or investment bank.

To act as an Operating Trustee (*hold-separate manager*) agents are generally required to have the ability to manage the business in the market in question, especially if the executive responsible for the operation of the business to be divested does not follow the sale of the assets.

In some cases, it may be necessary to engage an agent with specific sectoral knowledge as part of the Trustee's team, although the remedy should be designed in such a way that its understanding is not exclusive to those with technical expertise in the affected market. This need may be met by individuals currently or previously active in the affected market, who provide or have provided consulting or services of other natures to the industry, academics and scholars in the field, or others deemed relevant by CADE.

3.2.4. Mandate Instrument

3.2.4.1. General Content

The application must also include the submission of a draft Mandate Instrument (which should ideally be based on Appendix II -Mandate Instrument Template), which must cover, but not necessarily be limited to, the following items:

(i) Qualifications of the contracting parties;

(ii) Context of signing the Power of Attorney and appointment of a Trustee;

(iii) Definitions of terms used in the Power of Attorney;

(iv) Duties and obligations of the Trustee, whose scope of action must be limited to the specific case and must be sufficient to perform the functions defined in the agreement;

(v) Periodic reporting obligations regarding the implementation of remedies;

(vi) Duties and obligations of the Committing Parties;

(vii) Remuneration;

(viii) Conflict of interest and independence;

(ix) Conditions for mandate termination before the completion of the obligations.

3.2.4.2. Remuneration

The structure and amount of remuneration must be included in the draft of the Power of Attorney Instrument. CADE should not interfere in the structure or value to be negotiated between the Committing Parties and the Trustee. However, the structure and value of the remuneration must be analyzed within a broader context of ensuring the independence and effectiveness of the fulfillment of the mandate and must provide sufficient incentives for the Trustee *to* exercise its role in a manner compatible with the obligations assigned to him in the agreement. Attention should be paid to the issue of capture risks, since, although the Trustee will assist the authority, the Parties will be responsible for its cost.

Remuneration should vary depending on the complexity of the different types of mandate and their duration and should be stipulated in line with the obligations set out in the agreement.

As a reference, according to CADE's experience, it is noted that there are proposals developed based on (i) free hours, (ii) periodic hours (*e.g.*, monthly), with a certain surplus (*e.g.*, percentage above the stipulated ceiling) paid as additional, (iii) reports submitted to the authority, which can be structured in other formats. The list of examples provided here should not be interpreted restrictively, serving only as an example and leaving the Trustee candidates free to propose alternative structures.

If CADE has any doubts or suspicions that the structure and/or the negotiated value do not match the work to be performed, it may request additional information from the Committing Parties and the candidate regarding the rationality of the proposal.

3.2.4.3. Independence/No Conflict of Interest

The Trustee must have financial, economic and legal autonomy and independence. In this sense, the activity to be provided by the Trustee should not be linked to any self-interest in CADE's decision regarding the adequacy of its performance or the understanding of the implementation of remedies.

The draft Mandate Instrument must include a declaration of independence and absence of conflict of interest.

The conflict of interest can be identified in the following situations, in addition to others not indicated below:

(i) the Trustee has a corporate relationship with a company that belongs to the economic group of one of the Committing Parties (*e.g.*, partner, shareholder);

(ii) the Trustee provides services to the Committing Parties (*e.g*., advisory services, consulting services, audit services, investment banking) that have a relevant weight in economic terms for the Trustee;

(iii) the Trustee provides advisory services to the Committing Parties in another area of expertise (*e.g.*, forensic information technology specialist in the context of a cartel investigation)

(iv) the Trustee is a retired executive of one of the Committing Parties who still holds any pension plan or equity interest in the capital of the Committing Parties, or the Trustee is offered any employment relationship once his term of office ends;

(v) the Trustee has personal ties to key employees of one of the Committing Parties (*e.g.*, kinship, close friendship)

In other words, when submitting applications to act as Trustee, the Committing Parties must reveal any current or past business relationships between them, their economic groups or any relevant shareholders, within a certain period (*e.g.*, last five (5) years). If the Trustee has been employed by the Committing Party, it is recommended that he has left the company at least three (3) years ago.

As an additional measure, the Power of Attorney Instrument shall provide that the Trustee may not accept any employment or Board position with the Committing Parties during the period covered by the mandate and shall be subject to a quarantine so that he or she may not provide services of any kind to the Committing Parties during that period, both for a period of six (6) months.

In general, if there are no doubts from CADE, it is enough to submit the declaration of independence and absence of conflict of interest for this requirement to be met, in principle.

If the Trustee and/or the Committing Parties identify any conflicts arising from the signing of the Power of Attorney, they must inform the Committing Parties, if applicable, and CADE, so that the Power of Attorney is terminated and a new Trustee is appointed, evaluated and elected, following the procedure provided for in Chapter 3. In other words, obligations to reveal and report conflicts last while the mandate is in force.

4. Trustee's Responsibilities

As previously pointed out, the Trustee is an independent and autonomous third party, hired and remunerated by the Committing Parties to assist CADE in monitoring compliance with decisions, commitments and agreements involving the need to implement structural and/or behavioral remedies.

The scope of its obligations will be defined by the agreement signed between the Committing Parties and CADE.

It is the duty of the Trustee to submit true, timely, coherent, clear and relevant information for the supervision of compliance with the decisions, commitments and agreements approved by CADE. Based on the schedule defined by the agreement, the Trustee shall submit periodic reports to CADE, submitting its opinion on the fulfillment or non-compliance with the obligations undertaken by the Committing Parties in relation to the implementation of the remedies.

The decision on compliance or non-compliance with a decision, commitment or agreement is exclusive to CADE. Therefore, the Trustee's statement on possible compliance or non-compliance is merely advisory.

Periodic reports must include, but not necessarily be limited to, the progress of compliance with the obligations of the Committing Parties provided for in the agreement and the methodology used in the analysis of compliance with obligations, in line with the approved Work Plan.

Regardless of the reporting frequency, the Trustee must inform CADE, in detail, of any difficulties encountered in assessing compliance with obligations (*e.g.*, delay or failure in providing information necessary for evaluation, denial of access to the Committing Parties' premises) and of any suspicions and/or allegations of non-compliance or delay in complying with the decision, commitment or agreement. Should any of the occurrences indicated in this paragraph be identified during periods that do not coincide with the submission of periodic reports already provided for in the Agreement, the Trustee must submit extraordinary reports to CADE, substantiating such circumstances.

In this regard, it should be noted that if the Trustee encounters any demand, guidance, communication, request, procedure or action that deviates from the good practices of monitoring a decision, commitment or agreement, involving the Committing Parties or a third party, it is its duty to immediately report to CADE, so that the authority is aware of such events and can take the appropriate measures.

If the Trustee does not comply with its obligations in a timely and justified manner, it may be subject to the penalties provided for in Article 40 of Law No. 12,529/2011.

If they deem it pertinent, Trustees must propose to the Committing Parties any measures they deem necessary to monitor the decision, commitment or agreement in a manner that is faithful to the approved Work Plan.

The deceitfulness or falsity of information, documents or statements provided by the Trustee may be subject to the penalties provided for in Article 43 of Law No. 12,529/2011.

The Trustee must maintain confidentiality in relation to the information received for the exercise of its function and may not share it with third parties.

It is not the role of the Trustee to represent the interests of the Committing Parties.

5. Responsibilities of the Committing Parties

As indicated above, the appointment of a Trustee does not affect the obligation of the Committing Parties to implement the remedy, as the Trustee is exclusively in an advisory role to CADE.

The Committing Parties must provide the necessary conditions for the Trustee to perform its functions, offering, in a timely manner, cooperation, assistance, access to premises and personnel, systems and information relevant to the performance of its tasks, provided they are strictly limited to the scope of its performance, as defined in the agreement. Failure to comply may result in partial non-compliance with the decision, commitment or agreement, and the sanctions outlined.

It should be noted that, within the scope of the supervision of compliance with decisions, commitments and agreements, in addition to the sanctions provided for in the agreement, the unjustified refusal, omission or delay of information or documents, as well as the deceitfulness or falsity of information, documents or statements provided by the Committing Parties to the Trustee, are subject to the penalties provided for in Articles 40 and 43 of Law No. 12,529/2011.

Any possible creation of difficulty or delay in providing relevant information to the Trustee may lead to non-compliance with the decision, commitment or agreement, in addition to the sanctions provided for in Law No. 12,529/2011.

It should be noted that any adaptations to the Work Plan may lead to adjustments in the type of information or element to which the Trustee must have access to comply with its obligations.

In addition, the Committing Parties must keep the Trustee and CADE informed about any aspects related to the implementation of remedies that may impact their compliance.

The Committing Parties must compensate the Trustee for the performance of their activities, as defined in the Power of Attorney.

6. Relationship between Committing Parties, Trustee, and CADE

The relationship between the three parties involved in the implementation and monitoring of the remedy must be guided by clarity, transparency and good faith.

In order to ensure that both the Committing Parties and the Trustee understand the different roles played by them in the implementation of remedies, it is recommended that CADE, after appointing the Trustee*,* convene an initial meeting, with the participation of the Committing Parties (and their lawyers, if they deem it relevant), Trustee and CADE. This meeting may coincide with the one scheduled to address the Work Plan (Section 3.2.1).

It should be clarified that, although the Committing Parties are responsible for hiring and remunerating the Trustee*,* the Trustee must act in support of CADE, and the Committing Parties may not interfere, in any way, in the relationship between Trustee and CADE. The role of the Trustee should also be strengthened (including emphasis on its autonomy and independence, as well as on restrictions related to the identification of conflicts of interest) and follow-up routines should be established (*e.g.*, definition of communication focal points for both the Committing Parties and CADE, information flows, procedures for sending reports, and reporting of non-compliance). It should be emphasized the importance of respecting the schedule for the submission of reports provided for in the Agreement, and the Trustee, in any case, may contact CADE whenever necessary. It is recommended that each of the agents (Committing Parties, Trustee and CADE) appoint a person as a focal point – who should always be involved, although not the only one – for future communications regarding the Trustee's performance, so that the relationship between them is faster and more efficient.

If it deems necessary, CADE should schedule additional individual meetings with the Committing Parties and the *Trustee* for clarification regarding the dynamics between the parties involved in the implementation of the remedy.

In addition, as indicated in Section 3.2.1 above, it is recommended that the Work Plan include the provision of periodic meetings between the Trustee and the Committing Parties, *the* Trustee and CADE and between the three agents, in order to facilitate communication between them and the monitoring of the implementation of remedies.

Given that the drafting of the Agreements cannot foresee the totality of factual situations that may arise while the Trustee's obligations are in force, which may last for years, it is suggested that the communication between the parties involved be fluid, constant, fast and efficient, so as not to hinder the monitoring of the implementation of remedies and in order to enable it to be adapted, if necessary, depending on circumstances arising after the signature of the decision, commitment or agreement. It is expected that, once the need for adaptation or reconsideration of any point is identified, it will be considered promptly and timely by CADE, without affecting the monitoring of the implementation of remedies.

CADE shall request, at any time, additional information necessary to assess the Trustee's performance in complying with the decision, commitment or agreement. The case file of the decision, commitment or agreement are processed by the General Superintendence; therefore, this is the unit that institutionally represents CADE in the relationship with the

Trustees. In this sense, the General Superintendence is responsible for forwarding any inquiries that originate from other CADE units.

In order to provide more clarity about the Trustee's performance and its role in monitoring the implementation of remedies, it is recommended that, after the evaluations made by the Trustee and formalized through periodic reports, CADE officially issues its opinion on the fulfillment of the obligations covered by the Trustee's scope of action.

7. Confidentiality

It is necessary to carefully define the information and documents that will be given restricted access to CADE, the Trustee, and the Committing Parties , especially under penalty of affecting (i) the ability of the Parties to react to any obstacles identified by the Trustee in relation to the fulfillment of the obligations stipulated in the Agreement, and (ii) the visibility, by the parties under supervision, of the way in which CADE analyzes the evaluation criteria for Trustee candidates .

On the other hand, given the nature of the Trustee's role *as an agent that assists CADE in monitoring the implementation of remedies – and, therefore, as an auxiliary to the public function – care must be taken to ensure that the impartiality, autonomy and independence expected of the* Trustee is not impaired. Thus, it is suggested that the Trustee and CADE have their own confidential communication channels (covering, for example, discussions regarding any obstacles encountered in monitoring, such as difficulty in accessing information by the Committing Parties), without prejudice to the fact that part of their communication may also be accessed by the Committing Parties, if relevant, such as discussions about (i) possible non-compliance with the Agreement and (ii) measures that may generate burdens to the

Committing Party, such as hiring costs and human resources expenses. The visibility provided to the Committing Parties regarding any claims by the Trustee can facilitate the achievement of the same objectives more quickly and efficiently.

Reports prepared by the Trustee will be kept in sections with restricted access to CADE, the Trustee, and the Committing Parties.

If the content of the report prepared by the Trustee may in any way threaten the impartial, autonomous and independent nature of its performance (*e.g.,* containing an indication of difficulties in accessing information by the Trustee), the submission of a version of the report with restricted access to CADE and the Trustee may be justified, with the Committing Parties having access to a more limited version. The Trustee must consult CADE about this possibility, submitting a proposal for the report, which must be analyzed before submission within the deadline.

Versions with content relatively more limited to the Committing Parties may also be justified if the report contains confidential information of companies that should not be accessed by either of the Committing Parties (*e.g.*, information on the potential buyer of the package to be divested or confidential information between the Committing Parties).

In any case, any versions of the reports prepared by the Trustee will be kept in restricted- access sections, whether for access to CADE and the Trustee, or for access to CADE, the Trustee and the Parties. Reports prepared by the Trustee should not be accessed by the public.

Regarding the improvement of the practice for the use of Trustees, not only by agents who can act as such, but also by the Committing Parties, who may draw on previous experiences, it is suggested that technical notes and/or opinions issued by CADE (either by the General Superintendence or by the Tribunal) regarding the analysis of Trustee candidates be disclosed in public and restricted access versions (justifying, for example, restricted access treatment in relation to the identity of candidates and other information that can identify them). The guarantee of visibility by the actors involved regarding the analysis of candidate evaluation criteria tends to result in better practices by the authority and more efficient application of competition law.

8. Non-compliance Procedure

If the Trustee suspects or understands that the Committing Parties have not complied with the decision, commitment or agreement, it must notify CADE.

In case of suspected non-compliance*,* the Trustee must notify this to CADE via e-mail or through an official letter submitted to the case file.

If the Trustee understands that there has been non-compliance, CADE must be notified in detail by means of an ordinary report or an extraordinary report. The Trustee must ensure that this notification is made as quickly as possible.

Suspicions or opinions about possible non-compliance are not binding on CADE. First, it will be up to CADE to evaluate them. Subsequently, if it considers it valid, CADE will initiate an incident of non-compliance in which it will provide the Committing Parties the right to full defense, including the opportunity to submit formal and detailed clarifications, before adopting any of the penalties established in the decision, commitment or agreement.

The Trustee remains at CADE's disposal to provide further information required concerning any potential non-compliance.

Ultimately, it is CADE’s responsibility, however, to assess whether the decision, commitment or agreement has been complied with.

9. Replacement, Removal/Discharge, and Reappointment of a Trustee

The Trustee may be removed if (i) it fails to perform its duties satisfactorily; (ii) begins to perform its functions in an inefficient or untimely manner; (iii) is exposed to a conflict of interest; (iv) experiences the loss of independence; or (v) for any other cause that results in non-compliance with obligations stipulated in the Agreement.

Questions regarding the need to replace the Trustee may be raised by CADE, the Committing Parties or the Trustee itself. In any of these situations, CADE must hear from the Committing Parties and the Trustee in order to ascertain any impediments to the originally appointed Trustee continuing to perform the obligations established in the Agreement.

The analysis of the need to replace the Trustee shall be conducted by the General Superintendence, which shall forward the case file to CADE's Presidency for approval by the Tribunal.

If CADE deems it necessary to replace the Trustee, it should request that the Committing Parties replace him, preferably, with a candidate already evaluated and approved by CADE in a previous phase. On this occasion, a revised and adapted Work Plan and Mandate Instrument must be submitted. If it is not possible to nominate a candidate who has already been approved (and not appointed), a new application process must be conducted, following the procedure established in Chapter 3.

The originally appointed Trustee shall have an obligation to share with the new Trustee information and documents that it has received from the Trustees for the performance of its duties.

The originally appointed Trustee may be required to continue performing his or her duties until a new Trustee is appointed. Exceptionally, and if it is concluded that such a measure will not affect the monitoring of the implementation of remedies, CADE may promptly remove the Trustee originally appointed from its obligations.

It should be noted that the process of appointing a new Trustee will not suspend the obligations of the Committing Parties, who are responsible for providing information and documents, to indicate the fulfillment of obligations established in the decision, commitment or agreement.

10. Termination of the Trustee's and CADE's Activity

The Agreement shall establish the duration of the Trustee's obligations.

After the submission of the final report by the Trustee, the General Superintendence shall analyze its content and, if it understands that the Committing Parties have fulfilled the obligations related to the implementation of the remedy that are linked to the scope of the

Trustee’s activities – and that, therefore, the Trustee's activity will no longer be necessary –, shall issue a technical note concluding that it is convenient to relieve the Trustee of its duties. The case file shall then be forwarded to the Presidency for approval by the Tribunal.

The Trustee shall be definitively discharged upon publication, in the Official Gazette of the Federal Government, of the minutes of the hearing corresponding to the approval, by the Tribunal, of the Order issued by the Presidency, agreeing with the Technical Note of the General Superintendence

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Appendix I – Standard Clauses for Agreements

DEFINITIONS

- ***Monitoring Trustee*:** means one or more natural or legal persons appointed by the Committing Party and approved by CADE who will assist CADE in monitoring the implementation and obligations set forth in this **[ACC or TCC]**
- ***Divestment Trustee*:** means one or more natural or legal persons appointed by the Committing Party and approved by CADE who received an exclusive mandate for the purpose of selling the Divested Business
- ***Operating Trustee*:** means one or more natural or legal persons appointed by the Committing Party and approved by CADE who have received an exclusive mandate to

keep the Divested Business isolated from [merged company or other term, as applicable].

- **Transaction:** [to be defined as per affected transaction].
- **First Divestment Period:** period of [*] calendar days with which the Proponent(s) will have to find a buyer for the Divested Business
- **Divested Business:** [to be defined according to the affected transaction].
- **Work Plan:** document submitted by the Trustee with a description of how it intends to carry out the obligations assigned to it through the [ACC or TCC] including, but not limited to, the schedule contemplating different phases of the work, date of submission of reports, suggestions for dates of periodic meetings with CADE and/or Committing Party, methods and metrics for gathering and processing information for the analysis of compliance, tools and instruments to be used, among others.
- **Definitive Work Plan:** final version of the Work Plan, to be submitted when the Trustee chosen by the Committing Party(ies) is appointed or when the General Superintendence deems it necessary to adjust the Work Plan.
- **Mandate Instrument:** document to be signed between the Trustee and the Committing Party, which shall include all provisions necessary to enable the Trustee to perform its obligations under this [ACC or TCC].

1. TRUSTEE CANDIDATE NOMINATION PROCEDURE

[For ACC: *Monitoring/Divestment/Operating Trustee*]

1.1. Within thirty (30) calendar days from the publication date, in the Official Gazette of the Federal Government, of the minutes of CADE's Ordinary Judgment Session in which the Transaction was approved, the Committing Party(ies) must submit to CADE the name of at least 3 (three) natural or legal persons they appoint to act as **[*Monitoring/Divestment/Operating Trustee*]**.

[For ACC: *Divestment* Trustee]

1.1. Within at least ninety (90) calendar days prior to the completion of the First Divestment Period, the Committing Party(ies) shall submit to CADE the name of at least three (3) natural or legal persons appointed to act as Divestment Trustee.

[For TCC: *Monitoring Trustee*]

1.1. Within thirty (30) calendar days of the publication date, in the Official Gazette of the Federal Government, of the minutes of CADE's Ordinary Judgment Session in which this Cease and Desist Agreement was approved by CADE's Tribunal, the Committing Party(ies) shall submit to CADE the name of, at least: 3 (three) natural or legal persons they appoint to act as Monitoring Trustee.

1.2. Proposals for nomination of Trustee candidates shall include:

1.2.1. Draft Work Plan describing how the Trustee intends to carry out the obligations assigned to it through this [**ACC or TCC**];

1.2.2. Trustee team responsible for the execution of the mandate, indicating its operational capacity and technical qualification;

1.2.3. Draft of the Mandate Instrument to be signed between the Committing Party(ies) and the Trustee upon the Trustee's appointment, which shall include all arrangements necessary to enable the Trustee to perform its obligations under this [**ACC or TCC**];

1.2.4. Proposal for remuneration for the activities performed by the Trustee; and

1.2.5. Declaration of independence and absence of conflict of interest issued, individually, by the Trustee and by the Committing Party(ies).

2. ANALYSIS REQUIREMENTS FOR ACTING AS A TRUSTEE

2.1. The Trustee must necessarily meet the following requirements:

2.1.1. Have the qualifications and technical knowledge necessary for the exercise of their mandate, **[if necessary, include specific knowledge and experience]** and possess higher education compatible with the intended scope of their work;

2.1.2. Have a recognized and unblemished reputation in the market;

2.1.3. Not have corporate, commercial (provision of services of any nature) or employment ties with the Committing Party(ies) and/or its subsidiaries that compromise its independence in the performance of its obligations;

2.1.4. Not have been an employee of the Committing Party(ies) and/or its subsidiaries in the three (3) years prior to the approval of this **[ACC or TCC],** nor have any valid pension plan with them.

3. PROCEDURE FOR APPOINTING THE TRUSTEE

3.1. The Trustee candidates nominated by the Committing Party(ies) must be approved and/or rejected, with reasons, by CADE in the first judgment session following their nomination, or within 30 (thirty) calendar days from the date of presentation of the Trustees, whichever occurs later.

3.1.1. If only one (1) candidate is approved, the Proponent(s) will appoint him/her as Trustee, in accordance with the Power of Attorney approved by CADE. If more than one (1) name is approved, the Committing Party(ies) shall be free to choose the Trustee to be appointed from among the approved names within ten (10) days from the publication, in the Official Gazette of the Federal Government, of the minutes of the judgment session approving the candidates.

3.1.2. If all proposed Trustee candidates are rejected by CADE, the Committing Party(ies) must send nominations of at least three (3) more natural or legal persons within fifteen (15) days from the publication, in the Official Gazette of the Federal Government, of the minutes of the judgment session that rejects the candidates.

3.1.3. If all the proposed new Trustee candidates are again rejected, within fifteen (15) calendar days from the manifestation of disagreement, CADE will appoint a Trustee, respecting the eligibility requirements, with whom the Committing Party(ies) will sign the Power of Attorney approved by CADE.

3.1.4. The Trustee will be appointed within ten (10) days from the publication, in the Official Gazette of the Federal Government, of the minutes of the judgment session that approves its appointment, in accordance with the Power of Attorney approved by CADE.

3.2. The Trustee's nomination and appointment procedure does not suspend the performance of obligations by the Committing Party(ies). In the interval between the publication, in the Official Gazette of the Federal Government, of the minutes of the judgment session that approved the **[ACC or TCC]** and the effective appointment of the Trustee, any obligations undertaken must be fulfilled by the Committing Party(ies) and monitored by CADE's General Superintendence.

3.3. **[Note: use, if applicable]** There is no obstacle for the Monitoring Trustee, Operating Trustee, and Divestment Trustee to be the same natural or legal person, provided that the necessary requirements for carrying out their activities as provided for in this ACC are met.

4. TRUSTEE'S DUTIES

4.1. The Trustee shall, within fifteen (15) calendar days from its appointment by CADE, submit a Definitive Work Plan, if it deems it necessary to adjust the Work Plan submitted when its name is indicated by the Committing Party(ies) or when it deems it necessary to do so by the General Superintendence.

4.1.1. CADE and/or *the* Trustee may suggest adjustments to the proposed Work Plan at any time, which must be discussed and approved by CADE.

4.2. Without prejudice to other obligations under this **[ACC or TCC],** the Trustee shall:

4.2.1. Monitor compliance with the obligations undertaken by the Committing Party(ies) under this **[ACC or TCC]**;

4.2.2. Submit periodic reports to CADE, as provided for in this **[ACC or TCC]** and contemplated in the Work Plan. The aforementioned reports must be filed in CADE in the Trustee's restricted-access case file;

4.2.3. Send copies of the reports to the Committing Party(ies) on the same date on which they send such reports to CADE. **[Note: use, if applicable],** ensuring the confidentiality of the information of one Committing Party in relation to the other;

4.2.4. If the Trustee understands that the content of the report may threaten its independence, it must send CADE a proposal for a report to be shared with the Committing Party(ies) at least 1 (one) week before the deadline for submission of the report, so that CADE can assess the justifications for submitting a more limited report to the Committing Party(ies). CADE shall evaluate such version in such a way that the Committing Party(ies) has access to the report on the original date of its submission.

4.2.4.1. In this case, the Trustee must submit to CADE two versions of the restricted access report, one of which is restricted to the Trustee and CADE, and the other is restricted to the Trustee, CADE and the Committing Party(ies).

4.2.5. Provide CADE with the requested information, within 10 days, or by the designated deadline;

4.2.6. Notify to CADE any obstacle that prevents or unjustifiably delays the full compliance with the Work Plan, simultaneously sending a copy of such notification to the Committing Party(ies);

4.2.7. Promptly report to CADE, in writing and with justification, if it concludes, with reasonable grounds, that the Committing Party(ies) is not materially complying with the provisions of this **[ACC or TCC],** simultaneously sending a copy of the notification to the Committing Party(ies).

4.2.8. Maintain confidentiality in relation to the information obtained in the exercise of its mandate, being prohibited from sharing of competitively sensitive and/or confidential information.

4.3. If the reports are not submitted to CADE due to the Trustee's responsibility, CADE will not apply any penalty to the Committing Party, and the Trustee's liability must be determined. However, if the Committing Party(ies) contributes to the delay, non-delivery or incompleteness of the reports, the Trustee must report in detail such facts so that CADE decides on the eventual declaration of partial non-compliance with the **[ACC or TCC]** or application of penalties.

4.4. At the expense of the Committing Party(ies), the Trustee may appoint consultants, subject to prior approval by CADE, if it deems such appointment necessary or appropriate for the performance of its duties and obligations under the Power of Attorney Instrument, provided that any fees and other expenses incurred by the Trustee are reasonable.

4.4.1. Approval of the appointment of consultants by *the* Trustee may not be unreasonably withheld or delayed by the Committing Party(ies) under penalty of liability.

4.4.2. If the Committing Party refuses to approve the consultants proposed by the Trustee, CADE may approve them, after consulting both the Trustee and the Committing Party.

4.4.3. Only the Trustee and CADE will have the right to issue instructions to the appointed consultants.

4.5. All communication between the Trustee, CADE, and the Parties will have its confidentiality safeguarded.

4.6. The Trustee's obligations take effect upon its appointment by CADE.

5. DUTIES OF THE COMMITTING PARTIES

[Note: this model only contains what is related to the use of Trustee]

5.1. The Trustee will be remunerated by the Committing Party(ies), without prejudice to the independent and effective fulfillment of its duties.

5.2. Committing Party(ies) has the duty to offer cooperation, assistance and information requested by the Trustee to perform its tasks, as long as such tasks are related to the object of this **[ACC or TCC],** as well as to ensure the material conditions for the fulfillment of its functions.

5.3. The Committing Party(ies) shall keep the Trustee informed of any material aspects regarding the obligations undertaken in the **[ACC or TCC]** to the extent that they impact the scope of its work.

6. CADE'S PREROGATIVES

[Note: this template only contains what is related to the use of Trustee]

6.1. CADE may, upon judgment of convenience and opportunity, at its sole and exclusive discretion and in response to a reasoned request from the Committing Party(ies), renounce, modify or replace, in exceptional circumstances, one or more of the commitments in this **[ACC or TCC]**. Such a request must be submitted with a report from the Trustee, who must, at the same time, send a copy of the report to the Committing Party(ies). The request will not have the effect of suspending the application of the commitments and, in particular, of suspending the expiry of any deadline within which the commitments have to be fulfilled.

6.2. CADE shall monitor compliance with the terms and conditions set forth in this **[ACC or TCC],** and may, at any time during its term, request that the Trustee or the Committing Party(ies) submit data, information and documents that it deems necessary for the analysis of compliance with the established obligations.

6.3. It is CADE's prerogative to request extraordinary reports from the Trustee, when it deems necessary to ensure the faithful monitoring of the steps related to the fulfillment of the obligations set forth in this **[ACC or TCC].**

6.4. CADE may share confidential information belonging to the Committing Party(ies) with the Trustee, provided that it is restricted to the scope of work, and the Trustee may not, under any circumstances and under the penalties of the applicable legislation, make improper use of such information or disclose it to third parties.

7. TRUSTEE REPLACEMENT, REMOVAL/DISCHARGE AND REAPPOINTMENT PROCEDURES

7.1. If the Trustee does not regularly perform its activities under the terms of this **[ACC or TCC],** acts in an inefficient or untimely manner, or incurs, for any other reason, in a conflict of interest, CADE may, with good cause and directly, or at the instigation of the Committing Party(ies) or third parties, request that the Trustee be replaced.

7.2. The Trustee may request the discharge of its functions, in which case he must expressly indicate whether the request for discharge from his functions is based on any of the hypotheses of this **[ACC or TCC],** justifying the reasons for doing so.

7.3. The Committing Party(ies) may, provided that it is duly justified and with CADE's prior approval, request the replacement of the Trustee.

7.4. In the event of a request for discharge by the Trustee or a request for replacement of the Trustee by CADE, a new appointment process will be conducted, in accordance with the procedure set forth in this **[ACC or TCC]**.

7.4.1. The new Trustee will preferably be, if possible, a candidate already evaluated and approved by CADE within the scope of this **[ACC or TCC].**

7.5. If discharged, the Trustee may be obliged to continue in its functions until a new one is appointed and must maintain the complete delivery of all information subject to its obligation under this **[ACC or TCC],** provided that CADE understands that such measure will not prejudice the fulfillment of the obligations assigned to the Committing Party(ies) through this **[ACC or TCC].**

7.5.1. In any case, the Trustee will cease to act as such only when CADE expressly removes it from its functions.

7.6. During the period between the replacement, removal and/or discharge of the Trustee and the completion of the procedure for appointing a new Trustee the obligations of the Committing Party(ies) under this **[ACC or TCC]** will remain in effect, and the Committing Party(ies) will continue to be responsible for their full compliance.

8. FOLLOW-UP OF THE TRUSTEE'S' PERFORMANCE BY CADE

8.1. Upon receiving the partial, extraordinary or final reports from the Trustee, CADE must express its opinion on whether or not it fulfills the obligations assigned to the Committing Party(ies) outlined in this **[ACC or TCC]** and that are under the Trustee's monitoring.

9. PROCEDURE FOR NON-COMPLIANCE WITH THE AGREEMENT

[Note: this template only contains what is related to the use of Trustee]

9.1. Pursuant to Article 9, item XIX, of Law No. 12,529/2011, any possible non-compliance with this **[ACC or TCC]** must be declared by CADE's Tribunal, after an administrative investigation procedure instructed by CADE's General Superintendence, pursuant to Article 13, items IX, X and XVIII, of Law No. 12,529/2011, in which it will be safeguarded by the Committing Party(ies) or the Trustee allegedly in default, the right to a full defense to demonstrate compliance with obligations, including the possibility of providing evidence.

9.2. In the event of unjustified non-compliance with ancillary obligations or delay in sending information without CADE's prior consent, by the Committing Party(ies), or unjustified absence of full cooperation with the Trustee's work, as provided for in this **[ACC or TCC],** the penalty will be R$ **[*]** (**[*]** reais) per day of non-compliance, and the fine may be doubled after a period of 10 (ten) days.

9.3. The unjustified delay and without prior consent in the provision of information to CADE or to the Trustee*,* by the Committing Party(ies) for a period of more than 10 (ten) days in relation to the agreed or determined date, will be characterized as partial non-compliance with the **[ACC or TCC]**, and the delay of more than 30 (thirty) days will be characterized as total non-compliance with the **[ACC or TCC],** with the consequent declaration by CADE's Tribunal, as the case may be.

9.4. In the event of unjustified non-compliance with the obligations set forth in this **[ACC or TCC]** delay in the submission of reports and information without prior consent by CADE, by the Trustee, the latter may be subject to a penalty of R$ **[*]** (**[*]** reais) per day of non-compliance, and the fine may be doubled after a period of 10 (ten) days.

10. SCHEDULE FOR SUBMISSION OF REPORTS TO CADE BY THE TRUSTEE

10.1. Based on the obligations set forth in this **[ACC or TCC],** the following table outlines the deadlines for submitting the reports produced by the Trustee to CADE:

Deadline for submission to CADE of the reports produced by *the* Trustee	
Report No. 1	Cut-off date: **[**/**/**]**

Report No. 2	Cut-off date: [**/**/**]
Report No [*]	Cut-off date: [**/**/**]

Appendix II – Mandate Instrument Template

[Note: the draft Power of Attorney Instrument below should not be read exhaustively, and other clauses may be added as deemed necessary]

MANDATE INSTRUMENT

BETWEEN

[Committing Party 1] **[Qualification]** ("Committing Party"), represented herein by **[Qualification]** and

[Committing Party 2] **[Qualification]** ("Committing Party"), represented herein by **[Qualification]**, **[together, " Committing Parties"]**

And

[*Trustee*] ("*Trustee* of **[Monitoring / Divestment / Operating]**") **[Qualification]**, represented hereby by **[Qualification]**

WHEREAS:

The Administrative Tribunal of the Administrative Council for Economic Defense ("CADE"), in the **[number]** Ordinary Judgment Session, held on **[date]** adopted, pursuant to the **[legal framework of the decision]**, decision to **[approval conditioned to the execution of a Merger Control Agreement ("ACC") of Merger Act No. [number], involving [name of the Parties]}** **OR {execution of a Cease and Desist Agreement with the Committing Party ("TCC") within the scope of [Administrative Inquiry / Administrative Proceeding] No. [number], which has as its objective [description of the purpose involving [name of the Parties]}**;

In the [ACC or TCC], the Committing Party(ies) undertook to comply with the following commitments of a [structural and/or behavioral] nature:

a) [Summary of the commitments];

In the aforementioned [ACC or TCC], the appointment of a Monitoring Trustee was defined, which will be responsible for verifying compliance with the obligations of [indication of which obligations will be monitored by the *Monitoring Trustee*] undertaken by the Committing Party(ies); of an Operating Trustee for the management of the [description of the asset to be disposed of] during the period in which the Committing Party(ies) undertook to dispose of said asset to a third-party acquirer; and, in the event that the Committing Party(ies) is unsuccessful in disposing of said asset within the period stipulated in the ACC, the appointment of a Divestment Trustee, that it will have the duty to sell it to a third party purchaser.

In the aforementioned [ACC], the appointment of a Monitoring Trustee was defined, which will be responsible for verifying compliance with the obligations of [indication of which obligations will be monitored by the *Monitoring Trustee*] undertaken by the Committing Party(ies).

In the aforementioned [TCC], the appointment of a Monitoring Trustee was defined, which will be responsible for verifying compliance with the obligations of [indication of which obligations will be monitored by the Monitoring Trustee] undertaken by the Committing Party(ies).

In the said [ACC], it was defined the appointment of an Operating Trustee to manage the [description of the asset to be disposed of] during the period in which the Committing Party(ies) undertook to dispose of said asset to a third-party acquirer; and, in the event that the Committing Party(ies) is not successful in the disposal of said asset within the period stipulated in the ACC, the appointment of a Divestment Trustee, who will have the duty to dispose of it to a third-party acquirer.

The *[*Monitoring/Operating/Divestment] Trustee and the terms and conditions of this Power of Attorney ("Mandate") were approved by CADE on **[date]**;

CADE must oversee and ensure compliance with the obligations undertaken by the Committing Party(ies) and the clauses set forth in the Mandate;

The **[Monitoring / Operating/ Divestment]** Trustee acts in CADE's interest with the objective of ensuring the fulfillment, by the Committing Party(ies), of the obligations set forth in the **[ACC or TCC]**;

The MANDATE is signed, integrated by the clauses below.

1. DEFINITIONS

1.1. For the purposes of this mandate, the terms set out below are defined as follows:

Divested Business: asset(s), as defined in the ACC, that the Committing Party(ies) has committed to dispose of.

Divestment Period: period of **[*]** defined for the Committing Party(ies) to find and effectively dispose of the Divested Business.

Work Plan: document submitted by the Trustee with a description of how it intends to perform the obligations assigned to it through the **[ACC or TCC]** including, but not limited to, the schedule contemplating different phases of the work, date of submission of reports, suggestions for dates of periodic meetings with CADE and/or the Committing Party(ies), methods and metrics for gathering and processing information for compliance analysis, tools and instruments to be used, among others.

First Divestment Term: deadline set forth in the ACC for the Committing Party(ies) to dispose of **[description of the asset]**.

[Note: adapt according to the particularities of the specific case]

2. APPOINTMENT OF THE TRUSTEE

2.1. By means of the Mandate, the Trustee(s) is conferred exclusive powers to perform the functions of the [**Monitoring/Divestment/Operating**] Trustee in accordance with the obligations set forth in the **[ACC or TCC]** and the Mandate. The Trustee accepts this appointment in accordance with the terms of the Mandate.

2.2. The duties of the **[Monitoring/Operating]** Trustee shall enter into force on the date of signature of the Mandate and shall thereafter be bound by the obligations and deadlines set forth in the **[ACC or TCC]** and the Mandate.

2.3. [The Divestment Trustee's duties will come into effect upon the expiry of the First Divestment Term, and will thereafter be bound by the obligations and deadlines set forth in the ACC and the Mandate].

2.4. The [Monitoring/Operating] Trustee team will consist of the following persons:

a) [Individual identification of team members].

2.4.1. The Divestment Trustee team will be presented upon its appointment, if necessary.

2.5. The Trustee will not add or replace any member of its team without obtaining CADE's prior authorization.

2.6. The Trustee, with prior authorization from CADE and after notifying the Committing Party(ies), may hire additional professionals to provide specific services to comply with the obligations set forth in the [ACC or TCC] and in the Mandate.

3. GENERAL DUTIES, AND OBLIGATIONS OF THE TRUSTEE

3.1. The Trustee shall act on behalf of CADE, to ensure compliance with the obligations undertaken by the Committing Party(ies) in the [ACC or TCC]. The Trustee will perform the functions provided for in the Mandate in accordance with the Work Plan approved by CADE, although CADE may, during the fulfillment of the obligations, request changes in the Work Plan or determine other measures that are necessary for the effective fulfillment of the commitments undertaken by the Committing Party(ies).

3.2. The Trustee shall propose to the Committing Party(ies) any measures it deems necessary to ensure, on its part, the effective fulfillment of the obligations set forth in the **[ACC or TCC]** and/or the Power of Attorney. In case the Committing Party(ies) does not comply with the proposal, the Trustee will propose to CADE measures to ensure compliance with the obligations set forth in the **[ACC or TCC]** and/or in the Power of Attorney by the Committing Party(ies).

3.3. CADE may, *ex officio*, or based on a request made by the Trustee or by the Committing Party(ies) issue to the Trustee any instructions to ensure that the obligations undertaken in the **[ACC or TCC]** and the Mandate by the Committing Party(ies)and the Trustee are fulfilled. In no event may the Committing Party(ies) give instructions to the Trustee.

3.4. The Trustee ensures, throughout the performance of its duties and obligations, to maintain complete independence from the Committing Party(ies) and ensures that its employees do the same, to prevent any conflicts of interest that may arise during the execution of their duties and obligations.

4. DUTIES AND OBLIGATIONS OF THE *MONITORING TRUSTEE*

4.1. The Monitoring Trustee shall, in accordance with the obligations set forth in the ACC and the Mandate, oversee, **[in cooperation with the Operating Trustee,**

where applicable], the management of the Divested Business with the objective of ensuring its economic viability and competitiveness. In particular, the Monitoring Trustee shall:

4.1.1. Oversee the:

4.1.1.1. Safeguarding of the economic viability, market value and competitiveness of the Divested Business;

4.1.1.2. Minimization of the risk of diminishing the competitive potential of the Divested Business;

4.1.1.3. Any act of the Committing Party(ies) and its subsidiaries that may have any detrimental impact on the value, management or competitiveness of the Divested Business or that may alter the nature and scope of the activity, or the industrial or commercial strategy or investment policy of the Divested Business;

4.1.1.4. Provision by the Committing Party(ies) of sufficient and necessary resources to allow the continued market operation of the Divested Business after its disposal;

4.1.1.5. Adoption of necessary measures, including appropriate incentive schemes, by the Committing Party(ies), to encourage retention of all key workers in the Divested Business;

4.1.1.6. Independence and autonomy of the management of the Divested Business;

4.1.1.7. The absence of involvement by key employees of the Divested Business, including the Operating Trustee, in any business or activity related to the Committing Party(ies).

4.1.2. Verify the management carried out by the Operating Truste, to ensure that the Trustee is conducting the Divested Business independently and in the best interest of the business and safeguarding its economic viability, as well as its independence from the Contracting Party(ies).

4.1.3. Ensure that the Committing Party(ies), from the date of approval of the ACC until the date of sale of the Divested Business, does not gain access to trade secrets, privileged commercial information, competitively sensitive information or other type of confidential information of the Divested Business that could compromise, in any way, the economic and competitive viability of said asset.

4.2. Until the completion of the First Divestment Period, the Monitoring Trustee shall assist CADE in analyzing the divestment process and evaluating the proposed acquirers. In particular, the Monitoring Trustee shall:

4.2.1. Analyze and evaluate the progress of the divestiture process and the potential acquirers of the Divested Business;

4.2.2. Verify that potential acquirers are receiving sufficient and accurate information regarding the Divested Business. In particular, the Monitoring Trustee will review, if available, the data room documentation and the due diligence process*;*

4.2.3. Serve as a point of contact for any requests from third parties, in particular from potential acquirers of the Divested Business;

4.2.4. Once the Committing Party(ies) has submitted a proposal for the sale of the Divested Business to CADE, the Monitoring Trustee shall, within [deadline] after receipt of such proposal, submit to CADE a comprehensive report on the suitability and independence of the proposed acquirer, on the viability of the Divested Business after the sale and on whether the Divested Business is being sold in accordance with the obligations undertaken by the Committing Party(ies) in the ACC.

4.3. **[If any]** In relation to the behavioral obligations set forth in the **[ACC or TCC],** the Monitoring Trustee shall:

4.3.1. Monitor the fulfillment of the obligations to act and/or refrain from acting as undertaken by the Committing Party(ies);

4.3.2. Establish any corrections in the actions adopted by the Committing Party(ies) in order to ensure greater adherence to the undertaken obligations, in line with the objectives of the **[ACC or TCC]** and in accordance with CADE's determinations;

4.3.3. In order to ensure full compliance with the behavioral obligations undertaken, the Monitoring Trustee and its team must have access, to the extent necessary to meet the scope of its obligations, to the premises of the parties, including, if necessary, participating in meetings, negotiations with third parties potentially affected by the obligations undertaken (customers, competitors, suppliers), interviews with interested third parties (if so third parties agree), maintaining confidentiality concerning the Committing Party(ies) if necessary for the faithful fulfillment of the Mandate.

4.4. The Monitoring Trustee shall inform CADE, at any time, of any actions or omissions by the Committing Party(ies) that may compromise the fulfillment of the obligations undertaken and the objectives of the Mandate, for the purpose of CADE's intervention or attestation of the fulfillment of the obligations.

5. DUTIES AND OBLIGATIONS OF THE *OPERATING TRUSTEE*

5.1. The Operating Trustee shall, in accordance with the obligations set forth in the ACC and the Mandate and in cooperation with the Monitoring Trustee, where applicable, manage, during the Divestment Period, the Divested Business with the aim of ensuring its economic viability and competitiveness. In particular, the Operating Trustee shall manage the Divested Business with a view to:

5.1.1. Ensure:

5.1.1.1. The preservation of the economic viability, market value, and competitiveness of the Divested Business;

5.1.1.2. The minimization of the risk of loss of the competitive potential of the Divested Business;

5.1.1.3. The interruption of any act of the Committing Party(ies) and its subsidiaries that may have a negative impact on the value, management or competitiveness of the Divested Business or that may alter the nature and scope of its activity, or the industrial or commercial strategy or investment policy of the Divested Business;

5.1.2. **[Note: define the obligations according to the particularities of the case]**.

5.2. The Operating Trustee shall manage the Divested Business independently and autonomously from the Committing Party(ies).

5.3. The Operating Trustee shall inform CADE, at any time, of any actions or omissions of the Committing Party(ies) that may compromise the fulfillment of the obligations undertaken and the objectives of the Mandate, for the purpose of CADE's intervention or attestation of the fulfillment of the obligations.

6. DUTIES AND OBLIGATIONS OF THE *DIVESTMENT* TRUSTEE

6.1. At the completion of the First Divestment Term, the Committing Party(ies), by means of the Mandate, grant the Divestment Trustee exclusive powers to dispose of the Divested Business to an acquirer in accordance with the obligations set forth in the ACC and the Mandate.

6.2. The Divested Business shall be disposed of by the Divestment Trustee subject to the following provisions:

6.2.1. **[Note: specific criteria for the sale of assets]**

6.2.2. **[Note: Divestment deadline]**

6.3. The acquirer of the Divested Business must comply with the requirements listed below, and both the acquirer and the final purchase and sale agreement must be submitted to and approved by CADE in advance.

6.3.1. The requirements for the acquirer to be eligible to acquire the Divested Business are: **[Note: list according to the particularities of the specific case]**

6.4. The Divestment Trustee will dispose of the Divested Business without being bound by a minimum price and on terms and conditions that it deems appropriate for an efficient sale. In particular, the Divestment Trust may include, in the purchase and sale agreement and in ancillary contracts, such representations and warranties and indemnification clauses as are reasonably necessary to affect the sale. At the same time, the Divestment Trustee shall protect the legitimate financial interests of the Committing Party(ies).

6.5. The Divestment Trustee will comply with CADE's instructions regarding any aspects of the conduct or conclusion of the sale of the Divested Business.

6.6. The Divestment Trustee, for the purpose of CADE's intervention or attestation of the fulfillment of the obligations, shall inform CADE, at any time, of any actions or omissions of the Committing Party(ies) that may compromise the fulfillment of the obligations undertaken and the objectives of the Mandate.

7. OBLIGATIONS TO INFORM

7.1. The **[Monitoring/Operating]** Trustee shall submit periodic comprehensive reports to CADE **[Note: determine the frequency depending on the case and duration of the obligations]** on the fulfillment of its obligations under this Mandate and the compliance by the Committing Party(ies) with the **[ACC or TCC]** and the Mandate, comprising, in particular, the following information:

a) Progress on the fulfillment of obligations by the Committing Party(ies);

b) Adherence to the Work Plan and negotiated deadlines;

c) Compliance or non-compliance with the obligations undertaken by the Committing Party(ies). In the event of non-compliance, the [Monitoring/Operating] Trustee shall report the reasons for such non-compliance, detailing the responsibility of the Committing Party(ies) for the breach or whether such consequence was due to force majeure.

d) Regardless of whether the obligations are fulfilled, the [Monitoring/Operating] Trustee must point out actions that it had to adopt in relation to the behavior of the Committing Party(ies) in order to be more compliant with the commitments undertaken. The [Monitoring/Operating] Trustee shall detail what these actions were, the commitment and effort of the Committing Party(ies) to adopt the recommendations and the relationship with the eventual fulfillment or non-compliance with any commitment undertaken.

e) Any other specific issues that it deems relevant for the fulfillment of the obligations set forth in the [ACC or TCC] and the Mandate.

7.2. During the period in which it is responsible for the sale of the Divested Business, the Divestment Trustee shall provide CADE, with a non-confidential copy to the Committing Party(ies), a comprehensive report on the fulfillment of its obligations under this Mandate and the progress of the divestment process, comprising, in particular, the following information:

a) List of potential acquirers and a preliminary assessment of each;

b) Status of negotiations with potential buyers;

c) Any issues or problems related to the divestiture of the Divested Business, including any issues and problems concerning the negotiation of agreements and contracts necessary to effectuate the divestiture;

d) Need for advisors for the sale of the Divested Business and a list of advisors selected by the Divestment Trustee for that purpose;

e) Any other specific issues that it deems relevant for the fulfillment of the obligations set forth in the **[ACC or TCC]** and in the Mandate.

7.3. At any time, *the* Trustee shall provide CADE, upon request of the latter or on the Trustee's own initiative, with a written report on matters related to the fulfillment of the **[ACC or TCC]** or the Mandate.

7.4. The responsibility for submitting the reports is exclusive to the Trustee, since the deadlines provided for in the agreement must be observed under penalty of a fine for delay or refusal to submit the reports. If the Committing Party(ies) cause a delay in or incompleteness of the reports, the Trustee must report in detail the facts so that CADE may decide on the eventual declaration of non-compliance with the agreement.

8. DUTIES AND OBLIGATIONS OF THE COMMITTING PARTY(IES)

8.1. The Committing Party(ies) and their legal representatives must provide all necessary conditions for the Trustee to comply with its mandate, with the aim of ensuring compliance with the obligations undertaken. The Committing Party(ies) shall grant the Trustee and its team access to its premises, especially to the Divested Business, information systems, accounting records, personnel, technical information, among others, that are strictly required for the fulfillment of the Mandate. Access to these resources and assets must be provided in a reasonable time so as to avoid any undue hindrance or delay to the work done by the Trustee.

8.2. The Committing Party(ies) must provide the Trustee and its staff with the necessary material and financial resources to support the work being carried out.

8.3. The Committing Party(ies) shall keep the Trustee informed of any relevant developments regarding the obligations undertaken, such as, for example, the identification of potential asset buyers, ongoing negotiations, offered terms, execution deadline, business plan, and any obstacles that may hinder the fulfillment of the obligations, among others.

8.4. If the Trustee deems it necessary, the hiring of specialized professionals to carry out specific work to ensure compliance with the obligations set forth in the **[ACC or TCC]** and in the Power of Attorney shall be arranged by the Committing Party(ies) in a reasonable time, after obtaining due authorization from CADE.

9. CONFLICT OF INTEREST

9.1. The current relationships or those within the 3 (years) prior to the commencement of the Mandate between the Trustee and its staff with the Trustee(s) and its subsidiaries are detailed in Exhibit [*]. The Trustee confirms that, as of the date of this Mandate, the Trustee and each member of its staff are independent of the Committing Party(ies) and its subsidiaries and have no conflict of interest.

9.2. The Trustee undertakes not to create a conflict of interest throughout the period of the Mandate. The Trustee and members of his staff may not, throughout the period of the Mandate:

9.2.1. Have or come to have any corporate relationship with the Committing Party(ies) and its subsidiaries;

9.2.2. Hold or accept any employment, nor be appointed as a member of the Board of Directors or a member of other management bodies of the Committing Party(ies) and its subsidiaries, with the exception of appointments related to the establishment and performance of the Mandate;

9.2.2.1. This prohibition shall remain in effect for the duration of the Mandate and for six (6) months after the termination of the Mandate.

9.2.3. Have or accept any business relationship with the Committing Party(ies) or have financial interest in the Committing Party(ies) and its subsidiaries that may result in a conflict of interest;

9.2.3.1. This provision shall not affect the business relationship between the Trustee and the Committing Party(ies) and their subsidiaries, nor the Trustee's financial investments in the Committing Party(ies), provided these business relationships or investments are customary to the business and are not relevant to either the Trustee or the Committing Party(ies).

9.2.4. Have or accept any other appointments, assignments or other business relationships that may, in view of the circumstances of the case, be considered detrimental to the impartiality and independence of the Trustee in fulfilling its obligations under the **[ACC or TCC]** and the Mandate.

9.3. During the course of the Mandate, if the Trustee or members of its team wishes to perform a task for the Committing Party(ies), have a business relationship with the Committing Party(ies) or make a financial investment in the Committing Party(ies), prior approval from CADE must be requested.

9.4. If the Trustee becomes aware of a conflict of interest, it must immediately notify CADE and the Committing Party(ies) of such conflict.

9.5. If the Committing Party(ies) or its subsidiaries become aware of a conflict of interest, they shall immediately notify CADE and the Trustee of the conflict.

9.6. In the event a conflict of interest arises during the term of the Mandate, both the Trustee and the Committing Party(ies) undertake to resolve it immediately. In case it is not possible to resolve such conflict or if it is not promptly addressed by the Trustee and/or the Committing Party(ies), the Power of Attorney may be terminated by CADE.

9.7. If the Trustee or a member of its team wishes, during the term of the Mandate and for a period of six (6) months after its termination, to provide services to the Committing Party(ies) and/or its subsidiaries, prior approval must be requested from CADE.

9.8. The Trustee undertakes, during the term of this Mandate and for a period of six (6) months after its termination, to establish measures to ensure its independence and the integrity of its staff from any undue influence that may interfere or in any way compromise the performance of their duties.

10. REMUNERATION

10.1. The remuneration of the Trustee, its team, and other professionals that may be required is the sole responsibility of the Committing Party(ies).

[Note: Compensation should be structured in a way that preserves the Trustee's independence , ensuring there are no incentives for the Trustee to align with the interests of the Committing Party(ies) and must be compatible with the scope of its obligations]

11. CONFIDENTIALITY

11.1. The Trustee acknowledges the obligation to maintain the strictest confidentiality concerning all aspects of the Mandate and its execution. In this regard, without prejudice to other obligations set forth in the Mandate, the Trustee undertakes not to disclose to any third party — except for CADE, the members of its team, and any external consultants hired to assist in fulfilling the obligations set forth in the **[ACC or TCC]** and the Mandate — the following:

11.1.1. The contents of the Mandate, including its annexes and any amendments;

11.1.2. Documents and information of any kind related to the Committing Party(ies) to which it has access during the performance of its tasks;

11.1.3. The contents of notifications and reports sent to CADE concerning the execution of the commitments undertaken by the Committing Party(ies) in the **[ACC or TCC]** and its attributions;

11.1.4. In general, any information related to the Committing Party(ies) that is not publicly available.

11.2. The Trustee undertakes to ensure that its staff complies with the confidentiality provisions set forth in the Mandate.

11.3. The confidentiality undertaking will remain in effect for **[duration]** after the termination of the Mandate.

12. DUTY TO INDEMNIFY

12.1. The Committing Party(ies) shall indemnify the Trustee for any damages incurred as a result of carrying out the Trustee's duties and obligations set forth in the **[ACC or TCC]** and the Mandate, except in cases where such damages arise from willful misconduct, gross negligence or bad faith on the part of the Trustee or its staff members.

12.2. The duty to indemnify shall remain in effect for a period of **[duration]** after the termination of the Mandate.

13. END OF TERM THE MANDATE

13.1. The Power of Attorney will be automatically terminated when CADE decides that all obligations set forth in the [ACC or TCC] assigned to the Committing Party(ies) have been fulfilled and when, in writing, it releases the Trustee from its obligations.

13.2. The Power of Attorney can only be revoked in the following cases:

13.2.1. By agreement between the Committing Party(ies) and the Trustee, duly accepted by CADE;

13.2.2. After CADE's reasoned decision on its own initiative or at the request of the Committing Party(ies) or third parties, if the Trustee does not regularly perform its activities as required under the terms of the [ACC or TCC] and/or the Mandate, acts inefficiently or untimely, or engages, for any other reason, in a conflict of interest.

13.2.3. At the request of the Trustee, in which case the Trustee must expressly state whether the request for revocation of the Power of Attorney is based on any of the conditions outlined in the [ACC or TCC], providing the reasons for doing so.

13.3. If the Mandate is revoked, the Trustee may be obliged to continue its functions until a new Trustee is appointed and must comply with all obligations set forth in the [ACC or TCC] and in the Mandate, particularly the full delivery of all information related to its obligation, ceasing to act only when CADE expressly removes it from its functions.

14. FINAL PROVISIONS

14.1. The Mandate may only be amended and/or revised in writing and with CADE's prior approval. CADE may request, after acceptance by the Committing Party(ies) and the Trustee, that the Committing Party(ies) and the Trustee amend the Power of Attorney to ensure full compliance with the obligations set forth in the **[ACC or TCC]** and the Power of Attorney.

14.2. In case of doubt, the provisions of the Mandate shall be interpreted in accordance with the **[TCC or TCC]**.

14.3. The Mandate will be governed by Brazilian law, and the provisions of Law No. 12,529/2011 will apply, in particular.