

Brazil	
Competition Framework	
Competition Law	Law No. 12, 529, enacted on November 30, 2011, constitutes the Brazilian Competition Act (henceforth, the “Competition Act”).
Competition Authority	<p>The Administrative Council for Economic Defense (Conselho Administrativo de Defesa Econômica - “CADE”) started its operations in 1962. The authority has suffered changes since then in terms of its institutional design, structure, powers and roles. It started to become more relevant when Law No. 8,884 of 1994 entered into force until finally reaching its current status and having its current structure when Law No. 12,529 entered into force (and revoked Law No. 8,884/1994).</p> <p>Website: http://www.cade.gov.br/ (includes and English version).</p> <p><i>[Please introduce here the name of the competition authorities that are part of the enforcement process of the laws mentioned in the previous question. In that regard, please specify the norms that established those agencies, the year in which they started operation, and their website. Include tribunals only if they have a role in the process of founding guilt and imposing sanctions. This point specifically excludes judicial authorities that only have judicial review powers]</i></p>
Policy-Making Agents	
-Diversification-	
How many agencies are responsible for competition enforcement?	<p>Brazil has one authority overseeing compliance with competition law: the Administrative Council for Economic Defense (CADE). CADE can impose administrative sanctions to offenders of the Competition Act, including fines, behavioral and structural remedies. CADE investigates illegal agreements, unilateral conduct and also conducts ex-ante and ex-post merger control.</p> <p>CADE is a federal autarchy that is composed mainly of three different divisions: (i) the General Superintendence (<i>Superintendência-Geral</i> - “SG”); (ii) the Administrative Tribunal; and (iii) Department of Economic Studies (<i>Departamento de Estudos Econômicos</i> - “DEE”).</p> <p>The SG is composed of 11 (eleven) units organized according to types of investigations (e.g., merger units, cartel units, unilateral conduct units, and leniency negotiation units) and sectors (e.g., regulated sectors; healthcare; retail markets). The SG is led by the General-Superintendent.</p> <p>With respect to anticompetitive practices (collusive and unilateral conducts), the SG initiates and conducts the investigations, while the Tribunal has the final word on reaching a finding of condemnation and imposing fines.</p> <p>With respect to merger control, the SG initiates and conducts investigations, and can also have the final word. Merger cases will be examined and ruled by the Tribunal only if (i) the General Superintendence's decision was to block the deal; (ii) General Superintendence's decision was to approve the deal with remedies; (iii) a third party appeals the decision of the General Superintendence; or (iv) a Commissioner formally manifest its will to bring the case before the Tribunal (through a mechanism called "avocation").</p> <p>The Administrative Tribunal is composed of 6 (six) Commissioners in addition to the agency's Chair. The Chair, Commissioners and the General-Superintendent are appointed by the Brazilian President and must be approved by Congress before taking office.</p> <p>The Department of Economic Studies is tasked with the</p>

	<p>development of market studies, conducting advocacy initiatives - including issuing non-binding opinions on bills under discussion in Congress or sector regulations) and with providing technical aid to the other 2 bodies. Its director, the Chief Economist, is appointed jointly by the General Superintendent and CADE's Chair.</p> <p><i>[Please mention how many authorities have a general mandate to enforce competition in your jurisdiction. Include a brief reference on their duties e.g.: if they impose criminal, civil or administrative liability. The purpose is that readers can quickly understand, which are the agencies charged with competition enforcement in the jurisdiction, the difference between them, and if they have concurrent, overlapping, or exclusionary authority. Include the relevant provisions on which their powers are based. Exclude in this point sector regulators or enforcers]</i></p>
<p>Do sector regulators have a competition policy enforcement mandate?</p>	<p>Sector regulators also have the mandate to promote competition within the sector under their scope of responsibility, as per the applicable laws. However, Law No. 13.848/2019 clarifies that the roles of CADE and sector regulators are distinct and complementary. CADE has an exclusive mandate for conducting investigations and rendering decisions as a result of the enforcement of the Competition Act. Sector regulators' tasks consist mainly of sharing information with CADE whenever it obtains knowledge of potential anticompetitive conducts, considering competition issues when creating sector regulations, among others.</p> <p>In some regulated sectors such as telecommunication, and energy health insurance, among others, the merging parties must seek approval with the approval of the sector regulator and CADE. In these cases, the sector regulator's analysis considers other aspects that are the same as those considered by CADE.</p> <p>In this sense, despite having some controversies in the past regarding potential overlaps and conflicts arising from CADE's and Central Bank's (<i>Banco Central do Brasil</i> - "BACEN") role in merger in the financial sector, the two institutions executed a Memorandum of Understanding in February 2018 distinguishing and clarifying their roles with respect to enforcing competition policies in the sector. BACEN has the power to review and approve mergers based on an analysis aimed at preventing systemic risk, while CADE has the mandate to assess the effects that merger between companies of the financial sector may cause in competition. Regarding antitrust violations, BACEN and CADE undertake to report to each other any activities that may constitute anticompetitive conduct.</p> <p><i>[Please introduce the name agencies that have powers to enforce any aspect of competition law, including merger control, in specific sectors. Introduce the relevant provisions on which their powers are based]</i></p>
<p>Have the Competition Authority and other agencies signed protocols or memoranda of understanding with sector regulators?</p>	<p>Yes.</p> <p>CADE has technical cooperation agreements or memoranda of understanding with the National Civil Aviation Agency, National Film Agency, National Data Protection Agency, National Agency of Petroleum, Natural Gas and Biofuel, National Healthcare Agency, National Telecommunications Agency, National Agency of Waterway Transportation, National Brazilian Health Regulatory Agency, National Department of Mineral Production, Brazilian National Institute of Industrial Property, and the Brazilian Central Bank.</p> <p><i>[Please mention here any provision or interinstitutional agreement that allows the competition authorities to coordinate behavior to effectively enforce competition law]</i></p>

Disaggregated Functions—Prosecutorial Model				
Are there different authorities or agencies that make the decision to investigate and the final ruling in the cases?	No (Not different agencies, but different departments within the same agency - i.e., CADE)	<p>As discussed above, while conduct and merger investigations are initiated by the SG, the final decision lies with the Tribunal in most of the cases.</p> <p>The SG has powers to launch investigations on its own discretion (<i>ex officio</i>) or after analyzing a complaint by a third party. The Tribunal can also determine that the SG launches a specific investigation.</p> <p><i>[If the answer is yes, please explain briefly the enforcement process, and include the relevant provisions. The purpose of this question is to understand the enforcement model of the jurisdiction and establish how many independent authorities are involved in the enforcement process and what are their functions.]</i></p>		
Are disputes presented for decision to judiciary authorities?	No	<p>CADE's decisions are not automatically reviewed by courts and are final, unless a party files a lawsuit seeking to revert a decision issued by CADE.</p> <p><i>[If the answer to your question is "yes", please introduce the name of the judiciary authorities that are involved and their role until the final decision in the process is achieved; exclude from this question judiciary authorities whose role in the process is the judicial review of administrative decisions.]</i></p>		
Do private rights of action to challenge competition law infringements exist in your jurisdiction?	Yes	<p>Any private party who has been harmed by an anticompetitive conduct can claim the damages before a judge according to the Competition Act, Article 47.</p> <p><i>[If "yes", please explain briefly the process and who are the persons entitled to exercise those rights; mention the relevant provisions]</i></p>		
* Please fill the next sections for each of the authorities mentioned in the prior sections excluding sector regulators				
The Administrative Council for Economic Defense (CADE)				
Status of the Competition Authority				
Accountability	Please, answer "Yes" in the boxes of this line if any of the duties on the right column apply to the authority, and "No" if they do not.	Answer with X/√ as it applies		Please, in the boxes of this line mention the relevant provisions in which the obligations are based.
Does the Competition Authority have obligations before the executive?	Yes	X	Obligations to report to the executive on on-going investigations upon request.	<i>[Include relevant provisions]</i>
		X	The decisions of the Competition Authority may be vetoed by a ministry or by the executive branch.	<i>[Include relevant provisions]</i>
		√	The Competition Authority has to report on an annual basis to the executive.	Article 29 of the Competition Act.

				<i>[Include relevant provisions]</i>
Does the Competition Authority have obligations before the legislature?	Yes	√	Obligation to publish an annual report on its activities.	As per the Normative Instruction No. 84 of 2020, CADE has the obligation of rendering accounts of its expenses and of its use of budget. Moreover, as per Law No. 13,848 of 2019, CADE has the obligation of publishing annual reports detailing its activities and also its fulfillment of its strategic plans.
		X	Obligation to stand before parliament and to respond to congressmen on an annual basis.	<i>[Include relevant provisions]</i>
		√	Its activities are monitored by an independent auditor or by oversight committees.	<i>[Include relevant provisions]</i>
Does the Competition Authority have obligations before the judiciary or independent agencies?	Yes	√	Decisions of the Competition Authority are subject to judicial review.	See comment above regarding the non-automatic review of decisions by courts. <i>[Aside from the relevant provisions please mention the judicial authority charged with the review.]</i>
		X	Decisions of the Competition Authority are subject to review or control of an independent authority different from the judiciary?	<i>[Aside from the relevant provisions, please mention the authority charged with the review.]</i>

		<p>Other obligations/comments:</p> <p>In theory in Brazil the Judiciary Branch can overrule any decision from agencies, including CADE. But in practice, when it comes to competition policy, CADE has the final word in the vast majority of cases, especially with respect to the merits of the case. Most cases that go to judicial courts in Brazil examine non-merit issues (e.g., potential procedural flaws; if a piece of evidence could have been used or not) or discusses non-final decisions (e.g., decisions imposing interim measures). There is little precedent of courts reverting CADE's final decisions on the merits.</p> <p><i>[Please introduce any other obligation or comment that you consider relevant.]</i></p>
Independence	Please, answer "Yes" or "No"	
Are the criteria for appointment and removal of the head/board members clear and transparent?	Yes	<p>As per Article 6 of the Competition Act, the Chair, Commissioners and General Superintendent must be over 30 years old, must have notorious legal knowledge and an unblemished reputation.</p> <p>Members of the Tribunal can only be withdrawn from office by a decision of the Senate (i) after a request of the President of Brazil; or (ii) in case the member is convicted by a definitive judicial decision (non subject to further appeals) for intentionally committing a crime; (iii) due to a disciplinary proceeding, as per Law No. 8,112 of 1990 and Law No. 8,429 of 1992; or (v) due to infringements of Article 8 of the Competition Act (which sets forth impediments and prohibited activities for the Chair and Commissioners to partake - e.g., exercise political activities; receive legal fees; participate as a controlling shareholder, director or manager of a company).</p> <p><i>[Please introduce the relevant provisions, and if the answer to this question is "no", explain briefly why in your opinion the criteria are not clear or transparent.]</i></p>
Does the executive have powers to decide on specific cases based on public interest?	No	<i>[Please introduce the relevant provisions, and if the answer to the question is "yes", explain in which cases the executive can decide on public interest bases.]</i>
Does the executive retain decision-making powers over the Competition Authority?	No	<i>[Please introduce the relevant provisions.]</i>
Is the Competition Authority obliged to publish reasoned decisions to ensure transparency?	Yes	<p>All proceedings (cases) have public case files, accessible to the general public on CADE's website. Therefore, not only decisions have a public version published, but rather there are entirely public case files, including parties' petitions, merger filing forms, among other documents. In the public case files, confidential documents and information are omitted. The obligation to publish decisions is founded on Article 79 of the Competition Act.</p> <p><i>[Please introduce the relevant provisions.]</i></p>
Is there a provision of the national budget allocated by law to the Competition Authority to ensure its proper functioning?	Yes	<p>Every year the Chairman submits CADE's budget proposal for the Executive Branch, pursuant to article 21 of the Competition Act. There is no specific amount or provision of the national budget allocated by law to CADE. For instance, the budget for the 2023 fiscal year was R\$ 78,430,000.00 (seventy eight million, four hundred and thirty thousand reais) (roughly US\$ 13.84 million).</p> <p><i>[Please introduce the relevant provisions and the budget assigned to the authority for the current year and the next if it is already approved]</i></p>
Can the Competition Authority be financed by its own means (notification fees, fines, etc.)?	Yes	According to the Competition Act, Articles 23 and 28, CADE can be financed by the proceeds of the merger filing fees, sale of publications,

		<p>technical material and data, among others.</p> <p>It should be noted that the pecuniary fines imposed by CADE as a result of the agency's investigations are not destined to the agency, but rather to the Diffuse Rights Defense Fund (<i>Fundo de Direitos Difusos</i> - "FDD"), as per Article 28, paragraph 3, of the Competition Act. Created by Law No. 7,347, of July 24, 1985, the FDD aims to repair damages caused to the environment, to the consumer, to goods and rights of artistic, aesthetic, historical, touristic, and scenic value, due to violations of the economic order and other diffuse and collective interests.</p> <p><i>[Please introduce the relevant provisions and mention the means by which the authority can be financed on its own]</i></p>
Governance of the Competition Authority		
Is the Competition Authority governed by a single chairman or by a collegiate body?	Collegiate Body (the Tribunal). The SG is led by a single person.	<i>[Answer "single chairman" if the directive organ of the authority is composed of one person. Answer "collegiate body" if the authority's directive organ is composed of two or more members, regardless if this organ is directed or presided by a chairman or president.]</i>
How are the members of the Authority's directive organ chosen?	CADE's Administrative Tribunal is composed of 6 Commissioners and the agency's Chair. All of these 7 members of the Tribunal are appointed by the President of Brazil and approved by the Brazilian Congress (Article 6, Competition Law),	<i>[Please describe the election process for choosing the members of the directive organ. Include relevant provisions; mention the branch government involved in this process]</i>
Is there a fixed period during which removal is prohibited?	No	<p>Members of CADE's Tribunal are appointed by the President of Brazil and subject to congressional approval prior to taking office, pursuant to Article 6, of the Competition Act. Commissioners are appointed for 4-year terms.</p> <p>Members of the Tribunal can only be withdrawn from office by a decision of the Senate (i) after a request of the President of Brazil; or (ii) in case the member is convicted by a definitive judicial decision (non subject to further appeals) for intentionally committing a crime; (iii) due to a disciplinary proceeding, as per Law No. 8,112 of 1990 and Law No. 8,429 of 1992; or (v) due to infringements of Article 8 of the Competition Act (which sets forth impediments and prohibited activities for the Chair and Commissioners to partake - e.g., exercise political activities; receive legal fees; participate as a controlling shareholder, director or manager of a company).</p> <p><i>[If your answer is "yes", please introduce the duration of the tenure and the relevant provisions. If the answer is no, please refer if there are specific and restricted grounds under which the members of the Directive body can be removed; mention if they are elected for a term and introduce the relevant provisions]</i></p>
Is the tenure of the heads renewable?	No	<p>The Commissioners and the President are elected for a 4-year tenure, and consecutive reappointment is prohibited according to Article 6, §1 of the Competition Act</p> <p><i>[Please, introduce the relevant provisions]</i></p>
Are the heads required by law to have certain minimum qualifications (degree in law or economics, age, experience)?	Yes	Pursuant Article 6, the Commissioners and the President must be. Brazilian citizens over thirty (30) years old, who are well reputed for their knowledge of law or economics and who possess a reputation for moral integrity.

		<i>[If your answer is "yes", please make reference to the qualifications required by law and the relevant provisions].</i>	
Architecture			
Is the Competition Authority a stand-alone agency with an independent physical location or is it part of a bigger entity such as a ministry?	Stand alone	<p>CADE is considered as an independent, adjudicative agency, having its own budget and headquarters, and disposing of administrative autonomy, pursuant to Article 4 of the Competition Act.</p> <p>It should be noted that the same provision states that the agency is linked to the Ministry of Justice. But, in practical terms, there is no influence of the Ministry of Justice in CADE's core activities and decision-making processes, as per the other provisions of the Competition Act.</p>	
Policy Duties			
Does the Competition Authority have an exclusive mandate on competition or multiple mandates?	Single	X	Concurrent consumer protection mandate.
		X	Concurrent IP mandate.
		Other mandates: n/a.	
Portfolio Instruments			
Law Enforcement			
Does the Competition Authority have powers to investigate cartels?	Yes	<p>According to Article 36 of the Competition Act, CADE has broad powers to investigate and sanction those who partake in any type of anticompetitive agreement.</p> <p>Pursuant to Articles 37 and 38 of the Competition Act, it can impose behavioral and structural remedies, prohibition to participate in trade activities or contract with the government up to 5 years, as well as fines up to 20% percent of the gross sales of the company, group or conglomerate;</p> <p><i>[If the answer is "yes", please mention the type of liability that the actions of the agency seek: civil, criminal, administrative. Introduce the relevant provisions; briefly explain if the powers of the authority are limited to certain types of cartels and what kind of sanctions can be imposed.]</i></p>	
Does the Competition Authority have powers to investigate unilateral Conduct?	Yes	<p>According to Article 36 of the Competition Act, CADE has broad faculties to investigate and sanction any company that performs an unilateral anticompetitive conduct. Such provisions sets forth an exemplificative list of potential anticompetitive conducts, rather than a comprehensive and exhaustive list.</p> <p>Pursuant to Articles 37 and 38 of the Competition Law, it can impose behavioral and structural remedies, prohibition to participate in trade activities or contract with the government up to 5 years, as well as fines up to 20% percent of the gross sales of the company, group or conglomerate;</p> <p><i>[If the answer is "yes", please mention briefly if the competition authority is invested with the power to pursue exploitative and exclusionary effects, also make reference to relevant provisions, the type of liability that the actions of the authority seek, and what kind of sanctions can be imposed.]</i></p>	

<p>Does the Competition Authority have the powers to conduct <i>ex-ante</i> merger reviews?</p>	<p>Yes</p>	<p>One of the Competition Act's (Law No. 12,529/2011) main innovations compared to its predecessor (Law No. 8,884/1994) was the establishment of the ex ante merger control regime.</p> <p>The request for approval of the acts of economic concentration must be addressed to CADE and must contain the information and documents indispensable to the filing of the administrative proceeding, in addition to the receipt of payment of the respective fee.</p> <p>CADE's Resolution No. 33/2023 provides further details about which transactions shall follow the fast-track proceeding and those that shall follow the non-fast track proceeding.</p> <p>After receiving the filing form and supporting documents, the General Superintendence shall publish a notice making the transaction public, indicating the name of the applicants, the nature of the transaction, and the economic sectors involved. See Article 53 of the Competition Act.</p> <p>Once the General Superintendence has received the request, it must: (i) render a final decision when the transaction does not raise any concern; or (ii) conduct a complementary fact-finding stage; pursuant to Article 54 of the Competition Act.</p> <p>After the conclusion of the complementary fact-finding, the General Superintendence shall: i) render a decision approving the act without restrictions; ii) present an objection before the Tribunal, if it deems that the act must be rejected, approved with restrictions, or if there is no conclusive elements in regards to its effects in the market; pursuant to Article 57 of the Competition Act.</p> <p>The applicants may file a written petition, directed to the President of the Tribunal, within 30 days of the objection date of the General Superintendence, exposing their argument and handling evidence opposing the General Superintendent's objections, pursuant to Article 58 of the Competition Act.</p> <p>After receiving the petition of the applicant, the Reporting Commissioner shall: render a decision determining that the case be submitted to trial if he understands that the fact-finding has been sufficient; or require collecting additional evidence and then submitting the case to trial. The Tribunal may fully approve concentration, reject it, or partially approve it, in which case it will determine the remedies (structural or behavioral) to be observed as conditions to validate the Concentration. See Article 59 of the Competition Act.</p> <p><i>[If the answer is "yes", please explain briefly the process and which are the remedies that authority can seek or impose and mention the relevant provisions]</i></p>
<p>Is the notification of merger transactions mandatory?</p>	<p>Yes</p>	<p>Pursuant to Article 88 of the Competition Act, an economic concentration in which, cumulatively:</p> <ol style="list-style-type: none"> at least one of the groups involved in the transaction has registered, in the last balance sheet, annual gross sales or total turnover in the country, in the year preceding the transaction, equivalent or superior to R\$ 750 million; and

		<p>2. at least one other group involved in the transaction has registered, in the last balance sheet, gross annual sales or total turnover in the country, in the year preceding the transaction, equivalent to or greater than R\$ 75 million.</p> <p>According to Article 90 a concentration occurs when:</p> <ol style="list-style-type: none"> 1. two or more previously independent companies merge. 2. one or more companies acquire, directly or indirectly, by purchase or exchange of stocks, shares, bonds or securities convertible into stocks or assets, whether tangible or intangible, by contract or by any other means or way, the control or parts of one or more companies. 3. one or more companies incorporate one or more companies or 4. two or more companies enter into an associative contract, consortium or joint venture. <p>CADE's Resolution No. 17, of 2016, sets forth what can be considered as an associative contract (agreement) for the purposes of Article 88 of the Competition Act.</p> <p><i>[If the answer is "yes", please explain whether all the transactions shall be notified or if there is a threshold; mention relevant provisions]</i></p>
<p>Can the parties close the transaction before the final decision of the Authority (suspensory effect of merger notification)?</p>	<p>No</p>	<p>One of the Competition Act's (Law No. 12,529/2011) main innovations compared to its predecessor (Law No. 8,884/1994) was the establishment of the <i>ex ante</i> merger control regime.</p> <p>Against this backdrop, Article 88 of the Competition Act prohibits merging parties from closing transactions that meet the legal thresholds for mandatory notification before obtaining CADE's approval.</p> <p>In exceptional and rare circumstances, the Competition Act grants the possibility of implementing a merger prior to CADE's final approval, but only in a precary manner, with CADE imposing conditions aiming at preserving the reversibility of the transaction, pursuant to Article 59, paragraph 1.</p> <p><i>[Please mention the relevant provisions and add any explanation that you deem necessary]</i></p>
<p>Does the Competition Authority have the power to carry out <i>ex-post</i> merger investigations?</p>	<p>Yes</p>	<p>Article 88, paragraph 7, of the Competition Act, allows CADE to request the ex post report of a transaction that did not fall under the duty to report within a year after its closing.</p> <p>Also, the same provision foresaw that CADE can impose administrative sanctions and structural remedies when it encounters a case in which there is a breach of the duty to report. In addition, CADE can also decide to prosecute the unreported merger as an antitrust conduct by initiating an administrative proceeding aimed at tackling anticompetitive behavior (conduct, non-merger investigation).</p> <p><i>[Please mention relevant provisions]</i></p>

<p>Does the Competition Authority have the power to impose remedies on <i>ex-post</i> merger investigations?</p>	<p>Yes</p>	<p>Pursuant to Article 88, of the Competition Act, CADE can impose administrative fines, behavioral and structural remedies for the breach of the duty to report, and despite that can prosecute the merger as an illegal conduct and sanction the merging parties with the corresponding penalties.</p> <p>If CADE requests an ex post report (in cases where the transaction did not trigger the duty to report), it can object, approve, or approve subject to structural or behavioral remedies.</p> <p><i>[If the answer is yes, please mention the remedies that the Authority can impose; mention relevant provisions]</i></p>
<p>Does the Competition Authority have powers to conduct dawn raids at premises?</p>	<p>Yes</p>	<p>Article 13 (VI) (d) of the Competition Act establishes that CADE, in particular the General Superintendence, can conduct dawn raids with prior judicial authorization.</p> <p><i>[If the answer is "yes", please mention whether the dawn raids shall be authorized by a judge, and mention the relevant provisions]</i></p>
<p>Can the Competition Authority investigate <i>ex officio</i> cases?</p>	<p>Yes</p>	<p>See comment above above the SG's power and discretion to initiate investigations. See also Article 66 § 1 of the Competition Act.</p> <p><i>[Please mention the relevant provisions]</i></p>
<p>Does the Competition Authority have powers to accept leniency applications?</p>	<p>Yes</p>	<p>According to Article 86 of the Competition Act, the General Superintendence can subscribe agreement in which pardon partially or completely the sanction that otherwise would be imposed in exchange for information and collaboration in the enforcement procedure that leads to the identification of other persons involved in the violation; and to obtaining information and documents proving the reported or investigated violation.</p> <p>To get the full exemption, it is necessary to report a conduct from which CADE did not have previous knowledge. In any other case, the offender will only obtain a reduction from 1 to 2 thirds of what otherwise would be imposed. The applicants will also be granted exemption from criminal liability in the same proportion that was given before CADE.</p> <p>The effects of the leniency agreement shall be extended to companies of the same group, <i>de facto</i> or <i>de jure</i>, and to their directors, administrators, or employees involved in the violation, provided they enter into it jointly, respecting the imposed conditions.</p> <p>The General Superintendence is the one in charge of receiving the application and entering into the agreement. The Tribunal of CADE reviews that the agreements have been honored and then grants the benefits on the final decision.</p> <p>Furthermore, CADE can execute Cease-and-Desist Commitments ("TCCs"), whereby investigates collaborates with ongoing investigation, but differently from leniency agreements, do not receive criminal immunity.</p> <p><i>[If the answer is "yes", please mention if there is any limitation for the</i></p>

		<i>applicants, what are the benefits, and mention the relevant provisions. Include any commentary that you consider relevant about the leniency program]</i>
Does the Competition Authority have powers to seek criminal punishment?	No	Nonetheless, in Brazil natural persons can have criminal liability arising from certain collusive anticompetitive conducts, such as cartels, pursuant to Article of Law No. 8,137 of 1990 (which sets forth crimes against the economic order). However, it is the Public Prosecutor's office who is in charge of criminal enforcement, rather than CADE. <i>[If the answer is "yes", please mention the different kinds of sanctions that the agency can impose]</i>
Advocacy		
Can the Competition Authority issue opinions on draft legislation?	Yes	Article 19 (III) of the Competition Act. The opinions are not binding (do not take away lawmakers' discretion), but rather only informative. <i>[If the answer is yes, please specify if there is any kind of limitation to the agency's authority to issue opinions, include relevant provisions]</i>
Is the executive and/or the legislature obliged to request the opinion of the Competition Authority when drafting legislation that may impact competition?	No	<i>[If the answer is yes, include relevant provisions]</i>
Rulemaking		
Can the Competition Authority issue guidelines?	Non-Binding	<input checked="" type="checkbox"/> Guidelines on the calculation of fines.
		<input checked="" type="checkbox"/> Guidelines on merger control.
		<input checked="" type="checkbox"/> Guidelines on the economic analysis of abuse of dominance cases.
Can the Competition Authority issue binding regulation on competition?	No	<i>[Please, explain which kind of regulation and mention the relevant provision on which the powers are based]</i>
Research & Reporting		
Can the Competition Authority carry out market studies?	Yes	Articles 17,19 (IV), 13 (XIV) of the Competition Act. <i>[If the answer is "yes", include relevant provisions]</i>
Can the Competition Authority report to the legislature on the results of market studies?	Yes	Article 19 §2 of the Competition Act. <i>[If the answer is "yes", include relevant provisions]</i>
Decision-Making Functions		
Aggregated Functions		
Does the Competition Authority make the decision to investigate and make guilty findings?	Yes	CADE as whole is responsible for the decisions of both initiating investigations and guilty findings. See comments above about the allocation of responsibilities and powers among the SG and the Tribunal. See also Articles 9 and 12 of the Competition Act. <i>[If the answer is "yes", include relevant provisions]</i>

<p>Does the Competition Authority impose punishments?</p>	<p>Yes</p>	<p>The penalties available to CADE as a result of a finding of an anticompetitive conduct are set forth in Articles 37 and 38 of the Competition Act. Pursuant to those provisions the Agency can impose:</p> <ol style="list-style-type: none"> 1. a fine of 0.1% to 20% of the gross sales of the company, group, or conglomerate, in the last fiscal year before the establishment of the administrative proceeding 2. To natural persons directly or indirectly responsible for the violation, when negligence or willful misconduct is proven, a fine of 1% to 20% of that is applied to the company, 3. The publication, in half a page and at the expenses of the perpetrator, in a newspaper indicated by the judgment, 4. Inability to contract with the Government up to 5 years 5. The company divestiture, transfer of corporate control, sale of assets or partial interruption of activity; 6. prohibition from carrying on trade on its own behalf or as representative of a legal entity for a period of five (5) years; and 7. any other act or measure required to eliminate harmful effects to the economic order. <p>Moreover, CADE can also impose other sanctions from violations of other duties (e.g., failure to disclose required information; bad-faith litigation).</p> <p><i>[If the answer is "yes", please mention the different kinds of sanctions that the agency can impose]</i></p>
<p>Is there a single body that carries out the investigation and the guilty findings within the Competition Authority?</p>	<p>No</p>	<p>See comments above about the distinct roles of the SG and the Tribunal in this regard.</p> <p>With respect to conducts, the administrative investigation shall be initiated ex officio or in view of any reasoned statement by any interested party.</p> <p>An investigation can be initiated under different types, as per Article 48 of the Competition Act, namely: I - preparatory procedure for an administrative probe to investigate violations of the economic order ("Preparatory Procedure" or <i>Procedimento Preparatório</i>); II - administrative probe to investigate violations of the economic order ("Administrative Probe" or <i>Inquérito Administrativo</i>); III - administrative proceeding to impose administrative sanctions for violations of the economic order ("Administrative Proceedings" or <i>Processo Administrativo</i>).</p> <p>Ultimately, sanctions will be imposed after an Administrative Proceeding takes place (type III mentioned above). Administrative Proceedings can be preceded by Preparatory Procedure and/or Administrative Probes, but do not have to. Different from the other types, the Administrative Proceedings formalizes the parties of the proceeding, identifying defendants, giving them notice about the investigations, granting them the opportunity to offer evidence and defense within specified legal deadlines, among other features.</p> <p><i>[Regardless of the answer please explain briefly the enforcement process until the final decision is issued, include relevant provisions, and if the answer is "No" mention how the head of the body that carries out the investigation is elected and removed. The main idea of this last point is to establish whether the investigation authority is, in fact, independent]</i></p>

		<i>from the decision-making body]</i>
Can the Competition Authority's decisions be appealed to a court?	Yes	<p>The civil courts review the final decisions of CADE. The jurisdiction of courts to review CADE's decisions is grounded on Article 5 (XXXV) of the Brazilian Constitution. See comments above as well.</p> <p><i>[Please, mention the judicial authority who is charged with the review, make reference to the relevant provisions, and if there is any requirement to exercise the right of the judicial review.]</i></p>
Please add commentaries or information that you consider relevant and were not covered in any of the previous sections and questions.	<p>As of October 24, 2024, CADE had 11 Guidelines: on the calculation of fines: Horizontal Mergers; Non-Horizontal Mergers; Gun Jumping; Compliance; Cease-and-Desist Commitments; Leniency; Remedies; How to Submit Data to CADE's Department of Economic Studies; Bid-Rigging Cartels; Recommendations to Celebrate Leniency Agreements; and Cartel Penalties. All of them have English versions available at CADE's website: https://www.gov.br/cade/pt-br/centrais-de-conteudo/publicacoes-institucionais/guias-do-cade.</p>	