
Significant Changes Expected for Brazilian Merger Control System

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The Brazilian Congress has passed a bill which, if approved by the President as expected, will make major changes to that country's merger control system. The two most significant changes are summarized below.

- *Filing thresholds:* Under the current Brazilian law, transactions can trigger a notification based on one party's revenues alone, or on the parties' combined market shares. The proposed changes would eliminate the market share trigger, and require filings only where the Brazilian revenues of either the acquirer's group of companies or the seller's group of companies (including but not limited to the target) exceeds R\$400 million (about US\$217 million), and the Brazilian revenues of the other of these groups of companies exceeds at least R\$30 million (about US\$16.2 million).
- *Waiting period:* Unlike the current Brazilian law, which permits parties to close a transaction before the antitrust authorities complete their investigation, the proposed changes would require the parties to obtain final approval from the Administrative Council for Economic Defense ("CADE") before closing. The proposed changes would give CADE up to 240 days to issue its final decision, with a possible 60-day extension at the parties' request or 90-day extension by order of the Tribunal. CADE is expected to enact regulations that will provide for an expedited procedure and shorter review period for uncontroversial transactions.

Assuming that the Brazilian President approves the bill and the new law enters into force, the new merger control rules will become effective 180 days after approval. The bill also would alter cartel enforcement procedures, but we have received reports that this part of the bill may be subject to changes or clarifications in further legislative processes. Finally, the bill envisions a restructuring of the agencies that administer the Brazilian antitrust laws, the concentration of merger control responsibilities with a single authority (CADE), and the hiring of up to 200 new case handlers and officers to enforce the antitrust laws. Overall, the new bill seems likely to make Brazil an even more significant player among antitrust enforcement regimes and makes it more important that parties and their counsel who may have dealings with Brazilian authorities have basic familiarity with these competition rules.

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