

CADE approves new Resolution defining the new concept of associative agreements for the purposes of mandatory notification

At the Public Hearing of October, 18, CADE approved Resolution n. 17, that revokes the provisions of Resolution n. 10/2014, and defines the concept of associative agreements for the purposes of the mandatory filing before CADE, pursuant to item IV of article 90 of Law No. 12,529/2011.

Resolution n. 17 was published today on the Official Gazette and will enter into force on November, 24, 2016.

An important change in relation to the previous rule was the removal of the market share criteria and requirements of sharing of revenue or losses and exclusivity in vertical relations.

Under this new Resolution, once triggered the turnover threshold established on article 88¹ of Law 12.529/11, the agreements with a 2-year-term or more (considered prorogations) that set “common enterprise for the exploiting of an economic activity” will be of mandatory filing, provided that they:

- i) Establish sharing of risks and results of the economic activity regarding the object of the agreement; and,
- ii) The parties are competitors in the relevant market object of the agreement.

The Resolution defines "economic activity" as the acquisition or offer of goods or services in the market, even when not for profit, provided that such activity is exploited by a private company with profit intention.

In addition, it establishes that the agreements with a 2-year-term or more, that were executed before this new Resolution enters into force, but fall into the new rules shall also be submitted to CADE's analysis.

¹ Pursuant article 88 of Law 12.529, the filing is mandatory when: i) at least one of the groups involved in the transaction has registered, in the year preceding the transaction, annual gross sales or total turnover equivalent or superior to R\$ 750,000,000.00 in Brazil; AND, at least one other group involved in the transaction has registered, in the year preceding the transaction, annual gross sales or total turnover equivalent to or greater than R\$ 75,000,000.00 in Brazil.



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— A D V O G A D O S —

The competition team of Mattos Engelberg Advogados is available to provide additional information about the associative agreements subject to mandatory filing before CADE.