Appendix I – Unofficial English translation of CADE's updated FAQ

Section 1 - Revenue and Business Volume

- How to calculate the revenue of the economic group?

Parties should consider the consolidated gross operational revenue registered in the fiscal year preceding the transaction by each and all companies that are part of the economic group involved in the Merger Filing.

- Can the revenue thresholds be met only by the economic groups on the buyer's side?

Yes. Article 88 of Law No. 12,5291, dated November 30, 2011, does not expressly require that both a buyer-side and a seller-side economic group independently meet the revenue thresholds set out in items I and II for a transaction to be subject to mandatory filing. However, specifically for share purchase agreements, CADE Attorney General's Office, by means of Opinion No. 12/2013-PFECADE/PGF/AGU (Document SEI No. 0107568, pages 89-94), issued in Merger Case No. 08700.000258/2013-53 (Applicants: Singida Participações Ltda and Data Solutions Serviços de Informática Ltda.), established that there must be at least one economic group on the buyer's side and another on the seller's side that satisfy the requirements of Article 88, at least when involving share purchase agreements. This interpretation was adopted by CADE in its final decision in that case and has since become the standard approach for share purchase agreements.

- If the target company's share capital is held by an investment fund, should the shareholders (and groups) holding 20% of the fund's shares be considered for calculating the economic group's revenue?

No. Each shareholder holding directly or indirectly shares equal to or greater than 50% of the fund involved in the transaction is considered part of the economic group for purposes of revenue calculation, in line with Article 4, paragraph 2, item I, of CADE Resolution No. 33, dated April 14, 2022. This definition applies only for the purpose of calculating revenue to determine compliance with the objective criteria set forth in Article 88 of Law No. 12,529/2011. For the substantive (merit) analysis, the economic group shall encompass shareholders holding directly or indirectly more than 20% of the shares of the fund involved in the transaction, in line with item II.5.2. of the Annexes of CADE Resolution No. 33/2022.

- Should the revenue of the manager (and its economic group) and the funds under the same management be taken into account in the case of an economic group involving an investment fund?

No. The manager is not considered part of the economic group for the purpose of calculating revenue, as per Article 4, paragraph 2, item I, of CADE Resolution No. 33/2022. On the other hand, for the substantive (merit) analysis, the manager can be considered part of the economic group, as provided in item II.5.2. of the Annexes of CADE Resolution No. 33/2022.

- Should intercompany sales be considered in the calculation of the economic group's revenue?

No. Intercompany sales should not be considered for the purpose of verifying the revenue threshold set out in Article 88 of Law No. 12,529/2011.

- Should the relevant revenue threshold be assessed based on the consolidated financial statements or on the sum of revenue of the individual companies within the economic group?

The sum of revenue of the individual companies within the economic group should be considered for purposes of revenue calculation.

- Should any item (i.e., tax substitution revenue, among others) be excluded from the consolidated financial statements?

Strictly speaking, no.

- What types of revenue should be included within the definition of revenue?

Generally, the definition should encompass gross operational revenue, regardless of the specific terminology used to describe such revenue.

- How should the business volume of an economic group be calculated?

The definition of business volume should be applied only in exceptional circumstances-specifically, when it is not feasible to determine the annual gross revenue. In such cases, business volume may be assessed if it is possible to attribute revenue generated from the conduct of economic activities within the country by a particular company or asset that forms part of the economic group involved in the merger filing.

- How to identify a 20% indirect shareholding held by the owner of a company under common control?

It is necessary to calculate the cumulative ownership interest by multiplying the shares directly or indirectly held in a company. For example, if company A owns a 50% direct interest in company B, and company B owns a 50% direct interest in company C, then company A's indirect ownership in company C is 25%.

- Can the target company establish its own economic group, independent of the seller's economic group?

The target company may be considered part of the economic groups of its shareholders who exercise joint or shared control over it, regardless of whether each individual shareholder holds less than 20% equity interest.

- Should the full revenue of the invested company be taken into account, regardless of the percentage of the share capital held by the group involved? What about in cases involving public offers for the acquisition of shares?

Yes. The full revenue of the target company should always be taken into account, including in the context of public offers for the acquisition of shares, regardless of the percentage of share capital held by the acquirer.

- Can the target company be considered part of the buyer's or seller's economic group? If so, under what circumstances?

The target company may be deemed part of the economic group of shareholders who exercise joint or shared control over the target company, even if each individual shareholder holds less than 20% of the company's shares.

- If the target company is part of two or more economic groups under CADE's regulations, should the revenues of these groups be aggregated or considered separately?

The revenues should be considered separately for each economic group. If at least one of the economic groups to which the target company belongs meets the revenue thresholds set forth in items I and II of Article 88 of Law No. 12,529/2011, this will be sufficient to trigger the mandatory filing requirement for the merger case.

Section 2 – Timing of Economic Group Analysis

- What is the relevant time frame for determining the composition of an economic group for purposes of revenue calculation?

For purposes of calculating the revenue of the economic groups involved in a merger filing, the composition of each economic group should be assessed as of the execution date of the formal binding instrument governing the transaction.

- How is the timing of the transaction defined in the context of a merger filing?

The timing of the transaction is generally defined by the execution date of the formal binding instrument of the merger filing. Alternatively, it may refer to the date on which the merger filing is submitted to CADE. In accordance with Law No. 12,529/2011, the relevant revenue for each economic group is the gross revenue recorded in the fiscal year preceding the transaction, as reflected in the most recent balance sheet, according to Law No. 12,529/2011.

- If an economic group has a pending acquisition at the time of the merger filing, should the target company be included in the revenue calculation?

Yes. If an economic group involved in the merger filing has recently acquired a company, and the acquisition has not yet become effective as of the filing date, the target company should still be included in the revenue calculation for the economic group. Furthermore, for purposes of substantive (merit) analysis, any pending acquisition is conservatively treated as part of the economic group involved in the transaction.

- If an economic group has a pending divestiture at the time of the merger filing, should the divested company be included in the revenue calculation?

Yes. If an economic group involved in the merger filing has recently sold a company, and the divestiture has not yet become effective as of the filing date, the company being divested should still be included in the revenue calculation for the economic group. Similarly, for purposes of substantive (merit) analysis, any pending sale is conservatively considered as part of the economic group involved in the transaction.

- What is the relevant base year for reporting the revenue of the economic groups involved in a merger filing?

Pursuant to Law No. 12,529/2011, the annual gross revenue or total business volume of the economic groups involved in a merger filing must be calculated based on the fiscal year preceding the transaction, as reflected in the most recent balance sheet of the relevant companies.

In accordance with Article 46, sole paragraph, of CADE's Internal Rules, all information submitted to CADE must be reported in Brazilian Reais (R$). If the revenues are originally denominated in a foreign currency, the respective party must indicate the exchange rate used, the methodology for selecting that rate, and the applicable reference period. Specifically, for purposes of Article 88 of Law No. 12,529/2011, the exchange rate to be applied is that of the last business day of the year preceding the Merger Filing..

- If the fiscal year of a company within the economic group does not coincide with the Brazilian fiscal year, what period should be used to calculate gross revenue for merger filing purposes?

If a company's fiscal year differs from the Brazilian calendar year, the relevant period for calculating gross revenue is the most recent fiscal year as defined by the company's jurisdiction of origin (incorporation), prior to the transaction. In other words, each company within the economic group should use its own most recent fiscal year, as reflected in its latest balance sheet, regardless of whether this coincides with the Brazilian fiscal year.

- How should the parties' operations be measured for the purpose of effects analysis in a merger filing? *[Mattos Filho comment: this set of questions and answers was fully extracted from the original FAQ, but seems misplaced.]*

For the purposes of effects analysis, the operations of the parties involved in the transaction should be measured by assessing their respective market shares, both in the global market and in the relevant domestic (Brazilian) market.

- If the company or asset involved in the transaction is not located in Brazil and does not generate revenue in Brazil, can the transaction still be considered to produce effects in Brazil?

Yes. In such a case, the transaction may still be subject to review if it can produce actual or potential effects in Brazil.

Section 3 – Definition of an Economic Group

- How is the economic group of the parties involved in a merger filing defined for purposes of CADE review?

Under CADE Resolution No. 33/2022, the composition of an economic group is determined based on two distinct scenarios: if investment funds are not involved (see paragraph 1, Article 4), or if they are involved in the transaction (see paragraph 2, Article 4), as follows:

> Art. 4 The entities directly involved in the legal transaction are notified, and their respective economic groups are considered as parties to the transaction.
>
> Paragraph 1 An economic group is considered, for the purpose of calculating the revenues stated in Article 88 of Law No. 12,529/2011, cumulatively:
>
> I – the companies that are under common control, internal or external; and
>
> II – the companies in which any of the companies in item I holds, directly or indirectly, at least 20% (twenty percent) of the share capital or voting rights.

> Paragraph 2 In the case of investment funds, the following are considered part of the same economic group for the purpose of calculating the revenue referred to in this article, cumulatively:
>
> I – The economic group of each shareholder who directly or indirectly holds shares equal to or greater than 50% of the shares of the fund involved in the transaction via individual participation or through any type of shareholder agreement; and
>
> II – The companies controlled by the fund involved in the transaction and the companies in which the fund holds, directly or indirectly, shares equal to or greater than 20% (twenty percent) of the share capital or voting rights.

The literal interpretation of Article 4, paragraph 1, provides that items I and II are sequentially cumulative criteria, meaning that the following entities must be considered as part of the same economic group for purposes of revenue calculation: (i) companies under common control, plus (ii) companies in which the companies under common control (item I) hold, directly or indirectly, at least 20% of the share capital or voting rights.

If investment funds are involved in the transaction, Article 4, paragraph 2, specifies that the economic group comprises (i) shareholders who hold shares equal to or greater than 50% of the fund's shares, and (ii) companies in which the fund holds, directly or indirectly, shares equal to or greater than 20% of the share capital or voting rights (Article 4, paragraph 2, items I and II).

- How is unitary (sole) control of a company identified for merger filing purposes?

Unitary control is presumed to exist when a single shareholder, or a group of shareholders belonging to the same economic group, has the authority to unilaterally determine the company's business policies and direct its activities, regardless of the presence or votes of other shareholders. However, the mere fact that a shareholder or group holds a majority of the share capital sufficient for unilateral decision-making does not, by itself, rule out the possibility of common control.

- How is shared (joint) control of a company identified for merger filing purposes?

Pursuant to Brazilian corporate law, "shared" or "joint control" arises when a group of shareholders, bound by legal or contractual arrangements, collectively exercises control over the company, rather than by a sole controlling shareholder. This typically occurs when these shareholders act in a stable and coordinated manner to manage the company's business. CADE's analysis focuses on whether minority shareholders have been granted special rights—beyond mere investment protection—through corporate agreements, enabling them to participate in strategic decisions.

- What constitutes external control over a company?

External control refers to influence over a company that is exercised through mechanisms other than voting rights in corporate bodies. CADE has recognized various forms of external control, including but not limited to debt instruments, structured franchise models, consulting networks, cooperative systems, and management agreements.

- What types of management body decisions can indicate unitary or shared control?

CADE has already found that control is shared when minority shareholders possess the following rights:

- Veto rights or the need for a qualified quorum for approval in the General Assembly of matters such as:
    - Approval of the business plan;
    - Approval of the annual budget;
    - Any changes to the bylaws that affect shareholders' rights, regardless of the matter.
- Veto rights or the need for a qualified quorum for approval in the Board of Directors of matters such as:
    - Approval of the business plan;
    - Approval of the annual budget;
    - Election and dismissal of the company's directors;
    - Approval of the business policy.
- Rights to appoint members to the Board of Directors, especially when combined with veto rights over competitively strategic matters.
- Veto rights over decisions related to investments, loans, agreements, and other transactions above certain values.
- Veto rights over the approval of management reports, financial statements, and the appointment of independent auditors.

Conversely, if minority shareholders' rights are limited to protecting their investment, control is considered unitary and rests with the majority shareholder. The purpose of mere investment protection is presumed in the following cases:

- Veto rights or need for a qualified quorum for approval in the General Assembly of matters such as:
    - Relevant corporate transactions, such as mergers, incorporations, acquisitions, and the creation of wholly-owned subsidiaries;
    - Issuance of company securities to third parties;
    - Obtaining public company registration and trading of shares on the stock exchange;
    - Approval of dividends or other forms of profit distribution;
    - Approval of the maximum remuneration of management members;
    - Bankruptcy, judicial or extrajudicial recovery requests;
    - Increase or reduction of authorized share capital.

- Veto rights or the need for a qualified quorum for approval in the Board of Directors over matters such as:
    - Election and dismissal of members of the audit committee;
    - Election and dismissal of the CEO or the Chairman of the Board of Directors;
    - Approval of the general business plan proposed by the Board, provided that, in case of deadlock, the matter is submitted to the Board of Directors´ deliberation and approved by a simple majority.
- Rights to appoint members to the Board of Directors, provided this is not combined with veto rights over strategic matters.
- Veto rights over agreements between the company and the controlling shareholder or other companies in which the controlling shareholder has an interest.
- Veto rights over the evaluation of assets intended for capital increase.

- What is the proportion of management body members to determine unitary control?

For the definition of internal unitary control, see item No. 21. In the context of merger filings, the threshold required to establish unitary control over a company is determined on a case-by-case basis, as reflected in CADE's precedents. In these assessments, the key criterion is to determine whether a shareholder already possesses, independently of the votes of other shareholders, sufficient authority to set business policies and direct the company's activities, as well as to influence the operation of management and decision-making bodies in matters of competition.

Therefore, the proportion of members on management bodies is not determinative of unitary control. Instead, the existence of unitary control depends on whether a shareholder or group of shareholders has the authority—by virtue of the company's constitutive documents or shareholder agreements—to set business policies, direct the company's activities, and influence management and decision-making bodies, particularly in matters affecting competition.

- How should the group of companies involved in a transaction be determined based on their shareholders?

Article 4 of CADE Resolution No. 33/2022 (paragraphs 1 and 2) requires an analysis of the legal relationships among the companies directly involved in the transaction and their shareholders. For economic groups of companies (paragraph 1 of Article 4 of CADE Resolution No. 33/2022), companies under common control and those in which such companies (under common control) hold at least 20% of the share capital or voting rights are included.

For investment funds, there is no need to assess common control. Instead, the analysis focuses on (i) shareholders holding 50% or more of the fund's shares, (ii) companies controlled by the fund, and (iii) companies in which the fund holds a stake of 20% or more of the share capital or voting rights.

Both tests may apply, depending on the legal relationships between (i) the shareholders; (ii) the companies directly involved in the transaction; and (iii) the companies in which the involved companies hold shares.

- Are "intragroup corporate reorganizations" subject to mandatory filing to CADE? If so, under what circumstances?

Intragroup corporate reorganizations are generally not subject to mandatory filing to CADE if there is no entry of new shareholders external to the economic group or if there are no changes in the economic group's percentage ownership in the company's share capital.

- Should transactions carried out by the sole (unitary) controller of the target company be subject to mandatory CADE filing?

No. Acquisitions of shares by the sole (unitary) controller are not subject to mandatory filing under Article 9, sole paragraph, of CADE Resolution No. 33/2022.

- Should incorporations of assets and equity of a company carried out by its sole (unitary) controller be subject to mandatory filing?

If the assets or equity being acquired are owned by third parties, such transactions are subject to mandatory filing.

- In transactions involving companies belonging to two or more economic groups, which are also buyers, can mandatory filing be required? If so, under what circumstances?

Yes, mandatory notification may be required. If the acquiring company belongs to more than one economic group, the transaction must be notified if any of the groups to which the acquiring company belongs meets the revenue thresholds set forth in Article 88 of Law No. 12,529/2011.

For example, if Company A has two controlling shareholders and thus belongs to both of their respective groups, the transaction is notifiable only if either group meets the revenue thresholds established in Article 88 of Law No. 12,529/2011, provided that another group involved in the transaction meets the other criterion under Article 88.

A second example: if one controller of a given company (the target, in this case) sells a stake in the target company to another controller, the transaction will be subject to mandatory filing if both groups, taken together, satisfy the criteria set out in Article 88 of Law No. 12,529/2011.

Section 4 – Cross-border Transactions

- What are the conditions under which cross-border transactions are subject to mandatory filing to CADE?

Transactions that produce or may produce effects in the national territory, even potentially (Article 2 of Law No. 12,529/2011). In addition, the transaction must meet the mandatory filing rules set out in Law No. 12,529/2011.

- What constitutes the production of concrete effects in Brazil for merger filing purposes? *[Mattos Filho comment: the answer below was fully extracted from the original FAQ, but seems misplaced]*

Under CADE Resolution No. 33/2022, the composition of an economic group is determined based on two distinct scenarios: if investment funds are not involved (see paragraph 1, Article 4), or if they are involved in the transaction (see paragraph 2, Article 4), as follows:

> Art. 4 The entities directly involved in the legal transaction being notified and their respective economic groups are considered as parties to the transaction.
>
> Paragraph 1 For the purposes of calculating the revenues stated in Article 88 of Law No. 12,529/2011, an economic group is considered cumulatively:
>
> I – companies that are under common control, internal or external; and
>
> II – companies in which any of the companies in item I hold, directly or indirectly, at least 20% (twenty percent) of the share capital or voting rights.
>
> Paragraph 2 In the case of investment funds, the following are considered part of the same economic group for the purposes of calculating the revenue referred to in this article, cumulatively:
>
> I – The economic group of each shareholder who directly or indirectly holds shares equal to or greater than 50% of the shares of the fund involved in the transaction via individual participation or through any type of shareholder agreement; and
>
> II – Companies controlled by the fund involved in the transaction and companies in which the fund holds, directly or indirectly, shares equal to or greater than 20% (twenty percent) of the share capital or voting rights.

The literal interpretation of Article 4, paragraph 1, provides that items I and II are sequentially cumulative criteria, meaning that the following entities must be considered as part of the same economic group for purposes of revenue calculation: (i) companies under common control, plus (ii) companies in which the companies under common control (item I) hold, directly or indirectly, at least 20% of the share capital or voting rights.

If investment funds are involved in the transaction, Article 4, paragraph 2, specifies that the economic group comprises (i) shareholders who hold shares equal to or greater than 50% of the fund's shares, and (ii) companies in which the fund holds, directly or indirectly, shares equal to or greater than 20% of the share capital or voting rights (Article 4, paragraph 2, items I and II).

- What is considered an indirect operation in Brazil for merger filing purposes?

An indirect operation in Brazil may occur when a company conducts business in Brazil through exporting to customers or through subsidiaries.

- What characterizes the potentiality of producing effects in Brazil for merger filing purposes?

The potential to produce effects in Brazil is assessed based on whether there is a reasonable economic rationale, from a geographic and logistical perspective, for the parties to offer goods or services in Brazil. This is typically the case when the relevant market is defined as worldwide or includes Brazil. The eminently local geographic scope of a company that does not operate in Brazil makes it less likely for a transaction to be considered as having effects in Brazil, even potentially.

- When can the absence of plans to operate in Brazil within the relevant market rule out the potential for effects in Brazil for merger filing purposes?

No. The absence of plans to operate in Brazil is not sufficient to rule out the potential for effects in Brazil. Plans can change at any time, and the relevant market geographic scope involved in the transaction must be verified.

- When can the absence of past operations in Brazil within the relevant market rule out the potential for effects in Brazil for merger filing purposes?

Never. The logic is similar to that of Question 36. The fact that a party has not previously operated in Brazil does not preclude the possibility of future operations in Brazil, and the relevant market geographic scope involved in the transaction must be verified.

- Do markets with a geographic dimension broader than Brazil trigger a mandatory filing requirement, regardless of the scope of the transaction of the target company?

Yes, if the transaction can produce effects in Brazil-whether indirectly and/or potentially (that is, if it is a worldwide market)-and if, concurrently, the revenue thresholds under Law No. 12,529/2011 are met, mandatory filing is required. This applies even if the relevant market is defined as worldwide.

- How should the parties' operations be measured for the purpose of effects analysis in a merger filing?

For the purposes of effects analysis, the operations of the parties involved in the transaction should be measured by assessing their respective market shares, both in the global market and in the relevant domestic (Brazilian) market.

- If the company or asset involved is not located in Brazil and does not generate revenue in Brazil, can the transaction still be considered as producing effects in Brazil? *[Mattos Filho comment: the answer below was fully extracted from the original FAQ, but seems misplaced]*

Article 4 of CADE Resolution No. 33/2022 (paragraphs 1 and 2) requires an analysis of the legal relationships among the companies directly involved in the transaction and their shareholders. For economic groups of companies (paragraph 1 of Article 4 of CADE Resolution No. 33/2022), companies under common control and those in which such companies (under common control) hold at least 20% of the share capital or voting rights are included.

For investment funds, there is no need to assess common control. Instead, the analysis focuses on (i) shareholders holding 50% or more of the fund's shares, (ii) companies controlled by the fund, and (iii) companies in which the fund holds a stake of 20% or more of the share capital or voting rights.

Both tests may apply, depending on the legal relationships between (i) the shareholders; (ii) the companies directly involved in the transaction; and (iii) the companies in which the involved companies hold shares.

- If the parties had only a minimal or sporadic presence in Brazil in the year prior to the transaction, could this be sufficient to establish effects in Brazil?

Yes.

- If the asset to be acquired is not operational, can the transaction still be considered to produce effects in Brazil, whether actual or potential?

Yes, potentially.

Section 5 – Minority Shareholding Acquisitions

- Which companies should be considered when characterizing competition or a vertical relationship between the parties?

Pursuant to the sole paragraph of Article 10 of CADE Resolution No. 33/2022, the analysis of whether competition or vertical relationship exists must encompass all entities that are part of the economic group of each party, as defined in Article 4 of the same Resolution.

- How should a 'competing company' be characterized for merger filing purposes?

The delimitation of the relevant markets affected by a merger filing is essential for determining whether there is a competitive relationship between the parties prior to the transaction, resulting in a horizontal overlap, or whether the parties are active at different levels of the supply chain, leading to vertical integration. Companies are considered 'competitors' if they operate within the same relevant market, considering both the product and geographic scopes.

- Can companies that operate in the same economic activity, but not in the same geographic area, be considered competitors for the purposes of Article 10 of CADE Resolution No. 33/2022?

The determination of whether the parties are competitors for the purposes of Article 10 requires a definition of the relevant market, including its geographic scope. If, after this analysis, it is found that there is any geographic region in which both parties are active and their activities overlap, they will be deemed competitors for the purposes of the merger review.

- If one of the companies exclusively serves entities within its own economic group, can a vertical relationship with the other parties to the transaction be established for merger filing purposes?

Where a company exclusively supplies goods or services to other entities within its own economic group—a so-called captive supply arrangement—the vertical relationship between upstream and downstream entities exists prior to the transaction. In such cases, if the transaction involves the acquisition of an interest in a company that already operates in an upstream or downstream market and supplies or is supplied by another company within the acquiring group (i.e., on a captive basis), the vertical integration is pre-existing. Consequently, this scenario does not constitute a new vertical relationship for the purposes of merger review under Article 10 of CADE Resolution No. 33/2022, and therefore does not require further assessment by CADE.

- If a shareholding acquisition is subject to mandatory filing, does the absence of control or acquisition of political rights eliminate the need to assess the competitive effects of the transaction?

No. The fact that the acquisition of a corporate stake does not result in control, or that the acquisition of political rights occurs, does not, by itself, eliminate the need to assess the competitive impacts of the transaction. While control or the acquisition of political rights is an important factor in merger filings, the primary objective of the review process is to determine whether a transaction could have the effect of restricting or otherwise adversely affecting competition. Competitive concerns may arise even in cases where the acquirer does not obtain control over the target company.

Section 6 - Associative Agreements

- What constitutes an associative agreement for purposes of mandatory filing with CADE, and what are the relevant filing criteria?

For purposes of mandatory filing, as set forth in Article 2 of CADE Resolution No. 17/2016, any agreement with a term equal to or greater than two (2) years that establish a joint venture for economic activity is qualified as an associative agreement, provided that such agreement must cumulatively involve (i) the sharing of risks and results related to the economic activity that is the subject of the agreement, and (ii) contracting parties that are competitors in the relevant market object to the agreement.

- What are the specific criteria that render an associative agreement subject to mandatory notification to CADE?

The criteria for mandatory filing of an associative agreement are set out in Law No. 12,529/2011 (Article 90, item IV), and further regulated by CADE Resolution No. 17/2016, as follows:

  - term equal to or greater than two (2) years (Article 2, *caput*, of CADE Resolution No. 17/2016);
  - establishment of a joint venture for economic activity (Article 2, *caput*, of CADE Resolution No. 17/2016);
  - sharing of risks and results of the economic activity (Article 2, item I, of CADE Resolution No. 17/2016); and
  - the contracting parties being competitors in the relevant market (Article 2, item II, of CADE Resolution No. 17/2016).

Additionally, the transaction must meet the revenue thresholds set forth in Article 88, items I and II, of Law No. 12,529/2011.

- How should the minimum term for an associative agreement be calculated?

The minimum two-year term is calculated in calendar days, commencing from the execution date of the agreement.

- Should associative agreements with a term of less than two years be subject to mandatory filing?

Agreements with an initial term of less than two (2) years are not subject to mandatory filing unless they are subsequently amended or extended such that their total duration exceeds two (2) years from the original execution date, pursuant to Article 3 of CADE Resolution No. 17/2016.

- When must associative agreements be submitted to CADE for review?

Associative agreements that meet the criteria for mandatory notification must be submitted to CADE at any time prior to the completion of two (2) years from the agreement’s effective date. The agreement may not reach or exceed the two-year threshold before CADE has concluded its review, as doing so may constitute an infringement of the economic order.

- Should associative agreements with an indefinite term be subject to mandatory filing?

Yes. Agreements with an indefinite term must be notified to CADE if, in practice, their duration reaches and/or exceeds two (2) years.

- What factors characterize joint ventures for economic activity of determining whether an associative agreement is subject to notification?

A joint venture is characterized by joint and coordinated actions by the parties aimed at the collective pursuit of an economic activity, regardless of whether the activity is expressly for profit.

The determination of whether a joint venture exists requires a case-by-case analysis of the agreement, focusing on the degree of coordination and cooperation necessary to achieve the agreement's objectives.

CADE may consider factors such as:

- common corporate governance structure;
- high degree of interdependence between the parties;
- sharing of essential elements necessary for the economic activity;
- efficiencies that could not naturally be achieved outside the agreement;
- pre-established exclusivity arrangement;
- commercial terms that differ from less stable or less cooperative contractual relationships;
- joint decision-making based on planning and schedules set by the parties;
- temporary acquisition of assets; and
- sharing of risks and results, among others.

This list is illustrative, and the presence of any one of these factors may suffice to establish the existence of a joint venture for economic activity.

Conversely, agreements involving less intensive cooperation, such as simple supply agreements, would not exhibit the level of coordination and cooperation necessary to constitute a true joint venture for economic activity.

- What factors characterize the sharing of risks and results for purposes of notifying an associative agreement to CADE?

There are various scenarios that may constitute the sharing of risks and results, and there is no exhaustive list of situations in which this may occur. Generally, it is observed that when entering into associative agreements or memoranda of understanding, the parties often include specific clauses detailing how they will participate in the success or failure of the business.

This can be seen, for example, in provisions for joint investments or commitments to sales targets, the setting of prices for products or services to be developed within the joint transaction, and the exchange of information regarding the agreement's object for monitoring and tracking purposes, among others.

Nevertheless, the sharing of risks and results may also be implicitly incorporated into the agreement's purpose, being inherent to it and thus closely tied to the very existence of a joint venture for economic activity.

In practice, therefore, this assessment is not limited to the presence or absence of clauses that expressly provide for such sharing, nor is it confined to a mere accounting analysis of revenues, turnover, or losses. For example:

- joint several liability between the parties for the performance of the agreement;
- variable compensation based on sales of the agreement;
- mechanisms that create interdependence between the parties' economic activities;
- pricing methods that affect the parties' expenses and revenues within the joint venture;
- provisions for joint investments or sales targets;
- sharing of common costs; and
- joint decision-making affecting market conditions (e.g., price, supply, quantity).

This list is illustrative, and the presence of any one of these factors may be sufficient to establish the requisite sharing of risks and results.

- How are parties classified as competitors within the relevant market object to the agreement?

Parties are considered competitors if two or more companies operate in the supply of goods or services within the same relevant market, as defined by both product and geographic scope.

- Which parties are considered when assessing the competitive relationship for merger filing purposes?

The competitive relationship is assessed by considering all companies that are part of the economic groups of the contracting parties to the agreement.

- Under what circumstances is potential competition relevant for notifying associative agreements?

Products and/or services currently marketed by one party potentially compete with those products or services under development by another party, even if those products or services have not yet been made available to consumers. For potential competition to be a basis for mandatory filing of an associative agreement, there must be a horizontal or vertical relationship between the products or services already offered and those in development.