18 November 2026

Diogo Thomson de Andrade
Interim President
Administrative Council for Economic Defense (CADE)
SEPN 515, Conjunto D, Lote 4, Edifício Carlos Taurisano, Asa Norte
Brasília, DF, 70770-504
Brazil

Re: Public Consultation on the Revision of CADE Resolution No. 33/2022 (Process No. 08700.010733/2026-14)

Dear Interim President Thomson de Andrade,

The Association for Competitive Technology (ACT) is grateful for the chance to comment on CADE's proposed changes to Resolution No. 33/2022. That resolution sets the rules for notifying acts of concentration under Article 88 of Law No. 12,529/2011 and for the summary procedure used to review them.[1] ACT is a not-for-profit organization that represents the global small business technology developer community. Our members write software and build connected devices that serve customers worldwide, including in Brazil.

For small technology companies, the rules that govern merger control affect decisions well before any agreement is signed. Most small firms cannot afford a public listing, so founders and early investors generally expect that a successful company will one day be acquired. Investors weigh that possibility when they decide whether to fund a startup in the first place. Joining a larger company also often gives a startup the computing power, distribution channels, and compliance resources it needs to reach more customers.[2] Rules that are hard to interpret, or that pull routine minority investments and small acquisitions into long reviews, raise the cost of capital for the innovative firms that bring new competition into Brazilian markets.

Merger review serves small companies best when it relies on careful economic analysis of a transaction's likely effects on consumers, applied case by case, rather than on categorical triggers or presumptions tied to market share, sector, or the form of a deal. The information the parties must supply should be proportionate to the competitive risk the transaction actually presents, and the process needs to be predictable enough that founders and investors can plan around it, because

[1] CADE, "Cade abre consulta pública sobre regras de notificação de atos de concentração" (23 September 2026), https://www.gov.br/cade/pt-br/assuntos/noticias/cade-abre-consulta-publica-sobre-regras-de-notificacao-de-atos-de-concentracao; Brasil Participativo, "Revisão da Resolução nº 33/2022 do Conselho Administrativo de Defesa Econômica," https://brasilparticipativo.presidencia.gov.br/processes/resolucao33.

[2] Association for Competitive Technology (ACT), Comments on Making Improvements to the Premerger Notification and Report Form (26 May 2026), https://actonline.org/wp-content/uploads/ACT-Comments-Premerger-Notification-and-Report-Form.pdf.

uncertainty about whether, and when, a deal can close falls hardest on small firms whose financing and product timelines depend on a clear answer.[3]

ACT therefore supports the Court's Working Group's goal of making the notification criteria more objective and predictable, and of cutting back on notifications that have little bearing on structural control. That shift will let CADE focus its resources on the transactions that actually require scrutiny.[4] Many of the changes in the draft advance that goal. Our comments point to places where the draft could go further, and to provisions that, as written, risk working against startups and the investors who back them.

I. ECONOMIC GROUP, SELLER-SIDE REVENUE, AND MINORITY ACQUISITIONS

ACT supports the clarification in Article 4, §1, II. It confirms that the 20 percent rule applies to companies in which members of the controlling group hold investments. The rule therefore does not, by itself, pull a party's minority shareholders and their other investments into the party's economic group.[5] A growing startup typically has many minority investors, including angel investors, venture funds, and corporate investors. Treating each of those investors as part of the startup's group would push revenue figures far beyond the economic reality of the transaction and generate filings that serve no competitive purpose.

We also support the new Article 4-A, which ties seller-side revenue to the business that is actually transferred, and the simplified test in Article 9. That test replaces the current analysis of horizontal and vertical relationships at lower shareholding levels with a single objective criterion: an increase in shareholding of 20 percent or more, whether alone or together with earlier acquisitions.[6] Both changes let the parties determine whether a filing is required from facts they already know, which is what small companies without in-house antitrust counsel need most.

The Working Group decided not to revise the rules for investment funds in Article 4, §2 at this stage. It suggested that CADE revisit them later, once it has gathered data on how the rules work in practice.[7] Venture and growth funds are a leading source of capital for Brazilian startups. Under the current rule a fund's economic group includes every company in which the fund holds 20 percent or more. We encourage CADE to begin that review soon and to include venture investors and the startups they fund in the data-gathering process.

II. CONTROL PRESUMPTIONS AND STARTUP FINANCING (ARTICLE 4-B)

Article 4-B would presume control where an investor holds, among other things, the right to approve, veto, block, or condition competitively relevant decisions on the company's business plan, annual budget, competitive strategy, commercial policy, resources, or management (item III),

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[3] ACT, Comments on Making Improvements to the Premerger Notification and Report Form, *supra* note 2; Association for Competitive Technology (ACT), Comments on the FTC and DOJ Draft Merger Guidelines (18 September 2023), https://actonline.org/wp-content/uploads/ACT-Comments-re-FTC-DOJ-Draft-Merger-Guideline-Updates-18-Sept-2023.pdf.

[4] Grupo de Trabalho da Resolução nº 33/2022, *Exposição de Motivos* (SEI No. 1821041), para. 6 ("Exposição de Motivos").

[5] *Exposição de Motivos*, paras. 8--10.

[6] *Exposição de Motivos*, paras. 12--17, 31.

[7] *Exposição de Motivos*, para. 11.

or the right to appoint or veto the managers responsible for those decisions (item IV). Paragraph 2 provides that veto, consent, or approval rights intended solely to protect an investment do not, by themselves, amount to control, so long as they give no influence over competitively relevant decisions.

ACT appreciates that the Working Group tried to avoid treating every veto or minority right as control.[8] As drafted, however, items III and IV could reach rights that are ordinary in startup financing. Investors in startup financing rounds, including venture funds and corporate investors, commonly receive consent rights over the annual budget or the use of the funds they invest, a board seat, or a veto over the appointment of senior officers. The company usually has little operating history, and those rights are the investor's main protection against loss. Read together with the definition of business plan in paragraph 4, items III and IV could treat those rights as presumptive shared control. An ordinary minority financing round would then require notification and prior approval as an acquisition of control. Brazil's own startup framework recognizes that investors can fund young companies without taking management or voting rights in them, [9] and CADE's notification rules should leave room for the customary protections that make that investment possible.

We ask CADE to explain, in the final Resolution or in accompanying guidance, how paragraph 2 applies to the protective rights that are customarily granted to minority investors in startup and venture financings, with illustrations drawn from its decisional practice. We also ask CADE to reconsider paragraph 3. That paragraph would require parties to present "any other situations" that may amount to sole or shared control. A duty framed this way leaves parties guessing at the outer limit of their obligation. For a small company it effectively requires outside counsel to review every investor agreement before each financing round. CADE can already require additional information in a specific case under Article 2 of the Resolution and Article 53, §1 of Law No. 12,529/2011. That existing power can serve the same purpose without imposing an open-ended duty on the parties.

III. EXCLUSIONS FROM THE SUMMARY PROCEDURE (ARTICLE 8-A)

Article 8-A would allow the General Superintendence to decline to use the summary procedure, even for a transaction that fits one of the Article 8 categories, where a party is considered to have a disruptive or disciplining competitive role (item I) or where the target is a potential or recent entrant (item II), among other cases. The Exposição de Motivos states that these factors serve a procedural function only and do not constitute a presumption of harm, illegality, or need for intervention, a statement ACT welcomes.[10]

Items I and II describe a large share of the startups that larger companies acquire. Almost any young technology firm can be described as a recent entrant, and many are acquired precisely because they built something new. If these items come to be applied by default to acquisitions of startups, those transactions would lose the 30-day timeframe in Article 7, §2 and face the fuller information requirements of Annex I. The added cost and delay would fall on the small seller as

[8] *Exposição de Motivos*, para. 23.
[9] Lei Complementar nº 182, de 1º de junho de 2021 (Marco Legal das Startups), arts. 2, I and 8, I, https://www.planalto.gov.br/ccivil_03/leis/lcp/lcp182.htm.
[10] *Exposição de Motivos*, para. 28.

much as on the buyer. Many of these acquisitions combine complementary capabilities with no horizontal overlap, which makes them among the transactions least likely to harm competition.

We ask CADE to place the Exposição de Motivos' statement that the Article 8-A factors are procedural and carry no presumption of harm into the text of the Resolution itself, so that it guides future practice. We also ask that a decision under Article 8-A be made early in the review and explain why the factor matters for competition in the specific markets concerned, and that the final text confirm that the acquisition of a young or small company is not, without more, a reason to leave the summary procedure.

IV. GUIDANCE ON THE ARTICLE 88, §7 CALL-IN POWER (ARTICLE 9-A)

Article 88, §7 of Law No. 12,529/2011 allows CADE, within one year of consummation, to require the submission of transactions that do not meet the notification criteria.[11] New Article 9-A would allow CADE to issue general guidance on how it uses that power. The Exposição de Motivos states that the draft does not turn the power into a general obligation to notify, creates no automatic categories of transactions subject to it, and keeps it as an exceptional instrument for selecting transactions after the fact.[12] ACT supports that approach, and any guidance should give parties more certainty without widening the range of transactions that CADE may call in.

The Exposição de Motivos also lists factors the guidance might address, including characteristics of concentrated sectors, strategic assets, less traditional forms of acquisition, and relevant technological change. It refers to recent CADE cases involving talent, technology, and innovative capabilities in AI markets.[13] Factors stated at that level of generality would describe nearly every acquisition of a technology company. For small technology firms, particularly in AI and cybersecurity, hiring arrangements and non-exclusive technology licenses are often the only practical way to exit or to transfer what they have built. Treating those structures as suspect merely because of their form would close off that path.[14]

We therefore ask that any guidance under Article 9-A be published in draft for public consultation before it is adopted, and that it describe the circumstances that may justify a request under §7 by reference to an identified theory of competitive harm rather than by sector, technology, or transaction form. We also ask that the guidance commit CADE to act as early as possible within the one-year period and to give reasons when it requests submission, and that it explain how the parties to a transaction below the notification criteria can obtain early confirmation that CADE does not intend to request its submission.

V. NOTIFICATION FORMS AND A TECHNICAL CORRECTION

The draft states that Annexes I and II will be adjusted to reflect the changes to the text.[15] Because the forms account for most of the cost of a filing, we ask CADE to publish the revised annexes for

[11] Lei nº 12.529, de 30 de novembro de 2011, art. 88, §7, https://www.planalto.gov.br/ccivil_03/_ato2011-2014/2011/lei/l12529.htm.
[12] *Exposição de Motivos*, paras. 33--35.
[13] *Exposição de Motivos*, para. 34 and n. 11.
[14] ACT, Comments on Making Improvements to the Premerger Notification and Report Form, *supra* note 2.
[15] Draft Resolution amending Resolution No. 33/2022 (Review Document), Note 1.

comment, to scale information requirements to the competitive risk a transaction presents, and to consider reduced requirements where the target is a small company or where the parties have no horizontal overlap.

Finally, Article 11 of the draft would revoke "Resolution No. 33/2026." We understand this to refer to Resolution No. 33/2022 and suggest correcting it in the final text.

ACT appreciates CADE's consideration of these comments and would welcome the opportunity to share the experience of small technology companies that invest, compete, and seek investment in Brazil. Please contact the undersigned with any questions.

Sincerely,



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