CCIA Comments in Response to CADE's Consultation Regarding Revisions to Resolution No. 33/2022

The Computer & Communications Industry Association (CCIA)[1] welcomes the opportunity to submit comments to the Administrative Council for Economic Defense (CADE) on the proposed updates to CADE Resolution No. 33/2022,[2] which was released for public consultation on September 23, 2026.[3]

CCIA supports CADE's effort to simplify notification requirements, improve legal certainty, and direct its resources toward transactions that require closer review.[4] Predictable jurisdictional rules and proportionate information requirements help businesses determine their obligations while allowing CADE to identify potential competitive concerns.[5] CADE received 594 merger notifications in 2023 and 873 in 2025.[6] Separately, among the 849 merger cases decided in 2025, 818 were approved without restrictions.[7] Of those 849 cases, 799 (approximately 94 percent) were decided under the fast-track procedure.[8] These figures support preserving an efficient procedure for straightforward transactions while directing additional inquiry toward cases requiring closer examination.

Acquisitions are an important exit route for venture-backed startups and can influence investment incentives.[9] Notification requirements should therefore be calibrated to their screening value and administrative burden, while preserving effective review of transactions that may harm competition.

[1] CCIA is an international, not-for-profit trade association representing a broad cross-section of technology and communications firms. For over fifty years, CCIA has promoted open markets, open systems, and open networks. The Association advocates for sound competition policy and antitrust enforcement. CCIA members employ more than 1.6 million workers, invest more than $100 billion in research and development, and contribute trillions of dollars in productivity to the global economy. For more, visit www.ccianet.org.
[2] CADE, Resolução No. 33, de 14 de Abril de 2022 (Braz.).
[3] CADE, *Revisão da Resolução No. 33/2022 do Conselho Administrativo de Defesa Econômica* (Sept. 28, 2026).
[4] CADE, *Exposição de Motivos* ¶¶ 5–6, SEI No. 1821041 (2026) [hereinafter Exposição de Motivos].
[5] OECD, *Recommendation of the Council on Merger Review* §§ I.2–3, II.1–2, OECD/LEGAL/0333 (rev. June 3, 2025) [hereinafter Merger Review Recommendation]; Comput. & Commc'ns Indus. Ass'n, *Submission to European Commission on Merger Control Procedures Inception Impact Assessment Consultation* 1 (Apr. 23, 2021) [hereinafter EU Simplification Comments]; Comput. & Commc'ns Indus. Ass'n, *CMA's Mergers Guidance (CMA2) and Mergers Notice Template* 1, 4–5 (Aug. 2025) [hereinafter CMA Procedure Comments]; Comput. & Commc'ns Indus. Ass'n, *Comments in Response to the FTC and DOJ Request for Information on the Hart-Scott-Rodino Premerger Notification Form* 1–2 (May 26, 2026) [hereinafter HSR Form Comments].
[6] CADE, *Sistema do Cade Simplifica Notificação de Operações Sumárias* (Mar. 19, 2024); CADE, *Cade Divulga Anuário 2025 com Balanço da Atuação em Defesa da Concorrência* (Feb. 11, 2026).
[7] Thiago Luis dos Santos Pinto et al., CADE, Departamento de Estudos Econômicos, *Mensuração dos Benefícios Esperados da Atuação do Cade em 2025* 8, Documento de Trabalho No. 002/2026 (2026).
[8] *Id.*
[9] Brian J. Broughman et al., *No Exit*, 100 N.Y.U. L. Rev. 1481, 1492–97 (2025); Susan Woodward, *Antitrust Enforcement Over-deters Acquisitions, Squeezing Smaller Startups and Venture Capital Investors* 2–3 (CCIA Rsch. Ctr., Jan. 2025).

The proposed changes keep the existing turnover thresholds and basic structure of Brazilian merger control.[10] Within that framework, CCIA supports excluding non-controlling upstream investors from ordinary group revenue calculations, linking seller-side revenue to the business transferred, and simplifying non-controlling share acquisitions. These changes should reduce filings driven by revenue or holdings that do not reflect the transaction's economic scope. These simplifications should be accompanied by narrowly defined control criteria, proportionate information requirements, and express safeguards for below-threshold review. Proposed Articles 8-A and 9-A should not be adopted in their current form.

I. Simpler Revenue and Shareholding Rules

CCIA supports Article 4 § 1's clarification excluding the automatic attribution of revenue from non-controlling upstream investors.[11] The proposal retains the separate investment-fund rules under Article 4 § 2.[12] CADE should also reconsider attributing an investee's revenue solely because the commonly controlled companies hold a 20 percent interest, particularly where that interest is non-voting and confers no control or influence over commercial strategy.[13] CADE should provide worked examples of the common-control perimeter, aggregation of holdings, and treatment of investee revenue. Where a non-controlled entity is included in the group calculation, CADE should permit parties to provide reasonably available information, explain material gaps, and seek clarification of their notification obligations, while preserving the distinction between turnover calculations and information required for the competitive assessment.[14]

CCIA also supports CADE's proposed attribution of seller-side revenue to the economic object transferred for covered transactions under Article 4-A.[15] Focusing on the acquired business, rather than businesses retained by the seller, should reduce filings driven by revenue unrelated to the object of the transaction.[16] Notification criteria should reflect a material economic connection between the acquired business and Brazil; the acquirer's local presence or

[10] Conselho Administrativo de Defesa Econômica [CADE], *Minuta de Resolução Cade No. XX/2026* arts. 4, 4-A, 4-B, 8-A, 9, 9-A (proposed Sept. 2026) [hereinafter Draft Notification Resolution]; Exposição de Motivos, *supra* note 4, ¶¶ 5–6.
[11] Draft Notification Resolution, *supra* note 10, art. 4, § 1, I–II; Exposição de Motivos, *supra* note 4, ¶¶ 8–11.
[12] Draft Notification Resolution, *supra* note 10, art. 4, § 2; Exposição de Motivos, *supra* note 4, ¶ 11.
[13] Merger Review Recommendation, *supra* note 5, §§ II.1–2; *cf.* CMA Procedure Comments, *supra* note 5, at 1–2.
[14] Draft Notification Resolution, *supra* note 10, art. 4, § 3; Int'l Competition Network, *Recommended Practices for Merger Notification and Review Procedures* §§ II.D cmts. 1–2, II.E cmts. 2–3, II.F cmts. 1–2, VI.E cmt. 3, at 5–7, 21 (2018) [hereinafter Merger Notification Practices]; CMA Procedure Comments, *supra* note 5, at 1, 4–5.
[15] Draft Notification Resolution, *supra* note 10, art. 4-A, caput & §§ 1–2; Exposição de Motivos, *supra* note 4, ¶¶ 12–19.
[16] Merger Notification Practices, *supra* note 14, § II.B cmt. 3, at 4.

the seller's unrelated activities should not alone establish that connection.[17] CADE should publish examples explaining the allocation of revenue between transferred and retained businesses, revenue recorded in another seller entity, and the relevant reference years. Revenue recorded elsewhere in the seller's group should count only to the extent attributable to the economic object transferred.[18] Information concerning retained seller businesses should be requested where relevant to the competitive assessment, with proportionate limits reflected in Annexes I and II.[19] The revision introduces no specific new rules for asset acquisitions, which are expressly excluded from Article 4-A's scope whether tangible or intangible.[20] CADE should identify the existing criteria applicable to those acquisitions; any specific reform remains a subject for possible future review.[21]

The two-year aggregation rule under Article 4-A § 4 should have boundaries that parties can apply in advance.[22] CADE should explain the meaning of the same persons, companies, or economic groups, the treatment of earlier acquisitions, and the relevant years for calculating the acquired businesses' revenue. Article 4-A § 3 permits disregard of artificial or temporary reorganizations, or those lacking an independent economic rationale, undertaken with the purpose or effect of avoiding notification thresholds.[23] Published examples should explain how that provision will be applied. Consistent with Article 4-A § 6, CADE should limit reorganization disclosures to matters material to potential application of the aggregation rule and reasonably available to the notifying parties, allowing them to explain material information gaps concerning entities they do not control.[24]

CCIA supports replacing the existing lower 5 percent notification thresholds for non-controlling acquisitions involving competitors or vertically related businesses with Article 9's criterion of an increment of 20 percent or more, alone or together with earlier acquisitions.[25] An objective shareholding criterion should reduce filings driven solely by small non-controlling acquisitions and avoid requiring an initial horizontal or vertical market assessment to determine

[17] Merger Notification Practices, *supra* note 14, §§ II.B cmt. 3, II.C cmts. 1–2, 5, at 4–5; Merger Review Recommendation, *supra* note 5, § II.6; *cf.* CMA Procedure Comments, *supra* note 5, at 2.
[18] Draft Notification Resolution, *supra* note 10, art. 4-A, §§ 1–2; Merger Notification Practices, *supra* note 14, § II.B cmt. 3, at 4.
[19] Draft Notification Resolution, *supra* note 10, art. 4-A, § 7; Merger Notification Practices, *supra* note 14, § VI.E cmts. 1–3, at 20–21; CMA Procedure Comments, *supra* note 5, at 4–5.
[20] Draft Notification Resolution, *supra* note 10, art. 4-A, caput; Exposição de Motivos, *supra* note 4, ¶ 13.
[21] Exposição de Motivos, *supra* note 4, ¶ 13.
[22] Draft Notification Resolution, *supra* note 10, art. 4-A, §§ 4–5; Merger Notification Practices, *supra* note 14, §§ II.D–F, at 5–7; *cf.* HSR Form Comments, *supra* note 5, at 1–2.
[23] Draft Notification Resolution, *supra* note 10, art. 4-A, § 3.
[24] Draft Notification Resolution, *supra* note 10, art. 4-A, § 6; Merger Notification Practices, *supra* note 14, § VI.E cmt. 3, at 21; *cf.* CMA Procedure Comments, *supra* note 5, at 4–5.
[25] Draft Notification Resolution, *supra* note 10, art. 9, II; Resolução No. 33/2022, art. 10, II; Exposição de Motivos, *supra* note 4, ¶¶ 29–32.

that trigger. CADE should also examine further exclusions for purely passive, non-controlling acquisitions that are unlikely to be competitively significant.[26] CCIA also supports the exemptions for purchases by an existing sole controller and mere reinforcement of existing joint control without a qualitative change in the control structure.[27] CADE should publish examples explaining the calculation baseline, treatment of earlier purchases and divestments, and changes in the quality of control. Acquisitions conferring control remain subject to the separate notification trigger, while mandatory filing continues to depend on the applicable revenue thresholds.[28]

CCIA supports retaining the existing rule that notification of a convertible-security subscription removes the need to notify its subsequent conversion into shares.[29] Proposed Article 10 § 3 carries forward that rule from Article 11 § 3 of Resolution No. 33/2022.[30] CADE should illustrate the cumulative conditions for notification at subscription and explain how subsequent changes to an instrument's rights or terms affect the analysis. It should also clarify the relationship between "competitively sensitive matters" in Article 10 II and "*competitively relevant decisions*" in Article 4-B, using consistent terminology where the same concept is intended and expressly explaining any intended difference.[31]

II. Clarify Control and the Scope of Covered Transactions

Article 4-B would codify qualitative indicia of control, including rights over competitively relevant decisions.[32] Items II–V should be narrowed to ascertainable rights conferring power over strategic commercial decisions, including the business plan, annual budget, major investments, and senior-management appointments, assessed in their governance context.[33] Article 4-B § 2 excludes rights intended exclusively to protect an investment where those rights do not confer influence over competitively relevant decisions.[34] That exclusion should be preserved and explained. The definition of administrators in Article 4-B § 1 should

[26] Merger Notification Practices, *supra* note 14, § I.A cmts. 3–4, at 1.
[27] Draft Notification Resolution, *supra* note 10, art. 9, §§ 1–2; Exposição de Motivos, *supra* note 4, ¶¶ 29–32.
[28] Draft Notification Resolution, *supra* note 10, art. 9, I; Lei No. 12.529, de 30 de Novembro de 2011, art. 88, I–II (Braz.).
[29] Resolução No. 33/2022, art. 11, § 3; *cf.* EU Simplification Comments, *supra* note 5, at 1; *cf.* HSR Form Comments, *supra* note 5, at 7–8.
[30] Draft Notification Resolution, *supra* note 10, art. 10, § 3; Resolução No. 33/2022, art. 11, § 3.
[31] Draft Notification Resolution, *supra* note 10, arts. 4-B, 10, II; Merger Review Recommendation, *supra* note 5, §§ II.1–2.
[32] Draft Notification Resolution, *supra* note 10, art. 4-B, caput, I–V; Exposição de Motivos, *supra* note 4, ¶¶ 20–24.
[33] Draft Notification Resolution, *supra* note 10, art. 4-B, II–V & § 1; Merger Notification Practices, *supra* note 14, § I.B cmt. 3, at 1–2; *cf.* CMA Procedure Comments, *supra* note 5, at 1–2.
[34] Draft Notification Resolution, *supra* note 10, art. 4-B, § 2; Exposição de Motivos, *supra* note 4, ¶¶ 22–23.

focus on responsibility for strategic commercial decisions; appointment or consultation rights concerning personnel without that responsibility should not, by themselves, establish control.[35]

Article 4-B should expressly provide that the control presumptions may be rebutted by demonstrating that the rights, assessed together and in their governance context, do not confer influence over competitively relevant decisions.[36] Published examples should address anti-dilution protections, issuance of shares or convertible securities, fundamental changes to constitutional documents or business scope, and related-party transactions, distinguishing rights limited to protecting an investment from powers over ordinary management or commercial strategy.[37] Information rights and board-observer rights should be assessed in their contractual and governance context. Any competitive concern arising from access to sensitive information should remain analytically distinct from whether the investor acquires control for notification purposes.[38]

Article 4-B § 3 should retain flexibility without making the filing trigger open-ended.[39] A clear filing definition need not restrict consideration of other governance rights or forms of influence in the substantive assessment of a transaction properly before CADE.[40] It would also leave intact CADE's existing call-in power, subject to the statutory limits discussed in Section III.[41] Item V and the residual category should require equivalent power over strategic commercial decisions; a contract, license, or asset-use right should not, by itself, establish control.[42] Any related disclosure obligation should be tied to that same defined standard. This would implement the explanatory memorandum's recognition that excessively open concepts can undermine a rule used to determine notification obligations.[43]

CADE should clarify how the statutory notification criteria apply to arrangements combining hiring and non-exclusive licensing, including hire-and-license-out (HALO)

[35] Draft Notification Resolution, *supra* note 10, art. 4-B, II–V & § 1; Merger Notification Practices, *supra* note 14, § I.B cmt. 3, at 1–2; *cf.* CMA Procedure Comments, *supra* note 5, at 1–2.
[36] Draft Notification Resolution, *supra* note 10, art. 4-B; Exposição de Motivos, *supra* note 4, ¶ 24; Merger Review Recommendation, *supra* note 5, §§ II.1–2; Merger Notification Practices, *supra* note 14, § I.B cmt. 3, at 1–2.
[37] European Comm'n, Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No. 139/2004 on the Control of Concentrations Between Undertakings, 2008 O.J. (C 95) 1, ¶¶ 66–67; European Commission, *Case COMP/M.5830—Olympic/Aegean Airlines* ¶ 16, C(2011) 316 final (Jan. 26, 2011); *cf.* CMA Procedure Comments, *supra* note 5, at 1–2; Draft Notification Resolution, *supra* note 10, art. 4-B, § 2.
[38] Draft Notification Resolution, *supra* note 10, art. 4-B, §§ 2–3; Merger Review Recommendation, *supra* note 5, §§ II.1, III.2; *cf.* Comput. & Commc'ns Indus. Ass'n, *Response to CMA Invitation to Comment on Amazon's Partnership with Anthropic* 7 (May 10, 2024) (distinguishing acquisitions of influence from non-controlling investment under UK law).
[39] Draft Notification Resolution, *supra* note 10, art. 4-B, § 3.
[40] Int'l Competition Network, Recommended Practices for Merger Notification and Review Procedures § I.B cmt. 3, at 1–2 (2018); *cf.* Draft Notification Resolution, *supra* note 10, art. 4, § 3 (illustrating the distinction between turnover-group calculations and substantive assessment); CMA Procedure Comments, *supra* note 5, at 1–2.
[41] Lei No. 12.529, de 30 de Novembro de 2011, arts. 88, § 7, 90 (Braz.), official text.
[42] Draft Notification Resolution, *supra* note 10, art. 4-B, caput, V & § 3; Exposição de Motivos, *supra* note 4, ¶ 24; Merger Notification Practices, *supra* note 14, § I.B cmt. 3, at 1–2.
[43] Exposição de Motivos, *supra* note 4, ¶ 20.

arrangements.[44] Licensing can facilitate the combination of complementary technology and expertise while allowing the licensor to continue using and licensing its intellectual property.[45] CADE should identify the category under Article 90 of Law No. 12.529/2011 that applies and the features of the combined arrangement that satisfy that category.[46] That assessment should identify the scope and exclusivity of the license, the rights retained by the licensor, and any transfer of ownership, control, or economic activities; the filing analysis should turn on ascertainable rights and transfers rather than predictions about the licensor's post-transaction commercial viability.[47]

III. Ensure Predictable and Limited Use of Below-Threshold Call-Ins

Proposed Article 9-A would permit CADE to issue periodic guidance on its existing call-in power.[48] Article 88 § 7 of Law No. 12.529/2011 already permits CADE to require submission of transactions outside the ordinary notification criteria within one year of consummation.[49] Fewer routine filings may free capacity for more selective use of that power, making predictable boundaries and procedures especially important. The explanatory memorandum confirms that the proposal does not create a general obligation to notify below-threshold transactions or automatic categories subject to call-in.[50] The guidance should preserve that distinction.

Proposed Article 9-A should be omitted in its current form. If retained, it should expressly preserve the transaction-specific nature of Article 88 § 7 review and prevent guidance from creating general notification obligations beyond those established by law.[51] Any guidance issued under Article 88 § 7 should undergo prior public consultation, explain its competition rationale and supporting evidence, and specify a scheduled public review date.[52] It should explain how concentrated sectors, cross-shareholdings, strategic assets, technological change, or

[44] HSR Form Comments, *supra* note 5, at 2–6.
[45] U.S. Dep't of Justice & Fed. Trade Comm'n, *Antitrust Guidelines for the Licensing of Intellectual Property* §§ 2.3, 3.1, at 5–7 (Jan. 12, 2017).
[46] Lei No. 12.529/2011, art. 90.
[47] Int'l Competition Network, Recommended Practices for Merger Analysis § I.B cmt. 3, at 3 (2025) [hereinafter Merger Analysis Practices]; *see also* CADE, *Cade Arquiva Três APACs, Determina Notificação da Operação Microsoft/Inflection e Apuração de Duas Novas Operações Envolvendo Google* (May 13, 2026) (describing transaction-specific review of combined licensing and hiring arrangements and exercise of the Article 88 § 7 call-in power); *cf.* HSR Form Comments, *supra* note 5, at 3–6.
[48] Draft Notification Resolution, *supra* note 10, art. 9-A.
[49] Lei No. 12.529/2011, art. 88, § 7.
[50] Exposição de Motivos, *supra* note 4, ¶¶ 33–35.
[51] Merger Review Recommendation, *supra* note 5, §§ I.3, II.1–2, II.5–6; Merger Notification Practices, *supra* note 14, § II.A cmt. 3, at 3; Comput. & Commc'ns Indus. Ass'n Eur., *Public Consultation on the Introduction of a Merger Control Framework for Addressing Below-Threshold Mergers Likely to Harm Competition* 1, 3 (published Feb. 2025) [hereinafter French Merger Comments]; Draft Notification Resolution, *supra* note 10, art. 9-A.
[52] Merger Notification Practices, *supra* note 14, § VIII.C cmt. 3, at 27; *Cf.* EU Simplification Comments, *supra* note 5, at 1; French Merger Comments, *supra* note 51, at 1, 3.

new forms of economic organization may indicate transaction-specific potential competitive effects in Brazil.[53] Participation in a technology sector or a party's identity should not replace grounds connected to the particular transaction and its potential competitive effects.

The guidance should identify the administrative act by which CADE exercises its call-in power within the statutory one-year period and explain how the parties will be notified.[54] A decision requiring notification should set out the transaction-specific reasons for review, subject to lawful confidentiality protections.[55] CADE should explain the existing opportunity to respond and the suspensive appeal to the Tribunal from a General Superintendence decision requiring notification under Resolution No. 24/2019.[56] Clear procedures would make the exercise of this power more predictable and enable parties to address the authority's concerns meaningfully.[57]

Resolution No. 12/2015 already provides for formal consultations on defined merger-notification questions, with Article 6 setting a maximum of 120 days from assignment to a rapporteur for bringing the consultation to judgment.[58] CADE should clarify the availability of that procedure and provide a streamlined voluntary route for questions concerning possible call-in that require faster clarification, specifying the information required, response timetable, legal status of the response, and conditions governing reliance.[59]

IV. Preserve Proportionate Fast Track Review

CCIA recommends deleting proposed Article 8-A's non-exhaustive list of qualitative grounds for denying fast-track treatment, particularly given proposed Article 7 § 4's requirement to complete Annex I when a filing is converted to ordinary review.[60] CADE's existing framework already permits additional fact-finding under Articles 119 III and 120 of RICADE.[61] Before adopting additional qualitative exclusions from fast-track review, CADE should explain why its existing tools are insufficient to address the identified procedural need.

---

[53] Exposição de Motivos, *supra* note 4, ¶¶ 34–35; CADE, *Revisão da Resolução No. 33/2022 do Conselho Administrativo de Defesa Econômica* (Sept. 28, 2026).
[54] Lei No. 12.529/2011, art. 88, § 7; CADE, Resolução No. 24, de 8 de Julho de 2019, arts. 14–15 (Braz.); OECD, *Recommendation of the Council on Transparency and Procedural Fairness in Competition Law Enforcement* §§ II.5(a)–(f), II.6–7, OECD/LEGAL/0465 (Oct. 6, 2021) [hereinafter Procedural Fairness Recommendation]; Comput. & Commc'ns Indus. Ass'n, *Comments in Response to the Japan Fair Trade Commission's Request for Public Comments on the Proposed Revisions to the Business Combination Guidelines* 7–8 (Aug. 2026) [hereinafter JFTC Merger Comments].
[55] Procedural Fairness Recommendation, *supra* note 54, §§ II.5(a)–(d), II.6; JFTC Merger Comments, *supra* note 54, at 7–8.
[56] Resolução No. 24/2019, arts. 2, sole para., 14–19, especially art. 15, §§ 1–3.
[57] Procedural Fairness Recommendation, *supra* note 54, §§ II.5(a)–(f), II.7; JFTC Merger Comments, *supra* note 54, at 7–8.
[58] CADE, Resolução No. 12, de 11 de Março de 2015, arts. 1–4, 6, 8–9 (Braz.).
[59] Eur. Competition Network, Joint Statement on the Implementation of Merger Call-in Mechanisms ¶¶ 4, 9–11 (June 23, 2026); French Merger Comments, *supra* note 51, at 1, 3; Merger Notification Practices, *supra* note 14, § V.C cmts. 1–2, at 17.
[60] Draft Notification Resolution, *supra* note 10, arts. 7, § 4, 8-A; Exposição de Motivos, *supra* note 4, ¶¶ 25–28.
[61] CADE, Regimento Interno do Cade, arts. 119, III, 120 (consolidated June 22, 2026) (Braz.).

Transactions meeting Article 8's published eligibility criteria should ordinarily receive fast-track treatment unless a reasoned decision identifies transaction-specific grounds requiring ordinary review.[62] If Article 8-A is retained, CADE should specify the evidence relevant to a disruptive or disciplining competitive role, the basis for identifying potential entry, the period relevant to recent entry, and the materiality of cross-shareholdings.[63] A decision declining fast-track treatment should identify transaction-specific facts explaining why broader inquiry is needed, without treating a listed characteristic as a presumption of competitive harm.[64]

Proposed Article 7 § 4 would require a reasoned conversion decision and completion of Annex I.[65] Transactions remaining in fast-track review should retain the 30-day decision period and the requirement to explain any delay.[66] CADE should retain the requirement for a reasoned conversion decision and remove the automatic obligation to complete the full Annex I. Upon conversion, the Superintendence-General should identify the additional items necessary for review, credit information already provided, waive immaterial items, and specify a reasonable response timetable.[67] CADE should also explain how conversion and any required amendment affect the statutory review period.[68]

Where a transaction proceeds to ordinary review, the substantive assessment should identify the competitive conditions likely to prevail without the transaction and explain how the transaction would change them.[69] Predictions concerning entry or innovation should draw on relevant evidence of capabilities, incentives, financing, development plans, and commercial milestones.[70] CADE should explain how that evidence supports the expected development and how the transaction would affect its likelihood, timing, or scale.[71]

The assessment should consider substantiated, merger-specific innovation efficiencies, including whether they are likely, timely, verifiable, and capable of offsetting competitive harm.[72]

---

[62] Merger Notification Practices, *supra* note 14, § IV.B cmt. 1, at 11; EU Simplification Comments, *supra* note 5, at 1.
[63] CADE, *Guia para Análise de Atos de Concentração Horizontal* §§ 4.3.1–4.3.2, at 51–52 (2016); *cf.* CMA Procedure Comments, *supra* note 5, at 4–5.
[64] Exposição de Motivos, *supra* note 4, ¶ 28; EU Simplification Comments, *supra* note 5, at 1; *cf.* CMA Procedure Comments, *supra* note 5, at 4–5.
[65] Draft Notification Resolution, *supra* note 10, art. 7, § 4 & art. 8-A; Exposição de Motivos, *supra* note 4, ¶¶ 25–28.
[66] Draft Notification Resolution, *supra* note 10, art. 7, §§ 2–3.
[67] Merger Review Recommendation, *supra* note 5, §§ I.2–3; Merger Notification Practices, *supra* note 14, § VI.E cmts. 1–3, at 20–21; CMA Procedure Comments, *supra* note 5, at 4–5; HSR Form Comments, *supra* note 5, at 7–8; Draft Notification Resolution, *supra* note 10, art. 7, § 4; EU Simplification Comments, *supra* note 5, at 1.
[68] Lei No. 12.529/2011, art. 88, § 2; Draft Notification Resolution, *supra* note 10, art. 7, §§ 2–4.
[69] Merger Analysis Practices, *supra* note 47, §§ I.C cmts. 1–4, I.D cmts. 1–4, at 3–5; Merger Review Recommendation, *supra* note 5, §§ III.7–9; OECD, *The Concept of Potential Competition* §§ 2.4, 4.2, at 13, 24–31, DAF/COMP(2021)3 (2021) [hereinafter Potential Competition].
[70] Potential Competition, *supra* note 69, §§ 2.4, 4.2, at 13, 24–31; Merger Analysis Practices, *supra* note 47, § I.D cmts. 2–4, at 4–5; JFTC Merger Comments, *supra* note 54, at 3–4.
[71] JFTC Merger Comments, *supra* note 54, at 3–4; Merger Analysis Practices, *supra* note 47, § I.C cmts. 1–4, at 3–4.
[72] CADE, *Guia para Análise de Atos de Concentração Horizontal* §§ 3.1–3.3, at 45–46 (2016);

Where reliable quantification is unavailable, credible ordinary-course integration plans, research budgets, and technical milestones should receive appropriate weight; a longer realization period should not, by itself, justify greater skepticism toward efficiencies than toward competitive harms predicted over a comparable period.[73]

V. Keep Filing Requirements and Implementation Proportionate

Article 3 § 1 would require an explanation and full identification of a directly involved party that does not join the notification.[74] The explanatory memorandum confirms that notification by only some parties remains available where legally admissible.[75] CADE should accept a brief, good-faith explanation where joint filing is impracticable and limit identification requirements to information reasonably available to the notifying parties, including public sources. Additional information outside the notifying parties' reasonable access should be sought directly from the non-signing party or waived where appropriate. Parties should identify material information they could not obtain and explain the limitation. Its absence should not prevent the filing from being deemed complete unless it materially impairs CADE's ability to assess the transaction.[76]

CADE should publish the final forms and worked examples with sufficient preparation time and consult on material new reporting requirements, explaining their screening value and expected compliance burden.[77] CADE should consider whether targeted requests or less burdensome alternatives would achieve the same objective. Forms should implement the clarified filing rules rather than introduce wider substantive obligations.[78]

Proposed Article 12 provides for entry into force upon publication.[79] The final resolution should explain its application to pending filings and earlier transactions and allow reasonable preparation time. Transitional provisions should address new duties arising from changes in interpretation and the protection of established situations assessed under the general

---

Merger Review Recommendation, *supra* note 5, § III.11(a); OECD, *Efficiencies in Merger Control* § 2.2, at 14–17, DAF/COMP/WP3(2025)1 (2025) [hereinafter Merger Efficiencies]; JFTC Merger Comments, *supra* note 54, at 11–12; Comput. & Commc'ns Indus. Ass'n, *CMA's Merger Efficiencies Review* 2, 4 (Mar. 2026) [hereinafter CMA Efficiencies Comments].

[73] Merger Efficiencies, *supra* note 72, § 2.2, at 14–17; JFTC Merger Comments, *supra* note 54, at 12; CMA Efficiencies Comments, *supra* note 72, at 2, 4.

[74] Draft Notification Resolution, *supra* note 10, art. 3, § 1.

[75] Exposição de Motivos, *supra* note 4, ¶ 7.

[76] Merger Notification Practices, *supra* note 14, §§ IV.E cmt. 1, VI.E cmt. 3, at 13–14, 21; *cf.* HSR Form Comments, *supra* note 5, at 2; CMA Procedure Comments, *supra* note 5, at 4–5.

[77] Merger Review Recommendation, *supra* note 5, § I.2; Merger Notification Practices, *supra* note 14, § IV.C cmts. 2–3, at 12; HSR Form Comments, *supra* note 5, at 1–2.

[78] Draft Notification Resolution, *supra* note 10, annex note; CMA Procedure Comments, *supra* note 5, at 4–5; EU Simplification Comments, *supra* note 5, at 1.

[79] Draft Notification Resolution, *supra* note 10, art. 12; Procedural Fairness Recommendation, *supra* note 54, §§ II.1(a), II.4(c); *cf.* EU Simplification Comments, *supra* note 5, at 1.

interpretations applicable at the relevant time, consistent with Brazil's Lei de Introdução às Normas do Direito Brasileiro (LINDB).[80]

VI. Conclusion

CCIA supports the proposed simplifications to economic-group calculations, seller-side revenue attribution, and non-controlling share acquisitions. The final resolution should further narrow the treatment of passive investments, define control through ascertainable strategic rights, and preserve proportionate information requirements. Proposed Articles 8-A and 9-A should not be adopted in their current form; any retained provisions should incorporate the safeguards identified above. CCIA appreciates the opportunity to comment on CADE's review of its merger-control framework and looks forward to continued engagement.

[80] Decreto-Lei No. 4.657, de 4 de Setembro de 1942, arts. 23–24, 30 (Braz., as amended).