

“GUN JUMPING” ON CADE’S RADAR

Since 2012, prior approval of the Brazilian Administrative Council of Economic Defense (CADE) is required in order for large merger operations take place in Brazil. However, only recently CADE made public its special concern in relation to unauthorized starts or the so-called “gun jumping”. According to CADE’s understanding, gun jumping occurs whenever the companies that will merge start to share information, facilities or Intellectual Property rights, before the authorization of the said administrative council is granted. In order to educate the market in relation to how it will apply the rules that inhibits gun jumping, CADE issued in May this year the “Guide for Analysis of Previous Consummation of Economic Concentration Acts”. Amongst the various acts of the parties involved in a merger that may characterize gun jumping, the Guide mentions the following in the Intellectual Property area: (i) sharing of non-public information relating to marks and patents and Research and Development (R&D); (ii) signature of exclusive licenses of Intellectual Property rights between the parties; and (iii) the joint development of products. In addition to those acts, acquisition of marks, patents and other Intellectual Property rights may per se be qualified as economic concentration acts and must be submitted to CADE’s prior approval.

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