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Latin American and Caribbean Competition Forum

**LATIN AMERICAN AND CARIBBEAN COMPETITION FORUM - SESSION I:
COMPETITION, FINTECHS, AND OPEN BANKING**

- Contribution from Brazil -

9-10 October 2024

This attached document from Brazil is circulated to the Latin American and Caribbean Competition Forum (LACCF) FOR DISCUSSION under Session I at its forthcoming meeting to be held on 9-10 October 2024 in Santo Domingo, Dominican Republic.

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Session I: Competition, Fintechs and Open Banking

Brief Considerations on the Market and the Performance of CADE

– Contribution from Brazil¹ –

1. Introduction

1. Digitalisation in banking has been growing exponentially in the Brazilian economy. It is important to highlight the Brazilian digital payment system named ‘Pix’, which is the most used payment method in Brazil. The tool has been in use since November 2023. In May 2023 it had already been used by more than 146 million people.²

2. Compared to other Latin America citizens, Brazilians are the ones who use digital banks the most. In Brazil, 46% of account holders use traditional banks, while in Chile and Peru these institutions are used by 97% of the customers. Regarding transactions, the numbers are also very different comparing Brazil to other Latin American countries. In Brazil, 73% of account holders use online banks for transactions. In contrast, in other Latin American countries, the percentage is only 28%. The index is even higher among Brazilians with low socioeconomic status: 61% use digital accounts as their main banking source, while 39% prefer traditional banks.³

3. In terms of fintechs, in 2021 there were 771 fintechs in Brazil, 31% of the overall number of Latin America. Brazil is the country with the highest number of fintechs in Latin America and the country that developed this business the most from 2020 to 2021, 69%.⁴

4. With respect to open banking, Brazil has adopted a more advanced way of sharing information, the open finance. After the account holders’ authorisation, the

¹ This document was written by Camila Sanson Pereira Bastos and Gerson Carvalho Bênia from the Department of Economic Studies, proofread by Tatiana Lima, Deputy Assistant Economist and Lílian Marques, Chief Economist of CADE. The English version is the work of in-house translators of the International Unit of CADE: it was translated to English and proofread by Karine Neumann Gonçalves and Maria Luísa Castro Gasparini.

² BC. Estatísticas do PIX. Available in Portuguese at: <https://www.bcb.gov.br/estabilidadefinanceira/estatisticaspix> Retrieved on 17 June 2024.

³ FEBRABAN. Contas digitais: as queridinhas do momento dos brasileiros. Available in Portuguese at: <https://febrabantech.febraban.org.br/especialista/alessandra-montini/contas-digitais-as-queridinhas-do-momento-dos-brasileiros> Retrieved on 17 June 2024.

⁴ BID. Available in Portuguese at: <https://publications.iadb.org/publications/portuguese/viewer/Fintech-en-America-Latin-unecosistema-consolidado-para-la-recuperacion.pdf> Retrieved on 17 June 2024.

institutions directly connect with platforms of other banking institutions, so they can access customers authorised data. The whole process happens in a safe environment and the authorisation can be cancelled by the customer at any moment, whenever they want.⁵

5. Open finance includes not only information on products and more traditional financial services (such as accounts and credit operations), but also product data and currency exchange services, accreditation, investments, insurances, and pensions. According to the Open Banking Excellence (OBE, 2023) Brazil will be an open finance global leader soon⁶. As for the regulatory environment, the document puts Brazil in second place in the assessment of how likely the scenario is for the system development.⁷

2. Digitalisation of Financial Service

6. Digitalisation has been affecting the financial sector in Brazil mainly for the inclusion of users. Since 2018, there has been a significant increase in the number of active users of the National Financial System (SFN) and the Brazilian Payment System (SPB), with a growth of 103.2% by December 2023. This progress refers mainly to the digitalisation of financial services, which occurred at a faster pace due to the emergency aid⁸ during the COVID-19 pandemic, since the instant payment system ‘Pix’ and new financial entities were introduced. The number of individual customers raised from 77.2 million to 152 million people, representing an increase of 97%, and corresponding to 87.7% of the adult population. Referring to the companies and individual microentrepreneurs, such growth was even more significant: from 3.4 million to 11.6 million active users, a 244.5% increase.⁹

7. Pix can be used for transfers between individuals, payment for commercial establishments (including physical and online stores), service providers, and between companies, in addition to revenue collection from federal government bodies.¹⁰

⁵ BC. Open Finance. Available in Portuguese at: <https://www.bcb.gov.br/estabilidadefinanceira/openfinance>. Retrieved on 17 June 2024.

⁶ OBE. The Global Open Banking Index. 2023. Available at: <https://www.openbankingexcellence.org/index/> Retrieved on 14 June 2023.

⁷ CADE. Cadernos do CADE: Mercados de Bancos e Seguradoras. Available in Portuguese at: <https://cdn.cade.gov.br/Portal/centrais-de-conteudo/publicacoes/estudos-economicos/cadernos-do-cade/Caderno%20Bancos%20e%20Seguradoras%20nov%202023.pdf> Retrieved on 14 June 2024.

⁸ The emergency aid was a direct and temporary income transfer for the unemployed, self-employed, and informal professionals, paid by the Brazilian government during the COVID-19 pandemic - the benefit totalled BRL 600 per month.

⁹ BC. Relatório de Economia Bancária – 2023. Available in Portuguese at: <https://www.bcb.gov.br/content/publicacoes/relatorioeconomiabancaria/reb2023p.pdf> Retrieved on 17 June 2024.

¹⁰ BC. Pix. Available in Portuguese at: <https://www.bcb.gov.br/estabilidadefinanceira/pix> Retrieved on 17 June 2024.

8. The fintech credit market entry has decreased the concentration of the National Financial System. Overall, fintechs' participations in credit operations have increased from 1.5% to 2%, from 2021 to 2023.¹¹

9. Furthermore, the Institute of Economic Research Foundation (FIPE) published a study on the 10 years of Law 12865/2013¹², which was responsible for fintechs' development, compared banks' fee income to a counterfactual scenario without fintechs. The estimate showed that fintechs generated savings of BRL 7.9 billion in fees.¹³

10. Another impact that is expected from open finance is a possible decrease in investment fees, as customers can make the portability to compare their investments more easily using open investment. Since September 2023, open finance institutions can share product and service data related to investments. The new stage of the open finance system, named open investment, allows customers to share data from their investment products with the institution of their choice, if this institution is also part of the ecosystem. One of the benefits expected from open investment is an easier and faster consolidation of investment data, which could be spread through several custodian institutions – the ones that intermediate the operations of purchase and sale of assets.¹⁴ About 37% of the Brazilian banks provide the open investment tool of account aggregators, allowing customers' access and management of their own financial accounts in a single platform. The tool has already been used by 23.9 million customers.¹⁵

3. Evolution of the Legal Framework

11. Currently there is no specific framework to provide authorisation and operation of digital banks. They must adapt to the same rules that are applied to other banks to obtain the authorisation needed. Recently, some financial institutions have adopted only digital business models, without opening agencies or other in-

¹¹ BC. Relatório de Economia Bancária – 2023. Available in Portuguese at: <https://www.bcb.gov.br/content/publicacoes/relatorioeconomiabancaria/reb2023p.pdf> Retrieved on 17 June 2024.

¹² BRAZIL. Law 12685/2013. Available in Portuguese at: https://www.planalto.gov.br/ccivil_03/_ato2011-2014/2013/lei/l12865.htm Retrieved on 17 June 2024.

¹³ FIPE. Estudo sobre impacto das *fintechs* para competição e inclusão financeira: Relatório final. 2023. Available in Portuguese at: https://somoszetta.org.br/wp-content/uploads/2024/01/Zetta_FINTECHS_DESKTOP_.pdf Retrieved on 17 June 2024.

¹⁴ BC. Open Finance inaugura fase de compartilhamento de dados de investimentos, o Open Investment. Available in Portuguese at: <https://www.bcb.gov.br/detalhenoticia/723/noticia> Retrieved on 17 June 2024.

¹⁵ FEBRABAN. Pesquisa Febraban de Tecnologia Bancária 2024. Available in Portuguese at: <https://cmsarquivos.febraban.org.br/Arquivos/documentos/PDF/Pesquisa%20Febraban%20de%20Tecnologia%20Banc%C3%A1ria%202024.pdf> Retrieved on 17 June 2024.

person service centres.¹⁶ Moreover, there is no other specific law for fintechs, there is only Law 12865/2013¹⁷, which regulates the activities from payment arrangements and payment institutions, so the fintechs were developed under this law. However, there is no exclusive legislation for these companies.

12. The rules from the Central Bank of Brazil (BC) and the National Monetary Council (CMN) list some fintechs categories: credit, payment, financial management, loan, investment, financing, insurance, debt negotiation, exchange, and multiservice. Since 2018, credit fintech operations were authorised and regulated by Resolutions 4656 (updated from Resolution 5050/2022)¹⁸ and 4657¹⁹ from CMN. BC has jurisdiction to request information on the owners, get a certificate of origin and respective controllers' cash flow in the business. Furthermore, it can check the compatibility of the economic-financial capacity along the business size, nature, and aim.²⁰

13. Instead of a law, open finance is regulated by a Joint Resolution between the Central Bank of Brazil (BC) and the National Monetary Council (CMN) - the Joint Resolution no. 1/2020²¹. The resolution addresses the implementation of open finance by financial and payment institutions, and other institutions that receive the Central Bank of Brazil's authorisation to operate. This rule defines open finance as standardised sharing of data and services by open system integrations. According to the Resolution, the goals of open finance are: encourage innovation, promote competition, improve efficiency in the National Financial System and the Brazilian Payments System, and promote financial citizenship.

14. The open finance model in Brazil shares the same basic principle for the enactment of the General Data Protection Law (LGPD)²², the fact that consumers are the owners of their personal data. Customers must give their explicit consent

¹⁶ BRAZIL. Law 12685/2013. Available in Portuguese at: https://www.planalto.gov.br/ccivil_03/_ato2011-2014/2013/lei/112865.htm Retrieved on 17 June 2024.

¹⁷ CADE. Cadernos do CADE: Mercados de Bancos e Seguradoras. Available in Portuguese at: <https://cdn.cade.gov.br/Portal/centrais-de-conteudo/publicacoes/estudos-economicos/cadernos-do-cade/Caderno%20Bancos%20e%20Seguradoras%20nov%202023.pdf> Retrieved on 14 June 2024.

¹⁸ CMN. Resolution 4656/2018. Available in Portuguese at: <https://www.bcb.gov.br/estabilidadefinanceira/exibenormativo?tipo=Resolu%C3%A7%C3%A3o&numero=4656>. Retrieved on 18 June 2024.

¹⁹ CMN. Resolution 4657/2018. Available in Portuguese at: <https://www.bcb.gov.br/estabilidadefinanceira/exibenormativo?tipo=Resolu%C3%A7%C3%A3o&numero=4657> Retrieved on 18 June 2024.

²⁰ CADE. Cadernos do CADE: Mercados de Bancos e Seguradoras. Available in Portuguese at: <https://cdn.cade.gov.br/Portal/centrais-de-conteudo/publicacoes/estudos-economicos/cadernos-do-cade/Caderno%20Bancos%20e%20Seguradoras%20nov%202023.pdf> Retrieved on 14 June 2024.

²¹ BC and CMN. Joint Resolution no. 1/2020. Available in Portuguese at: <https://www.bcb.gov.br/estabilidadefinanceira/exibenormativo?tipo=Resolu%C3%A7%C3%A3o%20Conjunta&numero=1> Retrieved on 18 June 2024.

²² BRAZIL. Law 13709/2018. Available in Portuguese at: https://www.planalto.gov.br/ccivil_03/_ato2015-2018/2018/lei/113709.htm Retrieved on 18 June 2024.

before their data is shared with other parties. According to this law, the data owner can withdraw the authorisation at any time. In case the owner wants to share data with more than one institution, there will be a new collection for the data sharing authorisation, following the rules from LGPD. Furthermore, in case of changes in purpose, data or services that are to be shared, a new customer consent is requested.²³

15. In Brazil, open banking regulation covers only the data sharing procedure, while the procedures associated with the way that the receiving institutions should handle data are addressed according to the LGPD and the Civil Rights Framework for the Internet (Law 12965, from 23 April 2014), which is the regulatory law for Internet use in Brazil. Both the LGPD and the Civil Rights Framework for the Internet ensure that customers have the right to request data deletion. LGPD establishes that the owner (individual who owns the data) is allowed to request the data controller (company or organisation that stores or uses their data, for any purpose) to delete their personal information from their systems at any time. Moreover, LGPD also establishes that data controllers should delete or anonymise all data after they serve their specific purposes that motivated their collection in the first place.²⁴

16. Customer data collection is inherent to the banking business. It is a fact that the amount of data collected by financial institutions is substantial. In addition, all the information is linked to their activities, so the inputs are necessary to provide services more efficiently. However, knowledge externalities could harm competition in this sector: a large volume of information on their customers could increase banks' market power and raise entry barriers, since customers would be tied to a financial institution with a larger body of data collected.²⁵

17. In addition, with the rise of fintechs, customers can extract more value from their own information. This result can be achieved not only with cost reduction to share information, but also with the encouragement of service splitting. A financial institution that is familiarised with a certain customer would not be the only one able to offer excellent services, nor to impose a package service that their customers are not interested in. However, the features and fast development of these new financial institutions can be faced with anticompetitive conducts from dominant firms threatened by the relevant competitive pressure of fintechs.²⁶ Thus, CADE's collaboration with the financial regulatory authority is as important as the one with the data regulatory authority.

²³ BC. Open Finance. Available in Portuguese at: <https://www.bcb.gov.br/estabilidadefinanceira/openfinance>. Retrieved on 17 June 2024.

²⁴ OECD. Financial Markets, Insurance and Pensions. Digital Technologies and Finance. Available in Portuguese at: <https://www.oecd.org/finance/private-pensions/Financial-markets-insurance-pensions-digital-technologies-and-finance.pdf> Retrieved on 19 June 2024.

²⁵ OECD. Note by Brazil. Consumer Data Rights and Competition: Available in Portuguese at: DAF/COMP/WD(2020)41, Retrieved on 19 June 2024.

²⁶ OECD. Note by Brazil. Consumer Data Rights and Competition: Available in Portuguese at: DAF/COMP/WD(2020)41, Retrieved on 19 June 2024.

18. The Central Bank of Brazil (BC), an autonomous entity, is the main financial regulatory authority in terms of open banking, along with the National Monetary Council (CMN). Regarding data, the competent authority in Brazil is the Brazilian Data Protection Authority (ANPD), which has some institutional features that make it more independent, such as technical and decision autonomies, and a fixed term for the directors.²⁷

19. The competences of the Brazilian competition authority, the Administrative Council for Economic Defence (CADE), and the regulatory agencies are complementary. In terms of data protection, for ANPD and CADE's performance, it is crucial to have a close relationship with the competition authority, since the current scenario shows that data has a high economic value, and there are strategic variables for companies' performance.

20. Regarding preventive control, BC and CADE have concurrent jurisdiction, so interested parties must submit mergers to both authorities for review on their own, using their specific procedures, in accordance with deadlines and conditions under each jurisdiction²⁸. Therefore, clearance of mergers involving financial institutions depend on a positive response from both agencies. To prevent antitrust violation involving financial institutions, CADE is responsible for reviews. The antitrust authority uses data collected with BC after exchange of information, to increase technical consistency and articulation of their decisions²⁹.

4. Competition Enforcement Responses

21. Banking and financial digitalisations have presented challenges to CADE, which are also common to reviews involving digital platforms. For instance, how to intervene in such dynamic markets, how to estimate long term effects of competition policies intervention, how to adapt appropriate measures to the specific new reality of the digitalisation of the financial market, how to deal and identify exclusionary practices due to data concentration, how to deal with discriminatory treatment based on user data and technologies to create profiles, how to deal with

²⁷ ANPD. Frequently Asked Questions - Brazilian Authority for Data Protection: Available in Portuguese at: <https://www.gov.br/anpd/pt-br/acao-a-informacao/perguntas-frequentes-2013-anpd#c5> Retrieved on 19 June 2024.

²⁸ In rare occasions where mergers can harm the soundness and stability of the National Financial System (SFN), BC can unilaterally clear the transaction and notify CADE in 1 (one) working day, stating the reasons for the decision, and informing if the prudential aspects cover the whole transaction or only relevant markets. CADE will clear the transaction unconditionally using BC's principles, based on efficiency recognition and economic development.

²⁹ CADE and BC. Memorandum of Understanding. Available in Portuguese at: https://www.bcb.gov.br/content/estabilidadefinanceira/Organizacao/memorando_cade_bc_28022018.pdf Retrieved on 26 June 2024.

algorithmic collusion and vertical restrictions, and how to coordinate the relation between privacy and competition policy.³⁰

22. There are two examples of challenges previously reviewed by CADE, as stated below. On 14 April 2021, CADE unconditionally cleared Magalu Pagamentos' acquisition of the total share capital of Hub Prepaid and its subsidiaries (Case no. 08700.000059/2021-55). Magazine Luiza used to control Magalu Pagamentos, which provided exclusive payment services to the company group, the Grupo Magalu. On the other hand, Hub used to be a holding company that owned total share capital of Hub Pagamentos. Hub companies provided direct services to their customers, such as digital account and pre-paid card. According to the companies, the transaction would improve Magalu Pagamentos' service provision for their customers, who could use a free platform for financial products and services fully integrated with Magalu app. Thus, customers could access a digital account to complete purchases, deposits, transfers, payments, withdrawals, mobile top-ups, and public transport vouchers (PTV). In addition, customers would be able to use a pre-paid card with a digital account balance, allowing offline transactions. On March 2021, The Office of the Superintendent General (SG/CADE) unconditionally cleared the transaction. Subsequently, Mercado Pago, an interested third party, filed an appeal with CADE.

23. According to Mercado Pago, the main competition risks were related to the access to competitively sensitive data – in this case, Mercado Pago itself –, which could give undue competitive advantages to Grupo Magalu. The company stated that the review should be based on a data-driven merger. The motivation and rationality for the operation lied in the interest in Hub's database, instead of its services.³¹

24. The case was submitted to the Tribunal of CADE, which concluded that the transaction did not raise any competition concerns. The agreement, the Open Finance Regulation, and the Brazilian General Data Protection Law prevented Magalu Pagamentos from accessing HUB's third party data. Therefore, the Tribunal upheld the decision to unconditionally clear the transaction.³²

25. On December 2023, CADE reviewed Case no. 08700.006049/2023-95 for the acquisition of sole control from Visa International over Pismo. In Brazil, Grupo Visa provides payment arrangements through Visa do Brasil, offering various services to customers as well, including payment gateways, fraud risk management,

³⁰ CADE. Cadernos do CADE: Digital Platform Markets. Available in Portuguese at: https://cdn.cade.gov.br/Portal/centrais-de-conteudo/publicacoes/estudos-economicos/cadernos-do-cade/Caderno_Plataformas-Digitais_Atualizado_29.08.pdf Retrieved on 19 June 2024.

³¹ CADE. Opinion of Commissioner Paula Farani de Azevedo Silveria. Case no. 08700.000059/2021-55. Available in Portuguese at: https://sei.cade.gov.br/sei/modulos/pesquisa/md_pesq_documento_consulta_externa.php?DZ2uWeaYicbuRZEFhBt-n3BfPLlu9u7akQAh8mpB9yO7xCk-135VHw7Yfw5XM9JWrLWkPs8LdJGFRmUjJ_fBhoZ3jfec79qFqmno4pRW6RkDBR6P7IGv_KOHPLE01Qjx Retrieved on 28 June 2024.

³² CADE. Aquisição da Hub pela Magalu Pagamentos é aprovada sem restrições pelo Cade. Available in Portuguese at: <https://www.gov.br/cade/pt-br/assuntos/noticias/aquisicao-da-hub-pela-magalu-pagamentos-e-aprovada-sem-restricoes-pelo-cade> Retrieved on 19 June 2024.

EMV 3-D Secure Authentication, and Token ID. Pismo is a technology company that develops and implements innovative banking and payment solutions for several financial institutions. Pismo offers an all-in-one processing platform for bank transactions, including card issuing and core banking, which contains integrating digital wallets, reconciliation, and statements. However, Pismo does not take part in these processes.³³

26. During the review, SG concluded that there was no horizontal or vertical relationship between the activities performed by the companies. Nevertheless, due to Visa's position in the payment arrangements market, CADE analysed possible competitive effects of a non-horizontal merger. Particularly, regarding access to competitively sensitive information, conglomerate effects, and discriminatory practices.³⁴

27. There was a potential harm to competition related to a transaction allowing Visa to access competitively sensitive information on other payment arrangements, once in charge of Pismo. The qualitative analysis showed that most of the information from payment arrangement competitors in Pismo consists of transactional data from the business relationship between card holder and commercial establishment. In contrast, most of the information on the business relationship between payment arrangements and card issuers, or other commercial information of payment arrangements of Visa's competition, did not pass by third party processors nor were of public knowledge, such as interchange fees, which are available at the payment arrangement regulations with free access.³⁵

28. In quantitative terms, the review did not raise many concerns. Considering Pismo's relationship with Visa's payment arrangement competitors, having access to information on the transaction would be insignificant. In addition to those aspects, regulation, contract, and compliance issues have helped to mitigate concerns related to competitively sensitive information. Besides the internal data protection policies of the parties, the agreement between Pismo and its beneficiaries, the Complementary Law 105/2001 (Confidentiality of transactions),

³³ CADE. Opinion no. 11/2023/CGAA2/SGA1/SG. Case no. 08700.006049/2023-95. Available in Portuguese at:

https://sei.cade.gov.br/sei/modulos/pesquisa/md_pesq_documento_consulta_externa.php?HJ7F4wnIPj2Y8B7Bj80h1lskjh7ohC8yMfhLoDBLdda26-zUt5H4x0MVvOsQnSRRMju4WTt-JRB0-IIM1L4GzNikdG1YvDh2WDT9dIFW_Ui-ykStns8GYvHDDG8Y51e Retrieved on 19 June 2024.

³⁴ CADE. Opinion no. 11/2023/CGAA2/SGA1/SG. Case no. 08700.006049/2023-95. Available in Portuguese at:

https://sei.cade.gov.br/sei/modulos/pesquisa/md_pesq_documento_consulta_externa.php?HJ7F4wnIPj2Y8B7Bj80h1lskjh7ohC8yMfhLoDBLdda26-zUt5H4x0MVvOsQnSRRMju4WTt-JRB0-IIM1L4GzNikdG1YvDh2WDT9dIFW_Ui-ykStns8GYvHDDG8Y51e Retrieved on 19 June 2024.

³⁵ CADE. Opinion no. 11/2023/CGAA2/SGA1/SG. Case no. 08700.006049/2023-95. Available in Portuguese at:

https://sei.cade.gov.br/sei/modulos/pesquisa/md_pesq_documento_consulta_externa.php?HJ7F4wnIPj2Y8B7Bj80h1lskjh7ohC8yMfhLoDBLdda26-zUt5H4x0MVvOsQnSRRMju4WTt-JRB0-IIM1L4GzNikdG1YvDh2WDT9dIFW_Ui-ykStns8GYvHDDG8Y51e Retrieved on 19 June 2024.

and the Brazilian General Data Protection Law (LGPD, Law 13709/2018) provided additional protection for possible access to competitively sensitive information.³⁶

29. Finally, regarding conglomerate effects, the authority analysed Visa's incentives and potential to harm competition, especially against payment processors (outsourced or not). Despite Visa's dominant position in the payment arrangements market, CADE concluded that legislation and payment arrangement regulations restricted Visa's potential to harm payment processors that are Pismo's competitors. The authority determined that discriminatory practices aiming to leverage payment processors could be harmful to Visa's main activity (payment arrangements) and that the legislation was an additional protection layer against possible anticompetitive conducts. CADE has submitted its legal opinion to the Central Bank of Brazil. Based on this information, the authority unconditionally cleared the acquisition.³⁷

30. Regarding the investigations of antitrust violations involving fintechs, CADE has also reviewed some of these cases. One of the investigations (Case no. 08700.004201/2018-38) was related to a case involving Bradesco, one of the largest banks in Brazil, and GuiaBolso, a smartphone application designed to provide users with a financial management system. GuiaBolso originally intended to use a data management tool to provide a financial management mechanism by accessing banking information, duly authorised by users with their passwords.³⁸

31. The case investigated an alleged abuse of dominant position and refusal to deal against GuiaBolso. The conduct hampered the operation of GuiaBolso and, consequently, the free competition in the financial services sector.³⁹

32. The Tribunal dismissed the case in 2023, after the certification of compliance of the Cease and Desist Agreement (TCC), in which the bank

³⁶ CADE. Opinion no. 11/2023/CGAA2/SGA1/SG. Case no. 08700.006049/2023-95. Available in Portuguese at:

https://sei.cade.gov.br/sei/modulos/pesquisa/md_pesq_documento_consulta_externa.php?HJ7F4w_nIPj2Y8B7Bj80h1lSkjh7ohC8yMfhLoDBLdda26-zUt5H4x0MVvOsQnSRRMju4WTt-JRB0-IIM1L4GzNikdG1YvDh2WDT9dIFW_Ui-ykStns8GYvHDDG8Y51e Retrieved on 19 June 2024.

³⁷ CADE. Opinion no. 11/2023/CGAA2/SGA1/SG. Case no. 08700.006049/2023-95. Available in Portuguese at:

https://sei.cade.gov.br/sei/modulos/pesquisa/md_pesq_documento_consulta_externa.php?HJ7F4w_nIPj2Y8B7Bj80h1lSkjh7ohC8yMfhLoDBLdda26-zUt5H4x0MVvOsQnSRRMju4WTt-JRB0-IIM1L4GzNikdG1YvDh2WDT9dIFW_Ui-ykStns8GYvHDDG8Y51e Retrieved on 19 June 2024.

³⁸ CADE. Case no. 08700.004201/2018-38. Available in Portuguese at:

https://sei.cade.gov.br/sei/modulos/pesquisa/md_pesq_processo_exibir.php?0c62g277GvPsZDAX_AO1tMiVcL9FcFMR5UuJ6rLqPEJuTUu08mg6wxLt0JzWxCor9mNcMYP8UAjTVP9dxRfPBcSPhkuuJMkT4fjpAFUoydA2om7HEIkK-p3ldBmbm7oOe Retrieved on 19 June 2024.

³⁹ CADE. Case no. 08700.004201/2018-38. Available in Portuguese at:

https://sei.cade.gov.br/sei/modulos/pesquisa/md_pesq_processo_exibir.php?0c62g277GvPsZDAX_AO1tMiVcL9FcFMR5UuJ6rLqPEJuTUu08mg6wxLt0JzWxCor9mNcMYP8UAjTVP9dxRfPBcSPhkuuJMkT4fjpAFUoydA2om7HEIkK-p3ldBmbm7oOe Retrieved on 19 June 2024.

committed to cease the investigated practices, as well as pay a financial contribution.⁴⁰

33. On 22 April 2019, the Office of the Superintendent General of CADE launched an administrative proceeding to investigate an alleged antitrust violation involving Banco do Brasil, Banco Bradesco, Caixa Econômica Federal, and Banco Santander against Nubank (Case no. 08700.003187/2017-74). Evidence showed that Nubank received biased treatment, preventing its access to direct debit. Only fintech customers with checking accounts in one of the four banks were allowed to make automatic payments. According to the Office of the Superintendent General, the direct debit is convenient for users, because it saves time and prevents late invoice payments. If the product is unavailable to Nubank's customers, it could harm the platform, hindering its ability to retain customers or attract new ones. Following the administrative proceeding, CADE notified all four banks to file an answer. In its course, the Office of the Superintendent General will either find the defendants guilty or dismiss the case, submitting it to the Tribunal of CADE for a final decision. The case is still under investigation.⁴¹

5. Competition Advocacy Actions

34. CADE did not conduct any specific studies about fintechs or open banking. However, the authority has published documents on data protection, such as the Working Paper 02/2021⁴² “*Benchmarking internacional sobre as instituições de Defesa da Concorrência e de Proteção de Dados*”. Regarding digital platforms, CADE released the Working Paper 5/2020 “*Concorrência em mercados digitais: uma revisão dos relatórios especializados*”⁴³ and another report named “*Brics in the Digital Economy: Competition Policy in Practice*”⁴⁴. Based on its case law, CADE

⁴⁰ CADE. Case no. 08700.004201/2018-38. Available in Portuguese at: https://sei.cade.gov.br/sei/modulos/pesquisa/md_pesq_processo_exibir.php?0c62g277GvPsZDAXAO1tMiVcL9FcFMR5UuJ6rLqPEJuTUu08mg6wxLt0JzWxCor9mNcMYP8UAjTVP9dxRfPBcSPhkuuJMkT4fjpAFUoydA2om7HElkK-p3ldBmbm7oOe Retrieved on 19 June 2024.

⁴¹ CADE. Cade instaura processo contra quatro bancos por suposta discriminação ao Nubank. Available in Portuguese at: <https://www.gov.br/cade/pt-br/assuntos/noticias/cade-instaura-processo-contra-quatro-bancos-por-suposta-discriminacao-ao-nubank> Retrieved on 19 July 2024.

⁴² CADE. Working Paper 02/2021. Benchmarking internacional sobre as instituições de Defesa da Concorrência e de Proteção de Dados. Available in Portuguese at: <https://cdn.cade.gov.br/Portal/centrais-de-conteudo/publicacoes/estudos-economicos/documentos-de-trabalho/2021/Documento%20de%20Trabalho%20-%20Benchmarking-internacional-Defesa-da-Concorrecia-e-Proteacao-de-dados.pdf> Retrieved on 20 June 2024.

⁴³ CADE. Working Paper 5/2020. Concorrência em mercados digitais: uma revisão dos relatórios especializados. Available in Portuguese at: <https://cdn.cade.gov.br/Portal/centrais-de-conteudo/publicacoes/estudos-economicos/documentos-de-trabalho/2020/documento-de-trabalho-n05-2020-concorrecia-em-mercados-digitais-uma-revisao-dos-relatorios-especializados.pdf> Retrieved on 20 June 2024.

⁴⁴ CADE. Brics in the Digital Economy: Competition Policy in Practice”. Available at: <https://cdn.cade.gov.br/Portal/assuntos/noticias/2024/BRICS%20Digital%20Economy.pdf> Retrieved on 20 June 2024.

has published studies on digital platform markets⁴⁵, banks and insurance markets,⁴⁶ and payment systems market⁴⁷.

35. CADE has operated both with the Brazilian Data Protection Authority (ANPD) and the Central Bank of Brazil. On June 2021, CADE and ANPD signed a technical cooperation agreement⁴⁸ to fight antitrust violations and practices that harm free competition in services that require personal data protection. The agreement includes: (1) exchange of documents and information on the subject, (2) communication between parties of any launched proceedings, and (3) promotion of joint events and studies. Some mutual obligations established in the agreement are (1) request for analysis and statements on cases related to each authority jurisdiction, (2) information on any action, deal or situation that can indicate a violation, and (3) information on agreements related to one another's jurisdiction.

36. The cooperation with the Central Bank of Brazil (BC) determines that administrative proceedings for financial institution merger cases and merger reviews, institutions under supervision, or surveillance of BC on antitrust violations, are regulated by the Joint Regulation 1/2018⁴⁹. Furthermore, in 2018, both entities signed the Memorandum of Understanding⁵⁰ to join forces towards the approval of the supplementary law, setting clear and specific parameters within which regulators can operate. The parties have agreed to perform in a cooperative and efficient manner, as well as amend rules of common interest. They acknowledge the importance of analysis of both authorities and the legal framework in force, along with any prudential aspects, recognised by the Central Bank of Brazil. The authorities also committed to create mechanisms for technical cooperation and exchange information, observing the duty of confidentiality, within administrative proceedings for merger control and investigations into antitrust violations involving institutions overseen by BC. Without prejudice to their jurisdictions, BC and CADE are committed to report any activities that could be

⁴⁵ CADE. Cadernos do CADE: Digital Platform Markets. Available in Portuguese at: https://cdn.cade.gov.br/Portal/centrais-de-conteudo/publicacoes/estudos-economicos/cadernos-do-cade/Caderno_Plataformas-Digitais_Atualizado_29.08.pdf Retrieved on 19 June 2024.

⁴⁶ CADE. Cadernos do CADE: Mercados de Bancos e Seguradoras. Available in Portuguese at: <https://cdn.cade.gov.br/Portal/centrais-de-conteudo/publicacoes/estudos-economicos/cadernos-do-cade/Caderno%20Bancos%20e%20Seguradoras%20nov%202023.pdf> Retrieved on 14 June 2024.

⁴⁷ CADE. Cadernos do Cade. Mercado de Instrumentos de Pagamento. Available in Portuguese at: <https://cdn.cade.gov.br/Portal/centrais-de-conteudo/publicacoes/estudos-economicos/cadernos-do-cade/mercado-de-instrumentos-de-pagamento-2019.pdf> Retrieved on 20 June 2024.

⁴⁸ CADE and ANPD. Technical Cooperation Agreement 5/2021. Available in Portuguese at: <https://www.gov.br/anpd/pt-br/assuntos/noticias/act-tarjado-compactado.pdf> Retrieved on 20 June 2024.

⁴⁹ CADE and BC. Joint Resolution no. 1/2018. Available in Portuguese at: https://sei.cade.gov.br/sei/modulos/pesquisa/md_pesq_documento_consulta_externa.php?DZ2uWeaYicbuRZEFhBt-n3BfPLlu9u7akQA8mpB9yMAjhgvMhOhUiRhWzcnKCgfsd1eF3HkduhvLuNbKNK64YtjaTA9iVhwqez6F_Zd1Ihb1cFtF9vrt5Hj0YZC-NVz8 Retrieved on 20 June 2024.

⁵⁰ CADE and BC. Memorandum of Understanding. Available in Portuguese at: https://www.bcb.gov.br/content/estabilidade/financeira/Organizacao/memorando_cade_bc_28022018.pdf Retrieved on 20 June 2024.

defined as antitrust violations. In addition, the authorities will share data and technical information for examination of alleged conducts, aiming to preserve competition and the duty of confidentiality. The authorities must also develop guidelines, trainings, workshops, studies, and other activities to maximise their efficiency and have a closer relationship with each other.

37. Recently, CADE contributed to a Public Consultation on regulation of digital platforms for the Secretariat for Economic Reform of the Brazilian Ministry of Finance.

6. Final Remarks

38. Digitalisation, fintechs, and open banking are complex themes that have caused significant changes in the Brazilian financial markets. These changes cause an impact in CADE's performance, with an increase on mergers involving fintechs and reports of antitrust violations that affect the companies' activities. The authority is still investigating and reviewing mergers on this matter, in cooperation with the Central Bank of Brazil and the Brazilian Data Protection Authority. They aim to conduct further studies, join forces on enforcement, define new regulations for the sector, and promote competition in the referred markets.

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