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# Minority Shareholding and coordinated effects – Note by Brazil

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# *Brazil*[1]

## 1. Introduction

1. Minority shareholdings can connect competitors through economic interests, corporate decision-making and access to information. Brazilian proceedings have examined these connections in cement and concrete, steel, telecommunications and air transport. The questions raised have concerned the degree of competitive independence retained by the firms, changes in their incentives and the use of shareholder rights. The decisions have also addressed the implementation of safeguards over time, including during a prolonged divestiture process.[2]

2. This contribution sets out the Brazilian legal framework and examines how Cade has assessed minority shareholdings in a series of cases. The cement, concrete and steel cases illustrate why the absence of control does not settle whether firms linked by a minority interest remain independent sources of competitive pressure. The telecommunications cases show how changes elsewhere in an ownership chain can alter the competitive significance of an existing shareholding. The two Azul cases illustrate this point in a different setting. In American Airlines/Azul, the question was what the addition of a second competing shareholder to the same governance bodies changed in the conditions for co-ordination, as distinct from its effects on direct rivalry between American and Azul..[3]

## 2. Brazilian Legal Framework

3. Law No. 12,529/2011 includes acquisitions of control or parts of another undertaking within the definition of a concentration. Mandatory prior notification also depends on the statutory turnover criteria. As updated by Interministerial Ordinance No. 994/2012, these require one economic group to have Brazilian turnover of at least BRL 750 million and another to have at least BRL 75 million in the preceding year. Acquisition of control is therefore one category of transaction covered by the system.[4]

4. Articles 9 and 10 of Cade Resolution No. 33/2022 also provide notification rules for share acquisitions without control. Where the investee competes with, or is vertically related to, the purchaser or its group, notification is required for an acquisition reaching 5% of total or voting capital. Where that level is already held, the rule covers the acquisition that produces an additional increase of at least five percentage points, individually or cumulatively. For undertakings without those relationships, Article 10 establishes a 20%

[1] This contribution was prepared by Camila Cabral Pires-Alves, Commissioner at Cade, and Vitor Jardim Barbosa, Head of Office at Cade.

[2] Cade, Polimix/Cimento Tupi, Merger Case No. 08012.002467/2008-22. Cade, CSN/Usiminas, Merger Case No. 08012.009198/2011-21. Cade, United/Azul, Merger Case No. 08700.012101/2025-12.

[3] Cade, American Airlines/Azul, Merger Case No. 08700.003120/2026-21, Tribunal decision of 7 October 2026, Reporting Commissioner Camila Cabral Pires Alves, public version, paras. 34–42, 53–62 and 152–204.

[4] Law No. 12,529/2011, Articles 88 and 90(II). Interministerial Ordinance No. 994/2012. Cade, Perguntas sobre atos de concentração econômica.

threshold and a separate rule for subsequent acquisitions. These shareholding criteria operate together with the applicable turnover requirements.[5]

5. Article 88(7) permits Cade to require notification of concentrations falling outside the ordinary criteria within one year of completion. Conduct is separately subject to Article 36, which addresses acts that have, or may have, the effects specified in that provision. A merger assessment of prospective co-ordination and an infringement finding concerning an agreement or concerted conduct consequently arise through distinct proceedings. In American Airlines/Azul, the Tribunal expressly recorded that the evidence did not demonstrate prior co-ordination among the three airlines.[6]

6. Cade's Guide for the Analysis of Horizontal Mergers addresses partial acquisitions and co-ordinated effects in separate sections. The section on partial acquisitions helps identify how a minority shareholding may affect competition through financial incentives, influence over corporate decisions or access to information. The section on co-ordinated effects provides a framework for assessing whether market characteristics (check list) make it easier for competitors to reach a common understanding, detect and respond to deviations, and sustain co-ordination in the face of outside competition. In American Airlines/Azul, Cade´s Tribunal decision applied the two sections together to distinguish the effects of the investment on direct rivalry between American and Azul from its incremental effects on the conditions for co-ordination.[7]

## 3. Brazilian Precedents

### 3.1. Polimix and Cimento Tupi

7. Polimix/Tupi concerned Polimix's purchase of concrete assets in São Paulo and Rio de Janeiro. Votorantim held approximately 25% of Polimix while operating in both cement and concrete. The ownership link brought the investor's other concrete businesses into the assessment of the acquisition. Cade therefore examined how far the companies remained independent sources of competitive pressure.[8]

8. The reasoning addressed the return to Votorantim from competing through Engemix, which it controlled, against Polimix and Supermix, in which it held minority interests. Winning customers from those companies would entail the costs of offering more attractive terms and a loss of income from the firms in which Votorantim had invested. The opinion also considered the weaker pressure such a shareholder would exert on its investees to compete with Engemix. Those links informed the assessment of rivalry across the group's concrete interests.[9]

[5] Cade Resolution No. 33/2022, Articles 9 and 10, including the sole paragraph of Article 10.

[6] Law No. 12,529/2011, Articles 36 and 88(7). American Airlines/Azul, Tribunal decision, paras. 176 and 194.

[7] American Airlines/Azul, Tribunal decision, paras. 34–37 and 53–58. See also Cade, Guide for the Analysis of Horizontal Mergers, 2016, sections 2.7 and 4.3.5.

[8] Cade, Polimix/Cimento Tupi, Merger Case No. 08012.002467/2008-22, decision of 6 October 2010, Reporting Commissioner Fernando de Magalhães Furlan. Brazil, Annual Report on Competition Policy Developments in 2010, DAF/COMP/AR(2011)18, p. 17.

[9] Cade, Mercado de Cimento no Brasil, 2019, pp. 89–90, reproducing the reasoning in the reporting opinion in Polimix/Cimento Tupi.

9. Cade concluded that Votorantim and Polimix were not effective competitors and combined their market shares. The resulting concentration and the absence of compensating efficiencies led it to prohibit the acquisition on 6 October 2010 and require its reversal. Aggregation followed the assessment of competitive independence in that ownership structure. The precedent is relevant to minority shareholdings because the existing investment affected the evaluation of a further acquisition by the investee.[10]

## 3.2. The Cimpor proceedings

10. The Cimpor proceedings involved minority acquisitions by Votorantim and Camargo Corrêa in the same cement producer. In March 2010, Cade entered into agreements to preserve the reversibility of the transactions. These required the preservation of assets and prohibited information transfers concerning the affected Brazilian markets while the transactions were under review. The measures addressed the period during which the two competing groups had acquired interests in Cimpor and the final merger decisions remained pending.[11]

11. In the subsequent joint judgment, Cade prohibited two transactions and approved the Camargo Corrêa/InterCement acquisitions under a performance commitment agreement. The proceedings included Votorantim's 21.2% interest in Cimpor. The recorded obligations included asset divestitures, restrictions on further minority investments in concrete companies and submission of certain future transactions. Cimpor's disclosure concerning the decision also records the continuation of applicable interim obligations until Votorantim ceased to be a shareholder. The proceedings thus covered both the ownership structure and access to information during its reorganisation.[12] The presence of two competing minority investors in the same company provides a point of comparison with the later airline cases, although the proceedings arose in a different market and led to different remedies.

## 3.3. CSN and Usiminas

12. CSN/Usiminas concerned successive stock-exchange acquisitions that gave CSN 17.43% of Usiminas's total capital, including 14.13% of ordinary shares and 20.71% of preferred shares. A separate shareholder bloc retained control. In April 2014, Cade approved the acquisition subject to a performance commitment agreement, known as a TCD. The transaction linked the two largest established suppliers in Brazil's highly concentrated flat-steel market without transferring control of the investee.[13]

13. The case raised co-ordinated effects concerns in the highly concentrated flat-steel market. The competitive concern did not depend on CSN acquiring control or exercising governance rights: its financial interest in a rival could itself alter competitive incentives.

[10] Brazil, Annual Report on Competition Policy Developments in 2010, DAF/COMP/AR(2011)18, p. 17.

[11] Cade, Boletim da 462ª Sessão Ordinária de Julgamento, session of 3 March 2010, concerning Interim Proceeding No. 08700.000628/2010-18.

[12] Cade, judgment certificates for Merger Cases Nos. 08012.002018/2010-07 and 08012.002259/2012-18 and related proceedings, Diário Oficial da União, 17 July 2012, Section 1, p. 38. Cade, Mercado de Cimento no Brasil, 2019, p. 105. Cimpor, disclosure of 16 July 2012.

[13] Cade, CSN/Usiminas, Merger Case No. 08012.009198/2011-21, decision of 9 April 2014, Reporting Commissioner Eduardo Pontual Ribeiro. Cade, Cade limita aquisição de ações da Usiminas pela CSN.

The TCD therefore required CSN to reduce its shareholding and suspended its voting and governance rights pending disposal, including the ability to make direct or indirect appointments to Usiminas's management and supervisory bodies. Share lending was confined to dispersed, impersonal exchange transactions to prevent those rights from being channelled to selected shareholders.[14]

14. The distinction between economic ownership and participation in governance became explicit during implementation. In April 2016, Cade authorised CSN to take part in a specific shareholders' meeting to elect two directors and one fiscal council member. Taking office required individual commitments to independence, compliance with governance rules, quarterly activity reports and provision of documents on request. The candidates were subject to restrictions on links with either company. Cade maintained the divestiture obligation and the other limitations on shareholder rights. The authorisation was tied to that election and the safeguards attached to the appointees.[15]

15. The execution of the structural remedy extended over several years. Following an earlier extension in 2019, Cade removed the fixed divestiture deadline in September 2022 while retaining the remaining TCD obligations. CSN was prohibited from acquiring additional Usiminas shares until completion of the prescribed disposal. Cade also reserved the ability to revisit the decision and require an immediate sale if competition problems emerged. The modification concerned the timetable rather than the removal of the other safeguards.[16]

16. Subsequent proceedings addressed compliance and possible sanctions. In August 2025, Cade's public account specified that the TCD required a reduction to below 5% of total or voting capital. Following a Federal Regional Court order and CSN's reported disposal, the Tribunal directed its technical staff to verify the sale and its compliance unit to calculate any applicable fine. The announcement described verification as a further step. It did not equate the reported divestiture with a final determination that every obligation had been fulfilled.[17]

17. Read together, these decisions distinguish the return attached to the shares from the powers exercised through them. Suspension of governance rights left CSN's economic interest in place during implementation, while the divestiture obligation addressed the extent of that interest. The 2016 election authorisation separately regulated the independence and accountability of particular appointees. The case therefore contains both an assessment of incentives arising from a stake in a rival and a record of how restrictions on influence were administered after approval.[18]

[14] Cade, CSN/Usiminas, 2014 decision and TCD. Cade, Cade limita aquisição de ações da Usiminas pela CSN.

[15] Cade, Cade autoriza participação da CSN em assembleia da Usiminas, 27 April 2016, concerning the meeting of 28 April 2016.

[16] Cade, Presidential Order No. 111/2022, endorsed on 21 September 2022. Cade, Cade celebra repactuação de prazo em acordo no caso CSN/Usiminas.

[17] Cade, Cade determina apuração de multa em caso envolvendo CSN e Usiminas, 6 August 2025.

[18] Cade, CSN/Usiminas, 2014 TCD. Cade, Cade autoriza participação da CSN em assembleia da Usiminas, 27 April 2016.

## 3.4. The cement cartel

18. The cement cartel proceedings concerned evidence of an implemented arrangement in the cement and concrete markets. In May 2014, Cade found price fixing, sales quotas, regional market division and customer allocation. Its account described concrete-company acquisitions and asset exchanges used to preserve the market shares agreed among the participants. Corporate transactions thus formed part of the conduct examined in the infringement proceeding.[19]

19. The decision imposed fines and required disposal of shareholdings, including minority interests and cross-shareholdings, in cement and concrete companies used in the cartel. It also ordered asset sales and restricted further transactions between the condemned firms in cement and acquisitions in concrete for five years. Those measures addressed the structures through which the arrangement had operated. They sought to reopen opportunities for entry and rivalry that the cartel's use of acquisitions and vertical links had restricted.[20]

20. In the 2015 clarification decision, Cade specified that the duty to inform the Brazilian competition authorities covered the condemned firms' cement-sector concentrations even where the ordinary mandatory-notification criteria were not met. The case consequently combines the removal of existing links with supervision of later transactions. Its evidentiary basis remains distinct from prospective merger review. The ownership arrangements were considered alongside proof of unlawful co-ordination, which limits the conclusions that can be transferred to an investment assessed before any such conduct has occurred.[21]

## 3.5. Telecommunications

21. The telecommunications precedents trace the treatment of indirect minority ownership through successive changes in corporate structure. In April 2010, Cade approved Telco's acquisition of a minority interest in Telecom Italia, TIM's parent, subject to a TCD. Telefónica was a shareholder in Telco. The investment therefore connected operators active in Brazil through a holding company, requiring an assessment of the consequences for competition in their Brazilian businesses.[22]

22. The decision expressly recognised that an absence of control or significant influence did not exclude unilateral or co-ordinated effects. Market conditions and the ownership structure remained relevant to changes in competitive incentives. The TCD limited information exchange and participation in decisions concerning the Brazilian businesses and required annual reports to Cade. Approval thus depended on restrictions on

[19] Cade, Administrative Proceeding No. 08012.011142/2006-79, decision of 28 May 2014, Reporting Commissioner Alessandro Octaviani. Cade, Cade multa em R$ 3,1 bilhões o cartel do cimento.

[20] Cade, Administrative Proceeding No. 08012.011142/2006-79, 2014 decision. The structural criterion adopted by the majority followed the separate opinion of Commissioner Márcio de Oliveira Júnior. Cade, Cade multa em R$ 3,1 bilhões o cartel do cimento.

[21] Cade, Administrative Proceeding No. 08012.011142/2006-79, clarification decision of 29 July 2015, Reporting Commissioner Ana Frazão. Cade, Cade mantém multas aplicadas no cartel do cimento, 31 July 2015.

[22] Cade, Telco/Telecom Italia, Merger Case No. 53500.012487/2007, decision of 28 April 2010, Reporting Commissioner Carlos Emmanuel Joppert Ragazzo. Judgment published in Diário Oficial da União, 10 May 2010, Section 1, p. 32.

the channels through which the investment could affect rivalry, with continuing reporting to support their supervision.[23]

23. The relationship was reconsidered when Telefónica acquired Portugal Telecom's interest in Brasilcel, obtaining sole control of Vivo. In December 2013, Cade required Telefónica either to eliminate its direct or indirect financial position in TIM Brasil or to admit an independent co-controller of Vivo with sector experience and no stake in another Brazilian telecommunications operator. The alternatives addressed the coexistence of sole control over one mobile operator and a financial interest in its competitor.[24]

24. The decision linked the loss of an independent co-controller at Vivo, alongside Telefónica's interest in Telecom Italia, to a risk of co-ordination. The change in control at Vivo altered the setting in which the existing minority interest had to be assessed. In parallel, Cade sanctioned an increase in Telefónica's Telco interest for breaching the earlier TCD and ordered that increase to be unwound. The two decisions addressed different changes in the same ownership chain and reinforced the requirement that the Brazilian operators remain competitively independent.[25]

25. In March 2015, Cade jointly reviewed Telco's demerger and Telefônica Brasil's acquisition of GVT from Vivendi. The demerger would convert Telefónica's indirect stake in Telecom Italia into a direct holding. The GVT consideration included 8.3% of Telecom Italia's voting capital and shares in Telefônica Brasil for Vivendi. The resulting links raised mobile-market concerns involving Vivo and TIM, alongside the fixed-line issues arising from the GVT acquisition. Approval was conditional on ACCs.[26]

26. The ACC with Telefónica required disposal of its remaining 6.5% of Telecom Italia's voting capital. The ACC with Vivendi required gradual disposal of its Telefônica Brasil holding. Their respective voting and governance rights were suspended pending divestiture. Information restrictions accompanied those obligations. A separate ACC with Telefônica Brasil and GVT addressed service continuity and quality. The package therefore distinguished remedies for ownership links between mobile competitors from obligations concerning the acquisition of the fixed-line business.[27]

27. The later agreements strengthened the governance safeguards. Telefónica's rights in Telecom Italia were suspended beyond Brazilian matters, including voting, vetoes and board appointments. Restrictions also covered interlocking directors and further share acquisitions. Vivendi could not use its temporary Telefônica Brasil holding to appoint directors or participate in deliberations. Information barriers covered material that

[23] Cade, Telco/Telecom Italia, judgment of 28 April 2010, published in Diário Oficial da União, 10 May 2010, Section 1, p. 32. Brazil, Annual Report on Competition Policy Developments in 2010, DAF/COMP/AR(2011)18, p. 18.

[24] Cade, Telefónica/Brasilcel, Merger Case No. 53500.021373/2010-00, decision of 4 December 2013, Reporting Commissioner Eduardo Pontual Ribeiro. Cade, CADE blocks deepening of business relations between Vivo, Telefonica, and Tim, 5 December 2013.

[25] Cade, Telefónica/Brasilcel decision and Order No. 434 concerning the Telco TCD, both of 4 December 2013. Cade, CADE blocks deepening of business relations between Vivo, Telefonica, and Tim, 5 December 2013.

[26] Cade, Telco demerger and Telefônica Brasil/GVT, Merger Cases Nos. 08700.009731/2014-49 and 08700.009732/2014-93, decisions of 25 March 2015, Reporting Commissioner Márcio de Oliveira Júnior. Cade, Cade impõe restrições a operações envolvendo o Grupo Telefónica.

[27] Cade, ACCs with Telefónica, Vivendi, and Telefônica Brasil/GVT, approved on 25 March 2015. Cade, Cade impõe restrições a operações envolvendo o Grupo Telefónica.

remained private when transmitted even if it would subsequently become public. Periodic reports and Cade's own inquiries supported monitoring. Outstanding obligations from the earlier Telco TCD were incorporated into the new agreement.[28]

28. The telecommunications proceedings show how the competitive significance of a minority interest can change as the wider ownership structure evolves. In 2010, Cade examined the indirect link between competing Brazilian operators through Telco. In 2013, Telefónica's acquisition of sole control of Vivo changed the context in which its existing interest in Telecom Italia had to be assessed. The 2015 transactions changed the ownership links again and introduced Vivendi as an investor in both Telefônica Brasil and Telecom Italia. The resulting agreements distinguished between restrictions on governance and information during the divestiture period and disposal of the holdings themselves. The remedial design also makes a useful distinction. Governance and information restrictions operated during the divestiture period, while disposal addressed the continued financial connection. That combination provides a point of comparison with cases in which Cade allowed an investment to remain subject to continuing safeguards.[29]

## 3.6. United and Azul

29. United/Azul involved an increase in United's interest from approximately 2.02% to approximately 8% as part of Azul's Chapter 11 restructuring. The General Superintendence approved the transaction in December 2025. An appeal by the consumer association IPS Consumo brought it before the Tribunal, which approved it without restrictions on 11 February 2026. United and Azul already maintained codeshare and interline arrangements, so the investment was assessed within an existing commercial relationship.[30]

30. The investment gave United one of seven seats on Azul's Board of Directors and one of five seats on its Strategic Committee. These seats allowed United to participate in Azul's governance without giving it control.[31]

31. The proceedings also raised the question of whether the notification had to include American's contemplated investment in Azul. The Tribunal accepted separate review where transactions were at different stages of negotiation or rested on distinct contractual instruments, provided their relationship was disclosed to Cade. The scope of the notified transaction could therefore remain distinct from the wider set of commercial and ownership links considered in the analysis.[32]

32. Approval relied on the governance provisions and information safeguards in the Term Sheet and the draft new bylaws, together with the parties' formal commitments in the case file. These were treated as premises underlying the decision. Their non-implementation could lead to review under Article 91 of Law No. 12,529/2011. The formal

[28] Cade, Cadernos do Cade, Mercados de Telecomunicações, April 2023, pp. 136–140.

[29] Cade, Telco/Telecom Italia, decision of 28 April 2010. Cade, Mercados de Telecomunicações, 2023, pp. 136–140.

[30] Cade, United/Azul, Merger Case No. 08700.012101/2025-12, Tribunal decision of 11 February 2026, Reporting Commissioner Diogo Thomson de Andrade. Cade, Cade aprova aumento da participação societária minoritária da United Airlines na Azul, 11 February 2026. American Airlines/Azul, Tribunal decision, para. 13.

[31] American Airlines/Azul, Tribunal decision, paras. 38–42.

[32] Cade, United/Azul, Tribunal decision of 11 February 2026. Cade, Cade aprova aumento da participação societária minoritária da United Airlines na Azul, 11 February 2026.

outcome remained approval without restrictions. No separate merger control agreement was executed, and the commitments did not create an autonomous contractual sanctions regime of the kind associated with an ACC.[33]

33. The decision additionally addressed subsequent changes in the relationship. Further share acquisitions and related corporate transactions were to be submitted in accordance with the applicable notification criteria. Changes to corporate or contractual arrangements that enlarged United's voting rights, governance prerogatives or influence were to be reported to the General Superintendence even where the objective notification thresholds were not met. This reporting enabled Cade to assess whether a further filing should be required under Article 88(7). The obligations thus followed changes in rights as well as changes in the percentage held.[34]

34. United/Azul established the starting point for the subsequent assessment of American's investment. United already held a minority stake and was represented on Azul's Board and Strategic Committee. Although Cade had approved that transaction without restrictions, its decision rested on the governance safeguards and commitments recorded in the proceedings. American's entry added a second competing shareholder to the same bodies. The question in American Airlines/Azul was therefore not only how the new investment could affect rivalry between American and Azul, but also what their new governance relationship could change in the conditions for co-ordination given United's existing presence.[35]

## 4. Financial Interests and Corporate Influence

### 4.1. Ownership structure and the transaction baseline

35. The Tribunal's decision in American Airlines/Azul of 7 October 2026 applied these distinctions to a further investment in the same company. A USD 100 million subscription would give American approximately 8% of Azul. During the transition period described in the corporate documents, it would appoint one of seven Board members and one of five Strategic Committee members. The rights included no individual veto or power to determine corporate decisions unilaterally. The parties also envisaged expanded commercial co-operation through codeshare and reciprocal passenger benefits.[36]

36. The ownership structure already included United's investment and representation in the same bodies. The Tribunal therefore examined American's entry against a baseline in which United was present. The change under examination was the addition of a second airline competitor to Azul's ownership and governance arrangements. United's earlier acquisition was outside the transaction being notified, although its existing rights formed part of the factual setting for the incremental assessment.[37]

37. The Tribunal recorded the financing and network rationale submitted by the parties. The capital formed part of Azul's restructuring, while the commercial partnership could

[33] American Airlines/Azul, Tribunal decision, paras. 39–41. Cade, Cade aprova aumento da participação societária minoritária da United Airlines na Azul, 11 February 2026.

[34] American Airlines/Azul, Tribunal decision, paras. 40–41.

[35] American Airlines/Azul, Tribunal decision, paras. 41–42, 187–198 and 204–205.

[36] American Airlines/Azul, Tribunal decision of 7 October 2026, paras. 10–13 and 121–124.

[37] American Airlines/Azul, Tribunal decision, paras. 15, 22–23, 38–42 and 187.

connect American's international services with Azul's domestic network. The parties described the proposed co-operation as non-exclusive and as preserving independent decisions on capacity, schedules and network planning. The Tribunal treated these explanations as context for assessing incentives. It did not infer from the financing rationale that every governance right was required to achieve the claimed benefits.[38]

## 4.2. Markets and the limits of structural indicators

38. For passenger services, the assessment used four origin-and-destination pairs, in both directions, covering São Paulo–Miami, São Paulo–Orlando, Rio de Janeiro–Miami and Rio de Janeiro–Orlando. Cargo was considered on a country-to-country basis between Brazil and the United States. The wider Brazil–United States corridor remained relevant to the description of commercial relationships and contacts across multiple markets. It did not replace the passenger markets defined by origin and destination.[39]

39. The General Superintendence had added American's and Azul's market shares as a deliberately conservative exercise, while recognising that the acquisition was a minority investment. The Tribunal considered that exercise as contextual information and assessed its conclusions against the evidence. It recorded that the proximity of the parties' services and the incentives and sufficiency of competitors' responses had not been established to the depth required to support a conclusion based on full integration of the two airlines.[40]

40. The Tribunal also declined to treat American, United and Azul as an integrated economic unit or a competitive bloc with a common strategy. Each US carrier held a separate minority interest in Azul. American acquired no financial interest in United's profits through the transaction, and United acquired none in American's. Their simultaneous presence at Azul consequently remained distinct from reciprocal profit participation between the two investors. The Tribunal examined the direction of the financial interests and the actual governance rights separately.[41]

## 4.3. Financial incentives and direct rivalry

41. As CSN/Usiminas illustrates, a financial interest in a rival can affect competitive incentives independently of any influence over the investee and may also matter for co-ordinated effects. In American Airlines/Azul, the assessment first considered how that financial interest might affect direct rivalry between the two airlines. In the air transport assessment, American would receive a fraction of Azul's results while retaining the full return from its own operations. The effect on direct rivalry depended on margins and the demand diverted to Azul following a change in American's price, capacity or quality. The same reasoning applied to incentives to enter or expand on competing routes. The size of the investment therefore entered an assessment of commercial incentives alongside the competitive relationship between the firms.[42]

42. The Tribunal did not find sufficient evidence that this financial mechanism would cause a material loss of competition in the transaction under review. The decision

[38] American Airlines/Azul, Tribunal decision, paras. 43–52 and 121–125.

[39] American Airlines/Azul, Tribunal decision, paras. 16–20 and 106–107.

[40] American Airlines/Azul, Tribunal decision, paras. 14–15, 59–62, 77–81, 103–107 and 137–138.

[41] American Airlines/Azul, Tribunal decision, paras. 161–165, 172 and 192.

[42] American Airlines/Azul, Tribunal decision, paras. 108–115 and 131–138. For the earlier distinction between control and incentives, see CSN/Usiminas in section 3.3.

acknowledged that the reporting office had not independently estimated the relevant diversion ratios or undertaken a detailed empirical validation of the economic submissions filed by the parties and third parties. Differences between Guarulhos and Viracopos were treated as indications of service differentiation, without treating airport distance as a measured estimate of substitution.[43]

### 4.4. Governance and information

43. The governance analysis concerned the powers associated with each seat. Azul's corporate bodies discussed matters including budgets, business plans, fleet, capacity and partnerships. American's minority representation did not confer unilateral decision-making power. The Tribunal nevertheless examined participation in the formation of decisions and exposure to strategic information as separate mechanisms. In that analysis, a representative could receive competitively valuable information even where the representative's vote could not determine the outcome of a meeting.[44]

44. The information considered included non-public and prospective data on prices, capacity, frequencies, route entry and exit, fleet, costs, margins, demand forecasts and network planning. The Tribunal examined the content, level of detail, age and direction of potential flows. One-way access from Azul to American could affect the investor's own commercial decisions. The co-ordination analysis additionally considered whether discussions at Azul could transmit information or signals about American into an environment in which a United representative was also present.[45]

45. The Tribunal described this possible triangular channel without finding that an exchange had occurred. The mechanism did not require a direct American–United communication, and the coexistence of their seats did not itself establish a flow of sensitive information. The assessment remained connected to what material could be accessed in each discussion and to the segregation measures applicable to it. The distinction between a possible channel and an established exchange was maintained in the conclusions.[46]

## 5. Assessment of Co-Ordinated Effects

46. The assessment in American Airlines/Azul drew on Cade's Horizontal Merger Guide to distinguish the ways in which a minority acquisition may affect competition from the conditions needed for co-ordination to arise and persist. Financial interests, influence over corporate decisions and access to information may affect those conditions, but do not in themselves establish co-ordinated effects. The analysis grouped relevant market characteristics according to whether they helped firms reach a common understanding, detect deviations in time or respond credibly enough to deter them. It also considered whether outside competitors could disrupt co-ordination. For each condition, the analysis distinguished what was already present in the market from what the acquisition changed. The question was whether the change could make co-ordination more likely or more sustainable given the other conditions. In this case, that meant examining what American's

[43] American Airlines/Azul, Tribunal decision, paras. 59–62, 103–107, 133–138 and 147.

[44] American Airlines/Azul, Tribunal decision, paras. 112–114 and 140–144.

[45] American Airlines/Azul, Tribunal decision, paras. 113, 143–146 and 160–161.

[46] American Airlines/Azul, Tribunal decision, paras. 159–161, 170–177 and 187–198.

entry into Azul's governance added when United was already represented in the same bodies and the airlines already interacted across several routes. [47]

## 5.1. Formation of a common understanding

47. Prices were one of several variables examined. Capacity, frequencies, schedules, aircraft allocation, route entry and network connections could also matter. The Tribunal recorded that direct and connecting services, different airports and different hub structures created heterogeneous conditions across the four passenger markets. Potential visibility of Azul's future plans could reduce uncertainty, although the evidence did not demonstrate a common competitive parameter around which the airlines would sustain a co-ordinated outcome.[48]

## 5.2. Detection of deviations and prospective information

48. The Tribunal distinguished public observation from access to internal plans. Advertised fares and frequencies could already be observed to some extent through sales channels. Such observation did not disclose all transaction prices, load factors, margins or future decisions. The MIDT ticketing data and data from Brazil's National Civil Aviation Agency used in the proceedings described market conditions, without establishing that every relevant deviation could be detected promptly. The additional information channel concerned prospective capacity, fleet and network decisions potentially available through Azul's governance.[49]

49. The potential increase in observability was the clearest incremental effect identified in the decision. Its extent depended on the information made available and the safeguards restricting it. The Tribunal did not infer that greater access to information established all the conditions for sustainable co-ordination. It assessed whether the other conditions, including responses to deviations and reactions from firms outside the arrangement, were also supported by the record.[50]

## 5.3. Incentives to deviate and responses to deviations

50. The Tribunal examined the possibility that partial ownership could change the return from departing from an accommodative outcome. It retained the distinction between the investor's interest in Azul and the absence of reciprocal ownership between American and United. Neither their financial interests nor their simultaneous representation established a common profit-maximising strategy. Their minority seats and absence of individual vetoes also did not establish a credible governance mechanism for disciplining Azul if it departed from a wider understanding.[51]

51. Contacts across several routes were part of the pre-existing industry setting. The Tribunal considered whether responses in other markets could affect incentives to deviate and recorded the absence of specific evidence of effective cross-market discipline. American's entry added a shared institutional channel at Azul. The analysis did not attribute

[47] American Airlines/Azul, Tribunal decision, paras. 152–159 and 167–169.

[48] American Airlines/Azul, Tribunal decision, paras. 168–173 and 190–193.

[49] American Airlines/Azul, Tribunal decision, paras. 169–174.

[50] American Airlines/Azul, Tribunal decision, paras. 175–177 and 187–191.

[51] American Airlines/Azul, Tribunal decision, paras. 162–163, 172, 175 and 191–192.

every existing contact among airlines to that acquisition, and it found no evidence of previous co-ordination among American, United and Azul that the investment would reinforce.[52]

### 5.4. Outside competitors and the conclusion reached

52. The record described alternative networks, established competitors and infrastructure available for expansion. The Tribunal distinguished these observations from evidence of the intensity and sufficiency of actual competitive responses. In particular, the absence of a regulatory or physical obstacle did not measure a carrier's economic incentive to expand. The presence of commercial links elsewhere in the sector was also not treated as establishing that all outside competitors had lost their independent incentives.[53]

53. The Tribunal concluded that the evidence did not establish likely market-wide co-ordination. The identified change was more concrete in potential access to forward-looking information than in the ability to form and enforce a common strategy. Residual concerns remained about information, governance and possible future expansion of the links. The Tribunal approved the transaction subject to a merger control agreement addressing those concerns.[54]

## 6. Safeguards and Continuing Supervision

54. The cases used different instruments to address the identified concerns. CSN/Usiminas combined reduction of the financial interest with limitations on governance rights. The telecommunications ACCs likewise paired divestiture with restrictions operating during the disposal period. United/Azul relied on corporate safeguards and commitments recorded in the proceedings. In American Airlines/Azul, the ACC formalised information and governance obligations enforceable directly by Cade while preserving the investment and representation rights. The comparison suggests that the choice of instrument and the role of a safeguard should be examined together. An information barrier accompanying divestiture serves a different function from a continuing restriction attached to an investment that is permitted to remain.[55]

### 6.1. Access to information and participation in meetings

55. The agreement, referred to as an ACC in Brazilian practice, made the relevant safeguards enforceable as obligations to Cade. Its governance provisions concern overlapping origin-and-destination pairs between Brazil and the United States in which American and Azul provide direct or indirect services. The decision defines sensitive information as non-public, detailed, disaggregated, current or prospective material concerning competitive variables, including prices, capacity, network planning, route economics, costs and strategy.[56]

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[52] American Airlines/Azul, Tribunal decision, paras. 164–166, 176 and 194.

[53] American Airlines/Azul, Tribunal decision, paras. 59–62, 103–107, 169, 172 and 193.

[54] American Airlines/Azul, Tribunal decision of 7 October 2026, paras. 187–204 and 216–218.

[55] American Airlines/Azul, Tribunal decision, paras. 204–205. See also CSN/Usiminas, section 3.3, the telecommunications proceedings, section 3.5, and United/Azul, section 3.6.

[56] American Airlines/Azul, Tribunal decision, paras. 205–206.

56. Sensitive matters must be identified before Board or Strategic Committee consideration. American's representative must either receive no associated materials or receive versions from which sensitive information has been removed. The representative is excluded from access, participation and voting on the relevant matters and must leave the meeting during discussion and deliberation. The obligations therefore cover the stages at which information is distributed and discussed, in addition to the formal vote.[57]

57. American is prohibited from requesting or using competitively sensitive information obtained through its representative. Information transmitted from Azul may be provided only in an aggregated form that does not disclose a specific competitive strategy in the overlapping markets. Meeting minutes must record sensitive matters and recusals, and Azul must retain the relevant documents for five years. Cade may request the documentation to check compliance.[58]

### 6.2. Future acquisitions and changes in rights

58. A separate set of obligations concerns future share acquisitions by American or its economic group in airlines operating regular services between Brazil and the United States. The agreement requires prior notification even where ordinary turnover thresholds are not met. The obligation covers an acquisition reaching 5% of total or voting capital and, where that level is already held, a further increase of at least five percentage points. This is a transaction-specific obligation under the ACC.[59]

59. The agreement also addresses changes in the nature of American's rights at Azul. Azul must report amendments to corporate instruments or contractual arrangements that expand American's voting and governance rights or influence, even without an additional share purchase, change of control or ordinary notification trigger. Specified changes in American's representation must be communicated within ten business days of taking office, accompanied by acknowledgement of the applicable obligations. The reporting provisions therefore extend to the identity of the individuals exercising the rights.[60]

60. The ACC provides for direct monitoring powers, documentation and reporting duties, and a contractual sanctions regime. Those provisions formalise the safeguards addressing information and governance risks and allow Cade to verify compliance. United/Azul had previously been approved without an ACC, on the basis of the premises and commitments recorded in that proceeding. American Airlines/Azul was approved subject to execution and full compliance with its agreement.[61]

## 7. Concluding Observations

61. The Brazilian cases illustrate how the assessment can change as ownership and governance relationships evolve. Earlier cases examined whether firms linked by minority interests remained independent sources of competitive pressure and whether restrictions on shareholder rights, access to information or the holdings themselves were warranted. The telecommunications proceedings showed why an existing interest may have to be

[57] American Airlines/Azul, Tribunal decision, para. 207.

[58] American Airlines/Azul, Tribunal decision, paras. 208–209.

[59] American Airlines/Azul, Tribunal decision, paras. 210–211.

[60] American Airlines/Azul, Tribunal decision, para. 212.

[61] American Airlines/Azul, Tribunal decision, paras. 38–42, 146, 151, 204–205 and 213–218.

reassessed when control or ownership elsewhere in the chain changes. In air transport, United/Azul established the factual baseline for the next acquisition: the question in American Airlines/Azul was what the addition of a second competing shareholder to the same governance bodies would change.

62. American Airlines/Azul illustrates how the established framework for co-ordinated effects can be applied to that incremental question. The reporting opinion connected the rights attached to the minority investment to the conditions for reaching, monitoring and sustaining co-ordination. It identified a potential information channel between competitors without treating shared representation as evidence of an actual exchange or greater strategic visibility as sufficient to establish likely co-ordination. The ACC preserved the investment while making safeguards enforceable and providing for scrutiny of specified future acquisitions and changes in influence. The contribution of the case is to show how the assessment can identify which conditions a new minority link may affect, which inferences the evidence does not support, and which residual risks can be addressed without removing the investment.