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CADE's four new Commissioners were cleared by majority today in the Federal Senate

The Federal Senate's Plenary has just approved by majority the names of **Lenisa Rodrigues Prado, Sérgio Costa Ravagnani, Luis Henrique Bertolino Braido, Luiz Augusto Azevedo de Almeida Hoffmann, Walter de Agra Junior** and **Alexandre Cordeiro** as new members of the Brazilian Antitrust Watchdog (CADE)'s Tribunal, responsible for enforcing the [Brazilian Antitrust Law](#).

Lenisa Rodrigues Prado, Sérgio Costa Ravagnani, Luis Henrique Bertolino Braido and Walter de Agra Junior were cleared by the Senate's Plenary during yesterday's session (October 1st, 2019).

However, the voting process for the Constitutional Amendment Proposal on Social Security Reform (PEC 6/2019) – other priority issue for the October 1st meeting – delayed the Plenary's votes for CADE's other nominations: Luiz Augusto Azevedo de Almeida Hoffmann (Commissioner) and Alexandre Cordeiro (CADE's General Superintendent). The voting procedure only continued today (October 2, 2019), resulting in the clearance by majority of these last two names.

The new Commissioners went through scrutiny by the Commission for Economic Affairs (CAE) last Tuesday (September 24, 2019) during ordinary session. Alexandre Cordeiro and Walter de Agra Junior, respectively nominated for new terms as CADE's General Superintendent and General Attorney, went through CAE's scrutiny during the October 1st, 2019 meeting. All of CADE's nominees were approved by majority, as presented in the scoreboard below.



Nominee	Votes in favor	Votes against
Lenisa Rodrigues Prado	17	4
Sérgio Costa Ravagnani	20	1
Luiz Augusto Azevedo de Almeida Hoffmann	19	2
Luis Henrique Bertolino Braido	20	1
Alexandre Cordeiro Macedo	20	1
Walter de Agra Junior	20	1

After CAE's approval, the Senate's Plenary put the names to vote on October 1st and 2nd, 2019. All names ensured their clearance by majority:

Appointed	Votes in favor	Votes against
Lenisa Rodrigues Prado	44	19
Sérgio Costa Ravagnani	49	11
Luiz Augusto Azevedo de Almeida Hoffmann	51	12
Luis Henrique Bertolino Braidó	47	14
Alexandre Cordeiro Macedo	56	5
Walter de Agra Junior	56	8

With the Federal Senate's approval, the four new Commissioners will take their seats at CADE as soon as they sign the instrument of investiture – which must occur within the next few days during solemnity in the Palace of Justice, in Brasília, where the Minister of Justice and Public Security Sérgio Moro will be present.

As for CADE's General Superintendent and General Attorney their terms will be renewed respectively from October 24, 2019 to October 23, 2021 (Alexandre Cordeiro Macedo) and from October 2, 2019 to October 1st, 2021 (Walter de Agra Junior).

Resume of CADE's activities

The Senate's clearance of the four new Commissioners is going to take CADE out of the jam. The antitrust watchdog had its activities paralysed since [July 17, 2019](#). In total, the Tribunal is formed by 7 (seven) chairs. After commissioners have recently resigned and/or completed their terms, the authority remained with only three members and therefore without the minimum quorum of four commissioners to clear transactions and judge investigations.

The Government had nominated [Vinicius Klein and Leonardo Bandeira Rezende](#) to take up the seats left respectively by former Commissioners João Paulo de Resende and Polyanna Ferreira Silva Vilanova, but such appointments were withdrawn by President Jair Bolsonaro's order published in the Official Gazette on August 1, 2019.

On August 23 and 29, Luiz Augusto Azevedo de Almeida Hoffman, Luiz Henrique Bertolino Braidó, Sérgio Costa Ravagnani and Lenisa Rodrigues Prado were nominated to CADE by Presidential Messages published in the Official Gazette. The Senate, however, took almost 2 (two) months to assess and clear the names.

According to information released by the [press](#), the nominations have changed due to friction between the Executive and the Legislative Branches over Eduardo Bolsonaro's appointment to the Brazilian Embassy in the United States.

The suspension of CADE's activities resulted in more than 80 transactions paralised, with mergers, acquisitions, incorporations, joint ventures and associative agreements (Merger Review) already approved by the SG unable to being properly closed due to the deadline suspension for appeals and avocation by CADE's Tribunal.

The shutdown generated reactions from the [antitrust community](#) that highlighted the losses suffered by players in different markets and the legal uncertainty caused to businessmen and investors who depend on the authority's prior approval in major transactions. The problem reached the Judiciary when Pfizer and Aspen [petitioned](#) for an authorization to close [Aspen Pharmacare's acquisition of Pfizer's bisurated magnesium assets](#).

The transaction was submitted to CADE on June 12, 2019 and [cleared unconditionally by the General Superintendence \(SG\)](#) - CADE's investigative body - in an order published in the Official Gazette on July 9, 2019 (dies ad quo).

Judge Edna Márcia Medeiros Ramos granted the injunction authorizing Pfizer and Aspen to close the deal that had already been approved to prevent significant losses to the parties and because Pfizer's divestment was determined by the antitrust authority itself in a previous merger with GlaxoSmithKline (GSK).

CADE's new composition and future expectations

For the next terms, it is expected that CADE continues in the center of the Government's attention, not as an arena for political dispute but as a highly important body for the Brazilian economic development. That will demand an effective monitoring of CADE's Commissioners', General Superintendent's and General Attorney's terms to ensure continuity of the authority's work.

In the absence of specific rule on the obligation to permanently preserve CADE's minimum decision quorum, it is up to the Ministry of Justice and to the Executive to proceed with the monitoring task in anticipation for the long appointing/scrutiny/voting/nomination procedure, avoiding a new suspension of mergers and acquisitions clearances and of CADE's Tribunal trial sessions.

After the nominees take office, CADE's composition will be structured as follows:

CADE	
Commissioners	Term
Alexandre Barreto se Souza (President)	06/22/2017 to 06/21/2021
Mauricio Oscar Bandeira Maia	07/12/2017 to 07/11/2021
Paula Farani A. Silveira	02/19/2018 to 02/18/2022
Lenisa Rodrigues Prado	4 years since date of office
Sérgio Costa Ravagnani	4 years since date of office
Luiz Augusto A. A. Hoffmann	4 years since date of office
Luis Henrique Bertolino Braido	4 years since date of office

General Superintendence	
Superintendent	Term
Alexandre Cordeiro Macedo (General)	10/24/2017 to 10/23/2019 10/24/2019 a 10/23/2021
Diogo Thomson De Andrade (Assistant)	Appointed by the General Superintendent, without especific term.
Kenys Menezes Machado (Assistant)	

CADE's General Attorney's Office	
Attorney	Term
Walter de Agra Junior (General)	02/10/2017 to 01/10/2019 02/10/2019 to 01/10/2021
Rodrigo Abreu Belon Fernandes (Deputy Assistant)	Appointed by the General Attorney, without especific term.

Profile of CADE's new Commissioners

The turmoil during the nominations made and withdrawn by President Bolsonaro last month, and the Senate's delay in putting final nominations on the voting agenda, have caused several losses to companies which depended on CADE to close their merger and acquisition transactions. The wave of legal uncertainty generated since then has raised a number of questions in the antitrust community about how much CADE will be able to maintain independence after the agency was used by the President as a exchange currency with Senators - as admitted by himself.

This wave of concern was reinforced by the profile of the nominees, based on the following reasons:

- **Lack of experience:** none of the four new commissioners have professional and academic experience in Antitrust Law. Education in Economics and Law, in addition to Antitrust Law expertise, is crucial to building the body responsible for giving the final word in big mergers and acquisitions and in absolving or convicting companies investigated for cartel and other anticompetitive practices. The lack of experience in the private sector has been historically responsible for the [conservative](#), rigorous and many times paranoiac attitude shown by some commissioners in the past in regard to companies activities and markets functioning. This academic and practice gap is not new in CADE. Michel Temer (PMDB)'s nomination of commissioner Maurício Oscar Bandeira Maia, for example, was also seen with apprehension by the antitrust community in 2017. However, Maia is considered by antitrust lawyers today as a thoughtful commissioner, open to dialog.
- **Lack of feminine representativeness:** CADE's gender inequality is historical. Despite the great number of women specialized in Antitrust Law in Brasil, CADE has had only 1 (one) woman as president and 10 (ten) as commissioners since its creation in 1962. The Tribunal's last formation broke that rule when simultaneously brought together 3 (three) important feminine names: Cristiane Alkmin Junqueira Schmidt, Polyanna Ferreira Silva Vilanova and Paula Farani de Azevedo Silveira. For the last few months, [many professional associations protested](#) to the Senate and President Jair Bolsonaro against the absence of feminine names to CADE. Even though inequality continues – the Tribunal's formation now includes 5 (five) men and only 2 (two) women – Lenisa's final nomination to take up as Commissioner and not as CADE's Attorney may be seen as a reflex of such protests.
- **International image:** CADE's shutdown for more than two months over the lack of quórum and the lack of familiarity of the new commissioners with technical matters in Law and in Economics relating to antitrust practice may negatively affect the authority's reputation internationally. Used to being recognized as one of the [best antitrust agencies in the world](#), the antitrust watchdog may suffer unwanted negative effects in its institutional efficiency and reliability assessments. This does not come in a good time: [after 20 years of hard work, Brazil officially entered to the Organization for Co-operation and Economic Development \(OECD\)'s Competition Committee as a permanent member](#) in the beginning of the year.
- **Agency capture:** the fact that CADE's vacancies became political currency between the Senate and the Government is one more indication that CADE's importance to the Brazilian economic scenario is ever more evident to the Executive and Legislative branches. In that sense, [experts](#) say the authority faces an increasing risk of suffering strong political pressure by lobbyists. That would harshly jeopardize the legal certainty context necessary to attract foreign investments in Brazil.

According to Exame, a research conducted by CNT/MDA reveals that 72.7% of the Brazilians believe that the Presidential nominations to CADE are inadequate.

Find out more about the scrutiny process of CADE's new Commissioners

Lenisa Rodrigues Prado

- **Last role:** Lawyer at [Dias de Souza](#).
- **Academic titles:** Graduated in Law from UniCEUB (2006). Master's Degree in Constitution and Society from IDP (2004).
- **Curriculum**
- **Reporting Senator for Scrutiny Process:** Senator Eduardo Braga.
 - Lenisa asserted that CADE's decisions publicity is crucial to the "educational process" and to the creation of an antitrust culture in Brazil.
 - The nominee pointed out the need to respect the competences distribution between CADE and regulatory agencies, which are responsible for regulating the different economic sectors in Brazil.
 - After being asked about the end of free baggage postage – advocated by CADE -, the nominee answered that based on the information she has today and without access to the market studies conducted by CADE, she opposes the measure as she believes that the baggage postage costs are already included in the final plane ticket and, so far, the separate purchase of baggage postage services did not result in benefits to Brazilian customers or in reducing the price of plane tickets.
 - About CADE's fines dosimetry, Lenisa stated that the Brazilian Antitrust Law (Law n. 12.529/2011) provides sufficient guidance to CADE's Commissioners. However, she recognized the existence of room for improvement, especially regarding the subjective aspects involved in the dosimetry task.

Sérgio Costa Ravagnani

- **Last roles:** National Treasure Attorney and Deputy Chief of Economic Policy in Staff of the Presidency in Brazil.
- **Academic titles:** Graduated in Law from UnB (2006). Post-graduated in Public Management and Administration from Fundação Getúlio Vargas (2015). Post-graduated in Public Law from Pontifícia Universidade Católica in Rio Grande do Sul (2013).
- **Curriculum**

- **Reporting Senator for Scrutiny Process:** Senator Rodrigo Pacheco.
 - Sérgio stated that he has studied competition affairs for several years and dealt with many antitrust demands relating to Tax Law in the National Treasury Attorney's Office. He also stated his participation in an event that took place at FIESP, in São Paulo (<https://bit.ly/2XzuiiX>), and his contributions to the panel that discussed the impacts of the Provisional Measure for Economic Freedom alongside CADE's President Alexandre Barreto and Commissioner Paula Farani.
 - The nominee praised CADE's technical characteristic and pledged to act in accordance to that high standard and not under the influence of governmental political issues.
 - Sérgio reaffirmed the importance of private agentes cooperation in the course of CADE's cartel investigations through Leniency Agreements and Settlement Agreements (TCC) and highlighted the need for reasonableness and proportionality when the authority imposes administrative penalties.

Luiz Augusto Azevedo de Almeida Hoffmann

- **Last roles:** Partner at [Almeida Prado e Hoffmann](#) and Judge of São Paulo's Tax Tribunal. Diritto Civile from Università di Camerino, Itália (2015).
- **Academic titles:** Tax Law Especialist from Pontifícia Universidade Católica in São Paulo (2008). Civil Law Doctorate from Universidade de São Paulo (USP) (2015). Doctorate in Diritto Civile from Università di Camerino, Itália (2015).
- **Curriculum**
- **Reporting Senator for Scrutiny Process:** Senador Carlos Viana
 - When asked, Luiz Augusto stated that he sees as positive the Organization for Co-operation and Economic Development (OECD)'s recommendation for the General Superintendence (SG) – CADE's investigative body – and the Tribunal – CADE's decisional body – to enhance separation mechanisms, ensuring independence and quality of the work conducted by each of the administrative bodies.
 - The nominee stated, however, that it does not exclude the necessary dialog between the SG and the Tribunal.

Luis Henrique Bertolino Braidó

- **Last role:** Professor at FGV.
- **Academic titles:** Ph.D. in Economics from University of Chicago (2002). Master's Degree in Economics from University of Chicago (1999) and FGV/EPGE (1998). Degree in Economics from Universidade de São Paulo (1996).
- **Curriculum**
- **Reporting Senator for Scrutiny Process:** Senator Fernando Bezerra Coelho

- Luís Henrique highlighted his previous academic research of economic matters relating to competition, such as: **(i)** the dynamics of price competition in markets in which the customer faces high switching costs, very common in markets with product/service customization feature; **(ii)** the role of unpredictability of price promotions and new products launches as a way to inhibit competition.
- When asked about associative agreements, the nominee stated the importance of CADE's guidelines in pointing out how Commissioners should assess this kind of business arrangement.
- On exclusionary practices, besides noting that CADE in conducting many investigations in the financial industry, Luís Henrique said that CADE's initiative on this subject – especially to protect competition with fintechs and to prevent abuse from commercial banks – is crucial to bank devolution in Brazil. In his view, concentration in this market resulted from the Central Bank's excessive worry about systemic risk in the 1980's and 1990's.

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