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Brazil halts Facebook's WhatsApp payment deal

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Brazil's competition authority has issued an injunction to suspend a proposed deal between Facebook and finance company Cielo to launch a payment services system via WhatsApp.

Although the partnership was not filed for notification, the Administrative Council for Economic Defence (CADE) said yesterday that its initial review of the deal indicates serious concerns that the collaboration could potentially limit competition in Brazil's payment services market.

The general superintendence – the enforcer's investigative arm – said that while it was possible the deal would have eventually been reported to CADE for approval, its potential anticompetitive effects made it necessary for the authority to file an immediate injunction. The injunction will run until the authority concludes its investigation, unless the companies appeal the interim decision.

A spokesperson for CADE told *GCR* that one of the aims of its injunction is to analyse whether the operation meets the thresholds for notification to prevent harm to competition. Facebook did not reply to a request for comment. Cielo could not be reached for comment.

On 15 June, Facebook and Cielo announced they would team up to offer accredited businesses the option of receiving payments via the WhatsApp Business platform. CADE's initial review of the proposed partnership found that the launch of the new payment service could cause irreparable, or long-lasting, damage to the market.

The enforcer noted that Cielo has a high market share in the Brazilian payment certification market and that this high market share, coupled with WhatsApp's millions of Brazilian users, could make it difficult for rivals to compete.

WhatsApp's expansive user base would be difficult for Cielo's competitors to create or replicate, especially if the deal involves certain exclusivity benefits, the enforcer's investigative arm said.

Injunctions on the rise

Bruno Drago, a partner at Demarest Advogados in São Paulo, said that CADE's decision is not surprising considering the authority has been keeping a close eye on the country's financial services and payment methods markets.

Drago added that although Brazilian competition law limits the use of preventive measures for conduct cases, CADE's internal regulations on merger and gun-jumping cases authorise the enforcer to adopt preventive measures.

Martorano Law partner Luciana Martorano in São Paulo said injunctions were a very rare measure for CADE. However, in the past year she noted that the authority has issued multiple injunctions.

Last October, CADE filed an injunction against Itaú Unibanco and its credit card-processing subsidiary Redecard, ordering the companies to stop offering shortened repayment options exclusively to merchants that bank with Itaú. However, a month later, a federal judge in Brasília lifted the injunction, finding the preventive measure order did not meet the urgency threshold for an injunction.

In February, the enforcer also imposed interim measures on Rio de Janeiro gym unions for an anticompetitive clause in the gyms' agreement with union members.