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Facebook, Cielo could appeal Brazil WhatsApp payment suspension today

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The decision by the General Superintendent's Office (SG) of Brazilian competition authority CADE to suspend digital payments through Facebook's [NASDAQ:FB] chat app WhatsApp could be appealed to the agency's tribunal today, 30 June, a person familiar with the matter said.

On 23 June, the SG issued an injunction suspending Facebook's partnership with Brazilian payment processor Cielo to provide payment services through WhatsApp, in the wake of a decision by the Central Bank of Brazil (BCB) to suspend such services, as reported. On 26 June, Facebook and Cielo filed a reconsideration request with the SG, asking it to overturn the injunction on the grounds that their agreement does not meet CADE's pre-merger notification criteria and does not feature any exclusivity provisions.

If the SG does not agree to the parties' request and overturn the injunction, the parties will appeal the injunction to CADE's tribunal today, the person familiar said.

"The companies may have appealed the injunction to the SG as a first step to subsequently appeal it to the tribunal," lawyer Ademir Pereira Júnior of the law firm AJDC said. **Lawyer Bruno Drago of law firm Demarest added that a CADE tribunal member could also decide to appeal the SG injunction for further review.**

"It would be important for the tribunal to rule on the lawfulness of the SG measure, since this is the first time an injunction is used by the General Superintendent's Office to suspend a deal," Drago said.

The lawyers agreed that exclusivity agreements – which the companies said is absent from their arrangement – is key to CADE's concerns. It remains to be seen "whether there are exclusivity clauses or incentives that could reduce competition in the payment systems market," Drago said. "It is hard to see a theory of harm that is not based on exclusivity," Pereira Júnior said.

Pereira Júnior added that CADE could ultimately look to address any concerns through behavioral remedies if need be.

“Although CADE has the prerogative to ask for the deal to be filed, suspending a deal through an injunction prior to the review of its fundamental terms sets a new precedent that must be ratified or rejected [by the tribunal],” Drago said.

CADE President Alexandre Barreto and General Superintendent Alexandre Cordeiro have consistently said that the agency’s actions are guided by the principle of minimal state intervention in the economy, as reported.

CADE, BCB, Facebook/WhatsApp and Cielo declined to comment.

by Camila Pavanelli de Lorenzi in São Paulo

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