



**International
Competition
Network**

**ANTI-CARTEL
ENFORCEMENT
TEMPLATE**

**CARTELS WORKING GROUP
Subgroup 2: Enforcement Techniques**

**Administrative Council for
Economic Defense – CADE/Brazil
30 September 2022**

ICN ANTI-CARTEL ENFORCEMENT TEMPLATE

IMPORTANT NOTES:

This template is intended to provide information for the ICN member competition agencies about each other’s legislation concerning anti-competitive practices, particularly hardcore cartels. At the same time the template supplies information for businesses participating in cartel activities about the rules applicable to them; moreover, it enables businesses and individuals which suffer from cartel activity to get information about the possibilities of enforcement of their rights in private law in one or more jurisdictions.

Reading the template is not a substitute for consulting the referenced statutes and regulations. This template should be a starting point only.

[Please include, where applicable, any references to relevant statutory provisions, regulations or policies as well as references to publicly accessible sources, if any.]¹

1. Information on the law relating to cartels

A. Law(s) covering cartels: [availability (homepage address) and indication of the languages in which these materials are available]	Law No. 12.529/2011, “Brazilian Competition Law” (available in Portuguese at http://www.planalto.gov.br/ccivil_03/ato2011-2014/2011/Lei/L12529.htm , and in English at https://cdn.cade.gov.br/portal-ingles/topics/legislation/laws/LAW%20N%C2%BA%2012529%202011%20%28English%20version%20from%2018%2005%202012%29.pdf). Law No. 10.446/2002, which provides that the Federal Police may investigate cartels with interstate or international effects (available in Portuguese at http://www.planalto.gov.br/ccivil_03/leis/2002/L10446.htm).
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¹ Editor’s note: all the comments in [square brackets] are intended to assist the agency when answering this template, but will be removed once the completed template is made public.

	<p>Law No. 9.873/1999 that provides the limitation period to the Federal Public Administration to exercise its power to punish illegal actions (available in Portuguese at http://www.planalto.gov.br/ccivil_03/leis/L9873.htm).</p> <p>Law No. 8.666/1993², which sets out rules regarding public procurement (available in Portuguese at http://www.planalto.gov.br/ccivil_03/LEIS/L8666cons.htm).</p> <p>Law No. 14.133/2021, which sets out new rules regarding public procurement (available in Portuguese at http://www.planalto.gov.br/ccivil_03/Ato2019-2022/2021/Lei/L14133.htm#art193).</p> <p>Law No. 8.137/1990, “Brazilian Economic Crime Law”, which defines cartel as a crime against the fiscal and the economic order (available in Portuguese at http://www.planalto.gov.br/ccivil_03/leis/L8137.htm).</p> <p>Law Decree No. 2.848/1940, whose article 288 disposes on crimes of criminal association (available in Portuguese at http://www.planalto.gov.br/ccivil_03/DecretoLei/Del2848.htm#art288).</p>
<p>B. Implementing regulation(s) (if any): [name and reference number, availability (homepage address) and indication of the languages in which these materials are available]</p>	<p>CADE’s Resolution No. 3 (May 2012) states a list of businesses activities related to the Art. 37 of the Law No. 12.529/2011. Available in Portuguese at https://cdn.cade.gov.br/Portal/centrais-de-conteudo/publicacoes/normas-e-legislacao/resolucoes/Resolu%C3%A7%C3%A3o%203_2012%20-%20Ramos%20Atividade%20%28modificada%20pela%2018-2016%29.pdf.</p> <p>CADE’s Resolution No. 5 (March 2013), which approves a regimental amendment that modifies the section concerning the cease and desist agreements. Available in Portuguese at https://cdn.cade.gov.br/Portal/centrais-de-conteudo/publicacoes/normas-e-legislacao/resolucoes/Resolu%C3%A7%C3%A3o%205_2013.pdf.</p> <p>CADE’s Resolution No. 6 (April 2013), which provides ways to monitor the fulfillment of decisions, commitments and agreements stated in Art. 52 of the Law No. 12.529/2011. Available in Portuguese at https://cdn.cade.gov.br/Portal/centrais-de-conteudo/publicacoes/normas-e-legislacao/resolucoes/Resolu%C3%A7%C3%A3o%206_2013.pdf.</p> <p>CADE’s Resolution No. 12 (March 2015), which allows any parts concerned to open consultations with CADE’s Tribunal to clarify the</p>

² By the time this template was updated, the Law No. 8.666/1993 was partially in force. However, in April 2023, that Law will be fully revoked and substituted by the Law No. 14.133/2021.

	<p>possible illegality of certain conduct. Available in Portuguese at https://cdn.cade.gov.br/Portal/centrais-de-conteudo/publicacoes/normas-e-legislacao/resolucoes/RESOLU%C3%87%C3%83O%20N%C2%BA%2012.pdf.</p> <p>CADE's Resolution No. 21 (September 2018). Regulates the procedures for access to documents and information contained in the Administrative Proceedings for the Imposition of Administrative Sanctions for Offenses to the Economic Order, including those arising from Leniency Agreement, Termination Commitment Agreement (TCC) and search and seizure lawsuits, in order to foster Civil Actions for Reparation for Damage Claims (ACRDC). Available in Portuguese at https://sei.cade.gov.br/sei/controlador_externo.php?acao=documento_conferir&codigo_verificador=0523083&codigo_crc=A2E13386&hash_download=9b3f71e8039de2ec1d9ac70868783b2d9a79cd1154c42349a295051bedd35a0a5172548281582b4fcbea05029db9139017f0aee5af7b44c84f9743a4d43c8b4a&visualizacao=1&id_orgao_acesso_externo=0.</p>
<p>C. Interpretative guideline(s) (if any): [name and reference number, availability (homepage address) and indication of the languages in which these materials are available]</p>	<p>CADE's Guidelines for Competition Compliance Programs, available in Portuguese at https://cdn.cade.gov.br/Portal/centrais-de-conteudo/publicacoes/guias-do-cade/guia-compliance-versao-oficial.pdf and in English at https://cdn.cade.gov.br/Portal/centrais-de-conteudo/publicacoes/guias-do-cade/compliance-guidelines-final-version.pdf.</p> <p>CADE's Guidelines on Leniency Agreements, available in Portuguese at https://cdn.cade.gov.br/Portal/centrais-de-conteudo/publicacoes/guias-do-cade/Guia-do-Programa-de-Leniencia-do-Cade_Vers%C3%A3o_Atualizada.pdf and in English at https://cdn.cade.gov.br/Portal/centrais-de-conteudo/publicacoes/guias-do-cade/guidelines-cades-antitrust-leniency-program-2020.pdf.</p> <p>CADE's Guidelines on Cease and Desist Agreements, available in Portuguese at https://cdn.cade.gov.br/Portal/centrais-de-conteudo/publicacoes/guias-do-cade/guia-tcc-atualizado-11-09-17.pdf and in English at https://cdn.cade.gov.br/Portal/centrais-de-conteudo/publicacoes/guias-do-cade/guidelines_tcc-1.pdf.</p> <p>CADE's Guidelines for Fighting Cartels in Procurements, available in Portuguese at https://cdn.cade.gov.br/Portal/centrais-de-conteudo/publicacoes/guias-do-cade/guia-de-combate-a-carteis-em-licitacao-versao-final-1.pdf and in English at https://cdn.cade.gov.br/Portal/centrais-de-conteudo/publicacoes/guias-do-cade/guide-for-fighting-cartels-in-procurements_version_01-10.pdf.</p>

	<p>CADE's Guidelines on Parameters for submitting evidence in leniency applications, available in Portuguese at https://cdn.cade.gov.br/Portal/centrais-de-conteudo/publicacoes/guias-do-cade/Guia-recomendacoes-probatorias-para-proposta-de-acordo-de-leniencia-com-o-Cade.pdf and in English at https://cdn.cade.gov.br/Portal/centrais-de-conteudo/publicacoes/guias-do-cade/Guide-Parameters-for-submitting-evidence-in-leniency-applications-Atualizado.pdf.</p>
<p>D. Other relevant materials (if any): [availability (homepage address) and indication of the languages in which these materials are available]</p>	<p>Leniency Program Webpage (available in Portuguese and English at https://www.gov.br/cade/pt-br/assuntos/programa-de-leniencia or https://www.gov.br/cade/en/matters/leniency-program).</p> <p><i>Portal da Concorrência</i> that provides case law and studies related to the Brazilian Competition Policy System (available in Portuguese at http://www.portalconcorrenca.com.br/).</p>

2. Scope and nature of prohibition on cartels

<p>A. Does your law or case law define the term “cartel”? [Please quote.]</p> <p>If not, please indicate the term you use instead. [Please quote.]</p>	<p>Article 36, paragraph 3, subsection I and II of Law 12.529/2011 provides legal definition on conducts considered as cartel violations. According to the law:</p> <p>§ 3 The following acts, among others, to the extent to which they conform to the principles set forth in the caput of this article and its clauses, shall characterize violations of the economic order:</p> <p>I – to agree, join, manipulate or adjust with competitors, in any way:</p> <p>a) the prices of goods or services individually offered;</p> <p>b) the production or sale of a restricted or limited amount of goods or the provision of a limited or restricted number, volume or frequency of services;</p>
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	<p>c) the division of parts or segments of a potential or current market of goods or services by means of, among others, the distribution of customers, suppliers, regions or time periods;</p> <p>d) prices, conditions, privileges or refusal to participate in public bidding;</p> <p>II - to promote, obtain or influence the adoption of uniform or agreed business practices among competitors.</p>
<p>B. Does your legislation or case law distinguish between very serious cartel behaviour (“hardcore cartels” – e.g.: price fixing, market sharing, bid rigging or production or sales quotas³) and other types of “cartels”? [Please describe how this differentiation is made and identify the most egregious types of conduct.]</p>	<p>Law No. 12.529/2011 and Law No. 8.137/1990 do not distinguish between different types of cartel, but provides definitions for different types of collusive conducts (see question 2A). Furthermore, administrative precedents adopts the expression <i>soft cartel</i> for episodic collusion, in opposition of structured <i>hardcore cartel</i> (v. Luiz Carlos Delorme Prado Commissioner Vote in 08012.002127/2002-14). As average, the fines and pecuniary contributions for <i>hardcore cartel</i> are, at least, the double of <i>soft cartels</i>(v. TCC Guidelines, pp. 29-31).</p>
<p>C. Scope of the prohibition of hardcore cartels: [including any exceptions, exclusions and defences e.g. for particular industries or sectors. Please also describe any other limitations to the ban on hardcore cartels.]</p>	<p>Brazilian antitrust Law does not grant any, <i>a priori</i>, exemption to its precepts. The scope of prohibition provided by Law No. 12.529/2011 is set forth in article 2:</p> <p>Art. 2. This Law applies, without prejudice to the conventions and treaties of which Brazil is a signatory, to practices performed, in full or in part, on the national territory, or that produce or may produce effects thereon.</p> <p>Also, articles 31 to 33 provides the scope of application of the Competition Law:</p> <p>Art. 31. This Law applies to individuals or legal entities of public or private law, as well as to any associations of entities or individuals, whether de facto or de jure, even temporarily, incorporated or unincorporated, even if engaged in business under the legal monopoly system.</p>

³ In some jurisdictions these types of cartels – and possibly some others – are regarded as particularly serious violations. These types of cartels are generally referred to as “hardcore cartels”. Hereinafter this terminology is used.

	<p>Art. 32. The various types of economic order violations implicate jointly the liability of the company and the individual liability of each of its directors or officers, jointly and severally.</p> <p>Art. 33. The companies and their entities, de facto or de jure, shall be jointly and severally liable when at least one of them engages in violations of the economic order.</p> <p>The scope of conducts considered as cartel violations is set forth by article 36 (see question 2A).</p>
<p>D. Is participation in a hardcore cartel illegal <i>per se</i>⁴? [If the situation differs for civil, administrative and criminal liability, please clarify this.]</p>	<p>Pursuant to the Brazilian Competition Law, there is no <i>per se</i> infringement. However, according to Brazilian case law, the sole existence of evidence of collusion is enough to characterize a rebuttable unlawfulness.</p>
<p>E. Is participation in a hardcore cartel a civil or administrative or criminal offence, or a combination of these?</p>	<p>The three options. Whereas Law No. 12.529/2011 provides that cartels are administrative offences, Laws No. 8.137/1990 and n° 8.666/1991 sets out that cartels are also considered as criminal offences, subject to the penalty of two to five years of custody. Furthermore, under the Brazilian Competition Law, any anticompetitive conduct may also be considered an illicit civil violation (art. 186 of General Civil Code – Law 10.406/2002 c/c art. 36 of Law n° 12.529/2011), thus allowing the claim for damages through civil actions.</p>

3. Investigating institution(s)

<p>A. Name of the agency, which investigates cartels: [if there is more than one agency, please describe the allocation of responsibilities]</p>	<p>For administrative infringements, the Administrative Council for Economic Defense (CADE) has administrative competence to investigate cartels. Within CADE, the investigative body is the General Superintendence.</p>
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⁴ _For the purposes of this template the notion of 'per se' covers both 'per se' and 'by object', as these terms are synonyms used in different jurisdictions.

	<p>For criminal offenses the legal competence is assigned to Polices and Prosecutors Offices (state and federal, according to market affected).</p>
<p>B. Contact details of the agency: [address, telephone and fax including the country code, email, website address and languages available on the website]</p>	<p>SEPN 515, Conjunto D, Lote 4 Edifício Carlos Taurisano ZIP Code: 70770-504 – Brasília, DF, Brazil Phone: +55 61 3221 8445 Fax: +55 61 3326 9733 E-mail: international@cade.gov.br Website: https://www.gov.br/cade/pt-br</p>
<p>C. Information point for potential complainants:</p>	<p>ALEXANDRE BARRETO DE SOUZA General Superintendent Phone: +55 61 3221 8457 E-mail: alexandre.barreto@cade.gov.br</p>
<p>D. Contact point where complaints can be lodged:</p>	<p>Written complaints can be sent to the following postal address: SEPN 515, Conjunto D, Lote 4 Edifício Carlos Taurisano ZIP Code: 70770-504 – Brasília, DF, Brazil</p> <p>Electronic complaints can be sent to the following e-mail: superintendencia@cade.gov.br</p> <p>Furthermore, complaints can be lodged through the virtual tool “<i>Clique Denúncia</i>”, an application form integrated to CADE’s Electronic Information System, through which citizens can report anticompetitive practices. The link is available at https://www.gov.br/cade/pt-br.</p>
<p>E. Are there other authorities which may assist the investigating agency? If yes, please name the authorities and the type of assistance they provide.</p>	<p>Yes. Cade has extensive collaboration with other bodies and authorities in order to foster mutual assistance.</p> <p>The State and Federal Prosecutors may assist CADE in joint cartel investigations. In these situations, the aim is to conduct parallel administrative and criminal investigations, including the possibility to apply for leniency in both administrative and criminal spheres.</p> <p>CADE signed recently many agreements with Public Prosecutors’ Offices from different states in Brazil, in order to promote the cooperation in these types of investigation when the authorities need to conduct parallel proceedings. In this sense, CADE also signed a cooperation agreement with the Brazilian Federal Revenue’s Secretariat, which</p>

	<p>aims at exchanging information of mutual interest between the two bodies.</p> <p>The Federal Police may assist CADE in dawn raids to fulfill search and seizure warrants, upon CADE's request.</p> <p>It is also worth mentioning that CADE cooperates with the Office of the Comptroller General (CGU in its Portuguese acronym), which has the jurisdiction over corruption crimes and has recently established its own leniency program.</p> <p>The CGU signed a Cooperation Agreement with CADE in late 2014, which sets out a framework for information exchange in connected investigations. The need for integration between anticorruption and antitrust enforcers exists and both authorities are invested in establishing mechanisms to ensure effectiveness in investigations.</p> <p>Since 2014, there have been advances: CGU's intelligence unit is engaged in exchanging information with CADE regarding the use of screening to identify possible collusion public procurement.</p> <p>CGU is also in the process of training CADE's staff, in order to increase its capacity to open <i>ex officio</i> proceedings to investigate bid rigging. On the other hand, CADE has transmitted institutional experience to CGU by providing it with models in leniency documents, in order to facilitate the implementation of a leniency program at CGU.</p>
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4. Decision-making institution(s)⁵ [to be filled in only if this is different from the investigating agency]

<p>A. Name of the agency making decisions in cartel cases: [if there is more than one agency, please describe the allocation of responsibilities.]</p>	<p>The Administrative Council for Economic Defense (CADE) has administrative competence to decide upon cartel cases. Within CADE, the decision body is the Administrative Tribunal.</p>
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⁵ Meaning: institution taking a decision on the merits of the case (e.g. prohibition decision, imposition of fine, etc.)

<p>B. Contact details of the agency: [address, telephone and fax including the country code, email, website address and languages available on the website]</p>	<p>SEPN 515, Conjunto D, Lote 4 Edifício Carlos Taurisano ZIP Code: 70770-504 – Brasília, DF, Brazil Phone: +55 61 3221 8445 Fax: +55 61 3326 9733 E-mail: international@cade.gov.br</p> <p>Website: https://www.gov.br/cade/pt-br</p>
<p>C. Contact point for questions and consultations:</p>	<p>Questions and consultations should be addressed to CADE’s International Unit:</p> <p>BRUNA PAMPLONA DE QUEIROZ Head of International Unit Phone: +55 61 3221-8585</p> <p>E-mail: international@cade.gov.br</p>
<p>D. Describe the role of the investigating agency in the process leading to the sanctioning of the cartel conduct.</p>	<p>CADE’s General Superintendence is the body within the agency responsible for preparing and initiating administrative proceedings for the imposition of sanctions due to violations of the economic order. According to the law, the Superintendence shall monitor and follow up on market practices; decide when there is a lack of grounds to proceed; use different avenues to obtain information for the referred proceedings; appeal <i>ex officio</i> to the Tribunal upon dismissal of the administrative proceeding; submit to the Tribunal, for trial, the administrative proceedings it established; propose terms for a cease-and-desist commitment for violations to the economic order, submitting them to the approval of the Tribunal; adopt preventive measures to cease practices that constitute violations of the economic order; and provide the Judiciary, upon request, with information on the progress of investigations.</p>
<p>E. What is the role of the investigating agency if cartel cases belong under criminal proceedings?</p>	<p>Administrative and criminal proceedings are independent in Brazil. This means that CADE has full investigative powers with respect to the investigation at the administrative level. In respect to the criminal authorities, the Federal Police, and State and Federal Public Prosecutors have full investigative powers with respect to the investigation at the criminal level. In recent years, administrative and criminal authorities have been working closely in order to benefit from information exchange and investigative techniques.</p>

5. Handling complaints and initiation of proceedings

<p>A. Basis for initiating investigations in cartel cases: [complaint, ex officio, leniency application, notification, etc.]</p>	<p>An investigation on a given cartel may be initiated through complaints, whistleblowers, ex officio, or based on leniency applications.</p>
<p>B. Are complaints required to be made in a specific form (e.g. by phone, in writing, on a form, etc.)? [If there is a requirement to complete a specific form, please, indicate its location (website address).]</p>	<p>Complaints should be made to CADE by telephone, email, in writing or in person. Furthermore, anticompetitive conducts may be reported through the virtual tool “<i>Clique Denúncia</i>”, (available at https://www.gov.br/cade/pt-br), in which anyone can fill in an electronic form reporting a suspicious conduct anonymously.</p>
<p>C. Legal requirements for lodging a complaint against a cartel: [e.g. is legitimate interest required, or is standing to make a complaint limited to certain categories of complainant?]</p>	<p>None. CADE accepts and analyses all complaints it receives.</p>
<p>D. Is the investigating agency obliged to take action on each complaint that it receives or does it have discretion in this respect? [Please elaborate.]</p>	<p>CADE has discretion to decide on which complaint it is going to take action. However, the agency is obliged by law to formally respond to each complaint it receives. All the acts performed by the investigative authority – even the dismissal of frivolous complaints or complaints without legal cause – must be duly justified.</p>
<p>E. If the agency intends not to pursue a complaint, is it required to adopt a decision addressed to the complainant explaining its reasons?</p>	<p>CADE is bound by law to provide formal responses to all complaints it receives (see question 5D).</p>
<p>F. Is there a time limit counted from the date of receipt of a complaint by the competition agency for taking the decision on whether to investigate or reject it?</p>	<p>No.</p>

6. Leniency policy⁶

⁶ For the purposes of this template the notion of ‘leniency’ covers both full leniency and a reduction in the sanction or fines. Moreover, for the purposes of this template terms like ‘leniency’ ‘amnesty’ and ‘immunity’ are considered as synonyms.

<p>A. What is the official name of your leniency policy (if any)? [Please indicate its public availability.]</p>	<p>The official name of CADE’s leniency policy is “<i>Programa de Leniência</i>” (Leniency Program). The Leniency Program provision is supported by Law No. 12.529/2011 (articles 86 and 87) and by CADE’s Internal Statute (articles 237 to 251), both are available at https://www.gov.br/cade/pt-br.</p> <p>CADE has published Guidelines on Antitrust Leniency Program. It is available in English at https://cdn.cade.gov.br/Portal/centrais-de-conteudo/publicacoes/guias-do-cade/guidelines-cades-antitrust-leniency-program-2020.pdf.</p>
<p>B. Does your jurisdiction offer full leniency as well as partial leniency (i.e. reduction in the sanction / fine), depending on the case?</p>	<p>Leniency/immunity is only available for first-ins and can be total or partial, depending on existence of previous investigation.</p> <p>Second-ins can take part in the Cease and Desist Agreements Program, with proportional discounts in fines.</p>
<p>C. Who is eligible for full leniency [only for the first one to come forward or for more participants in the cartel]?</p>	<p>Leniency is only available for first-ins. Companies and/or individuals currently involved or that were involved in a cartel or other antitrust conspiracy are eligible to apply for leniency. A successful applicant must commit to cease the illegal conduct, report and confess the wrongdoing, and cooperate with the investigations by submitting information and documents relevant to the investigation.</p>
<p>D. Is eligibility for leniency dependent on the enforcing agency having either no knowledge of the cartel or insufficient knowledge of the cartel to initiate an investigation?</p> <p>In this context, is the date (the moment) at which participants in the cartel come forward with information (before or after the opening of an investigation) of any relevance for the outcome of leniency applications?</p>	<p>CADE has both total and partial leniency. According to the Guidelines on Leniency Program,</p> <p>Full immunity (total leniency) or the reduction by one to two-thirds of the applicable fine (partial leniency) (art. 86, paragraph 4, of Law No. 12.529/2011), depends on the “prior knowledge” of CADE’s General Superintendence concerning the reported conduct (art. 249, I and II, RICADE);</p> <p>I. if the SG/CADE did not have prior knowledge of the violation, the company and/or individual will receive, upon declaration of fulfillment of the Leniency Agreement by the plenary session of CADE’s Tribunal, the benefit of full immunity by the public administration regarding the reported conduct;</p> <p>II. if the SG/CADE already had prior knowledge of the conduct but did not have enough proof to ensure a conviction, then the company and/or individual may enter into a</p>

	<p>leniency agreement with partial benefits and will receive, upon declaration of fulfillment of the Leniency Agreement by the plenary session of CADE's Tribunal, the benefit of a reduction of one to two-thirds of the applicable penalty, depending on how effective the cooperation and good faith of the offender is in fulfilling the Leniency Agreement.</p>
<p>E. Who can be a beneficiary of the leniency program (individual / businesses)?</p>	<p>According to article 86 of Law No. 12.529/2011, both companies and/or individuals.</p> <p>Under the Corporate Leniency Policy, a corporation and all directors, officers, and employees of the corporation who admit their involvement in the illegal antitrust activity and cooperate with the agency.</p>
<p>F. What are the conditions of availability of full leniency: [e.g. provide decisive evidence, maintain cooperation throughout, not to be the ringleader, cease the infringement, restitution, etc.]</p>	<p>Pursuant to Brazilian Competition Law, in order to benefit from total leniency, the following requirements have to be fulfilled:</p> <ul style="list-style-type: none"> i. The applicant (a company or an individual) must be the first to come forward and confesses its participation in the unlawful practice; ii. The applicant must cease its involvement in the anticompetitive practice; iii. The company confesses having participated in the tort and fully and permanently cooperates with the investigations and administrative proceeding, attending, at its own expense, whenever required, at all procedural acts, until the conclusion thereof; v. The cooperation results in the identification of other members of the conspiracy, and in the obtainment of documents that evidence the anticompetitive practice; vi. At the time the applicant comes forward, the General Superintendence has no knowledge of the cartel.
<p>G. What are the conditions of availability of partial leniency (such as reduction of sanction / fine / imprisonment): [e.g.: valuable, potential, decisive evidence by witnesses or on basis of written documents, etc.? Must the information</p>	<p>According to the Guidelines on Antitrust Leniency, partial leniency is available for first-ins in the case</p> <p>the SG/CADE already had prior knowledge of the conduct but did not have enough proof to ensure a conviction, then the company and/or individual may enter into a leniency agreement with partial benefits and will</p>

be sufficient to lead to an initiation of investigations?]

receive, upon declaration of fulfillment of the Leniency Agreement by CADE's plenary Tribunal, the benefit of a reduction of one to two-thirds of the applicable penalty, depending on how effective the cooperation and good faith of the offender is in fulfilling the Leniency Agreement.

With respect to criminal liability, a partial leniency also fully protects individuals from criminal prosecution.

Besides the partial leniency available for first-ins applicants, there is an option for second-ins applicants, which is the Cease and Desist Agreement (TCC in its acronym in Portuguese). The TCC generates benefits only in the administrative sphere, without automatic benefits in the criminal sphere.

According to the Guidelines on Antitrust Leniency Program, specifically for cases of agreement, coordination, manipulation, or arrangement among competitors, such as the case of a cartel, the TCC has the following requirements:

I. payment of a monetary contribution to the Fund for the Defense of Diffuse Rights, according to articles 85, paragraph 1, III, of Law No. 12.529/2011 and 224, introductory paragraph, of the RICADE, which is established based on the amount of the expected fine, subject to a percentage reduction that will vary depending on when the TCC is proposed and the scope and utility of the collaboration of the committed party in the fact-

finding, according to article 227, parts I, II, III, and article 228 of the RICADE, as follows:

a. immediately after initiation of an administrative proceeding and before the proceeding is remitted to CADE's Tribunal, the monetary contribution will be calculated based on the expected fine, which will be subject to:

i. a reduction of 30% to 50% for the first in;

ii. a reduction of 25% to 40% for the second in;

	<p>iii. a reduction of up to 25% for the remaining proponents of a TCC;</p> <p>b. after the case is remitted to CADE's Tribunal: the monetary contribution will be calculated based on the expected fine, subject to a reduction of up to 15% (these parameters may be changed if Leniency Plus has also been granted);</p> <p>II. the proponent must admit having participated in the investigated conduct, according to article 225 of the RICADE;</p> <p>III. the proponent must collaborate in the fact-finding process, according to article 226 of the RICADE;</p> <p>IV. the proponent must commit not to engage in the invested conduct, according to paragraph 1, of article 85 of Law No. 12.529/2011;</p> <p>V. a fine will be set for total or partial nonfulfillment of the obligations undertaken.</p>
<p>H. Obligations for the beneficiary after the leniency application has been accepted: [e.g. ongoing, full cooperation with the investigating agency during the proceedings, etc.]</p>	<p>Beneficiaries of leniency must cooperate with CADE and criminal authorities throughout the investigation, providing all information, documents or other related materials of which they hold possession, and which may contribute to the investigations. Furthermore, they must cease their involvement in the conduct, confess their guilty, and cooperate fully and permanently with the investigation by identifying other parties involved and gathering evidence and relevant information to prove the infringement.</p>
<p>I. Are there formal requirements to make a leniency application? [e.g. must applications take a particular form or include particular information/data, must they be in writing or can they be made orally, etc.]</p>	<p>The Leniency Agreement proposal can be submitted to CADE's General Superintendence in writing or orally.</p> <p>If submitted orally, the procedure is the following:</p> <p>i. The interested party has to contact the Chief of Staff of the General Superintendence to arrange a secret meeting with the General Superintendent.</p> <p>ii. In the meeting, the interested party has to present a description of the anticompetitive practice ("what", "when" & "where"), including its participation and the identification of others involved</p>

	<p>in such practice (“who”), and a description of the evidence that can be provided to the General Superintendence; no evidence has to be brought at this first meeting;</p> <p>iii. The General Superintendent will prepare a short draft of the meeting to be kept by the applicant.</p> <p>iv. At each meeting before the agreement is finally executed, a new draft should be prepared and given to the applicant.</p> <p>If submitted in <i>writing</i>, the procedure is the following:</p> <p>i. The proposal has to be submitted to the General Superintendence’s Chief of Staff, in a sealed envelope, indicating that it contains a proposal for a Leniency Agreement (in Portuguese, “<i>Proposta de Acordo de Leniência</i>”);</p> <p>ii. The proposal will receive confidential treatment and only the General Superintendent and people authorized by he/she will have access to the document;</p> <p>iii. The proposal has to necessarily contain a description of the anticompetitive practice (“what”, “when” & “where”), including its participation and the identification of others involved in such practice (“who”), a description of the evidence that can be provided to the General Superintendence, and if there are any leniency application to other authorities in relation to the alleged cartel;</p> <p>Even though the confession of wrongdoing can be made orally or in writing, the Leniency Agreement is itself a written agreement that contains an express clause referring to admission of the participation of the company and/or individual in the antitrust conspiracy reported.</p> <p>The writing proposal may be also submitted through the “<i>Clique Leniência</i>” platform (available at https://leniencia.cade.gov.br/), by filing in the form.</p>
<p>J. Are there distinct procedural steps within the leniency program? [e.g.: provisional guarantee of leniency (“PGL”) and further steps leading to a final leniency agreement / decision)?]</p>	<p>According to the Guidelines on Antitrust Leniency Program,</p> <p>Generally, the negotiation of a Leniency Agreement occurs in three phases:</p> <p>I. Phase of securing a marker;</p>

	<p>II. Phase of submission of evidentiary information and documents of the offense reported or under investigation; and;</p> <p>III. Phase of execution of the Leniency Agreement.</p> <p>If the applicant satisfies the requirements for leniency, a Leniency Agreement will be signed within the General Superintendence. While adjudicating a case, CADE must verify whether the beneficiary complied with the terms and conditions provided in the leniency agreement and, if this is the case, acknowledge the full or partial immunity.</p>
<p>K. At which time during the application process is the applicant given certainty with respect to its eligibility for leniency, and how is this done?</p>	<p>According to the Guidelines on Antitrust Leniency Program,</p> <p style="padding-left: 40px;">Securing a marker does not guarantee entering into a Leniency Agreement, because it depends on the fulfillment of all legal requirements and the conclusion of all phases of negotiation of the Leniency Agreement in CADE.</p> <p>Once all the requested information and documents have been submitted, the SG/CADE's Chief of Staff will forward the Leniency Agreement proposal to the Deputy General Superintendent for analysis. The Deputy General Superintendent may suggest new arrangements and/or explanations from the leniency applicant or may forward the proposal to the General Superintendent for final analysis. If the analysis is positive, the proposal will be considered complete by CADE's General Superintendence and the case will move on to the phase of execution of the Leniency Agreement.</p>
<p>L. What is the legal basis for the power to agree to grant leniency? Is leniency granted on the basis of an agreement or is it laid down in a (formal) decision? Who within the agency decides about leniency applications?</p>	<p>Leniency is a written agreement signed between CADE's General Superintendence jointly with Public Prosecutor's Office and the applicant. CADE's General Superintendence has authority to grant leniency pursuant to Brazil's Competition Law.</p>

<p>M. Do you have a marker⁷ system? If yes, please describe it.</p>	<p>Yes. A company/individual can get a “marker” to secure its place in line for leniency. The party then has a given amount of time (maximum 30 days) to complete its internal investigation and perfect its leniency application.</p> <p>To be eligible to secure a marker, the applicant must provide the General Superintendence with information concerning its name and address, the parties to the alleged cartel (“who”), the affected product(s) and services affected and the geographic area affected by the reported violation (“what” & “where”), and the estimated duration of the reported violation (“when”). The applicant should also inform the General Superintendence on leniency applications to other authorities in relation to the alleged cartel.</p>
<p>N. Does the system provide for any extra credit⁸ for disclosing additional violations? [e.g. a hardcore cartel in another market]</p>	<p>Yes. The Leniency Plus Program allows a company that does not qualify for leniency for an initial matter under investigation to offer information about another cartel of which CADE has no prior knowledge. In this modality, the applicant can obtain all the benefits from leniency in regards to the second infringement and a reduction of one to two-thirds of the applicable sanction in regards to the first infringement, depending on its cooperation with the investigations.</p>
<p>O. Is the agency required to keep the identity of the beneficiary confidential? If yes, please elaborate.</p>	<p>Yes. CADE’s confidentiality policy for leniency applicants is regulated by the Resolution 21/2018 (v. 1.B item), which provides that CADE will not identify a leniency applicant prior to CADE’s final judgment of the case or share information provided by the applicant with third parties. The only exceptions to this are i) if the agency is requested by a court order ii) or if the applicant consents to waiver. In addition, if the applicant identifies itself first, then CADE is free to confirm. Please note that with respect to the defendants, they have the right to access the proceedings’ files and know the identity of the applicant.</p>
<p>P. Is there a possibility of appealing an agency’s</p>	<p>No.</p>

⁷ A marker protects an applicant's place in the queue for a given period of time and allows it to gather the necessary information and evidence in order to meet the relevant evidential threshold for immunity.

⁸ Also known as: “leniency plus”, “amnesty plus” or “immunity plus”. This category covers situations where a leniency applicant, in order to get as lenient treatment as possible in a particular case, offers to reveal information about participation in another cartel distinct from the one which is the subject of its first leniency application.

<p>decision rejecting a leniency application?</p>	
<p>Q. Contact point where a leniency application can be lodged [telephone and fax including the country code, plus out of hours contacts (if any)]:</p>	<p>FELIPE LEITÃO VALADARES ROQUETE General Coordinator of the Leniency Program at the General Superintendence Phone: +55 61 3221-8563 E-mail: leniencia@cade.gov.br</p>
<p>R. Does the policy address the possibility of leniency being revoked? If yes, describe the circumstances where revocation would occur. Can an appeal be made against a decision to revoke leniency?</p>	<p>A leniency agreement cannot be revoked, but only rejected. According to the Guidelines on Antitrust Leniency Program,</p> <p>A leniency application can be rejected by CADE for several reasons, including the following:</p> <ol style="list-style-type: none"> I. failure to submit the Leniency Agreement proposal within 30 days after the marker is secured; II. failure to cooperate throughout the negotiation, either by not supplying the information and documents requested by CADE's General Superintendence, or by otherwise obstructing the investigations; III. insufficiency of the evidentiary information and/or documents of the alleged conduct reported or under investigation; IV. failure to demonstrate the impact on the Brazilian territory of a conduct that took place abroad. <p>At the discretion of the SG/CADE, prior notice may be given to the leniency applicant of the intent to reject the marker request, giving the leniency applicant one last opportunity to submit the requested information and documents on the case.</p>
<p>S. Does your policy allow for "affirmative leniency", that is the possibility of the agency approaching potential leniency applicants?</p>	<p>Yes.</p>
<p>T. Does your authority have rules to protect leniency material from disclosure? If yes, please elaborate which parts are protected and what</p>	<p>The contents of the Leniency Agreement and all its related documents are restricted and will not be released to the public during the initiation of a preliminary investigation or an administrative proceeding neither in the case of a dawn raid.</p>

does protection actually mean.

CADE's General Superintendence follows a set of procedures aiming at ensuring confidentiality after signing the Leniency Agreement and upon initiation of the preliminary investigation or administrative proceeding, such as:

I. the possibility of not publishing the information that the case originated from a Leniency Agreement;

II. the order for initiation of the administrative proceeding, when published in the Federal Official Gazette (DOU in its Portuguese acronym), generally does not inform the names of the individuals involved in the Agreement nor the lawyers' names, but only the names of the legal persons involved, in alphabetic order;

III. the confidential information and documents related to the Leniency Agreement are restricted files in CADE's Electronic Information System (SEI in its Portuguese acronym), and there is one separated public record;

IV. the information related to the Leniency Agreement is labeled and/or highlighted as being of restricted access in the Technical Notes; and

V. in interaction with external bodies, traceable versions of documents are provided.

Furthermore, if an order is necessary to realize a dawn raid, other confidentiality measures are adopted, such as: (i) a request for the maximum level of confidentiality available in the Brazilian Judiciary; (ii) a personal request by CADE's Attorney General (PROCADE) to the assigned judge and a specific alert regarding to the confidentiality of the Leniency Agreement; (iii) no direct mention of the name of the company and/or individuals as leniency recipients; (iv) the leniency recipients are identified in a separated document from the Anticompetitive Conduct Records; and, (v) proactive action by the PROCADE at Brazilian courts, in the event of appeals, after the implementation of dawn raids' measures.

7. Settlement

<p>A. Does your competition regime allow settlement?</p> <p>If yes, please indicate its public availability (link to the relevant rules, guidelines, etc.).</p>	<p>The Article 85 of the Brazilian Competition Law, Law nº 12.529/2011, foresees CADE's settlement policy by means of the Cease and Desist Agreement (TCC in its acronym in Portuguese). This instrument is an agreement between CADE and the companies and/or individuals investigated for cartels violation of the economic order, under which the antitrust authority agrees to halt investigations against TCC signatories as long as the signatories comply with the terms of the referred agreement.</p> <p>CADE's Guidelines for Cease and Desist Agreements for cartel cases is available in Portuguese and English at:</p> <p>https://cdn.cade.gov.br/Portal/centrais-de-conteudo/publicacoes/guias-do-cade/guia-tcc-atualizado-11-09-17.pdf and https://cdn.cade.gov.br/Portal/centrais-de-conteudo/publicacoes/guias-do-cade/guidelines_tcc-1.pdf.</p>
<p>B. Which types of restrictive agreements are eligible for settlement [e.g. hardcore cartels, other types of cartels, vertical agreements only ...]?</p>	<p>All anticompetitive conducts are eligible for settlement, but the amount of the required pecuniary contribution will take into account in its calculation the gravity of the conduct, among other aspects. For instance, the range of the expected fine, used in the calculation of the pecuniary contribution, is greater in investigations of hard-core cartels than in investigations of vertical agreements.</p> <p>However, the payment of a pecuniary contribution for cartels cases is mandatory as well as the acknowledgement of participation in the conduct. Another mandatory requirement for cartel cases is the collaboration of the signatory when the case is still under investigation of the General Superintendence.</p>
<p>C. What is the reward of the settlement for the parties?</p>	<p>First, after the signature of a TCC, CADE's investigations on the signatories are suspended and filed – in what concerns the signatories – after the completion of the terms of the agreement.</p> <p>Second, even if the parties are called to pay a pecuniary contribution, it does not have a punishment nature. If the signatories are found guilty of an antitrust violation in the future, the TCC will not be considered for recidivism purposes, which would have the effect of doubling the amount of the applicable fine.</p> <p>Third, the settlement avoids a substantive ruling concerning the signatories and the need to appeal to court in case of disagreement, which prevents excessive expenses of time and money with lawyers.</p> <p>It is important to note that, in cartel cases, unlike a Leniency Agreement, a TCC does not result in benefits for criminal liability. However, if the party interested in signing a TCC with CADE also wishes to simultaneously negotiate a plea bargain agreement with</p>

	<p>the Public Prosecutor and/or the Federal Police, CADE may help the TCC proponents with such communication.</p>
<p>D. May a reduction for settling be cumulated with a leniency reward?</p>	<p>Yes. The benefits of a Cease and Desist Agreement, Leniency Agreement and Leniency Plus Agreement can be cumulated.</p>
<p>E. List the criteria (if there is any) determining the cases which are suitable for settlement.</p>	<p>The parties are considered suitable for settlement if:</p> <ul style="list-style-type: none"> i. they effectively cooperate with CADE's investigations and administrative proceedings; ii. other agents involved in the infringement can be identified; and, iii. the provided information and documents helped proving the violation.
<p>F. Describe briefly the system [who can initiate settlement – your authority or the parties, whether your authority is obliged to settle if the parties initiate, in which stage of the investigation settlement may be initiated, etc.].</p>	<p>The parties submit the settlement proposal to CADE's General Superintendence, whose staff will analyze the file. The sooner the parties present the TCC proposal, the greater is the pecuniary contribution's reduction. A TCC signed in the early stages of the proceeding will probably be more useful to the investigation, bringing information still unknown or little understood by the authority.</p> <p>In this respect, the TCC cooperation's decreasing bands can be established as follows:</p> <p>I. TCC requested before the beginning of administrative proceeding:</p> <ul style="list-style-type: none"> • TCC presented up to three months from administrative and/or legal actions of investigative nature, the initiation of administrative inquiry, or any Defendant's awareness of the investigation; • TCC presented between the end of the aforementioned period and the initiation of the administrative proceeding. <p>II. TCC presented between the initiation of the administrative proceeding and the end of the defense period:</p> <ul style="list-style-type: none"> • TCC presented before the attachment of party's notification in the proceeding; • TCC presented between the attachment of party's notification in the proceeding, and the end of the defense period. <p>III. TCC presented between the end of the defense period and the order to present new arguments:</p> <ul style="list-style-type: none"> • TCC presented up to six months from the end of the defense period; • TCC presented between the 6th month subsequent to the end of the defense period and the order to present new arguments.

	The legal limit of time to submit a settlement proposal is the schedule of CADE's Administrative Tribunal judgment session to decide over the anticompetitive conduct.
F. Describe the procedural efficiencies of your settlement system [e.g. shorter decision, etc.].	CADE's Leniency Program and the Cease and Desist Agreement policy have been important mechanisms for a quicker and more efficient detection of anticompetitive conducts and for the law enforcement against these practices.
G. Does a settlement necessitate that the parties acknowledge their liability for the violation?	No, according to CADE's Internal Regulation (Article 225), the acknowledgement of participation in the investigated conduct is a requirement to sign TCCs related to cartel cases. However, the acknowledgement of participation in the investigated conduct does not mean acknowledgement of the illegal character of the conduct.
H. Is there a possibility for settled parties to appeal a settlement decision at court?	No, the settlement policy is based on a negotiated consensus between the parties and the Brazilian competition authority. Thus, a judicial appeal regarding the settlement decision would be out of scope.

8. Commitment

A. Does your competition regime allow the possibility of commitment? If yes, please indicate its public availability [link to the relevant rules, guidelines, etc.].	No, the Brazilian anticompetitive enforcement foresees two main investigation tools and reward instruments: the Leniency, and Cease and Desist Agreements, as aforementioned. In both cases, the first requirement is to cease the anticompetitive conduct and commit to not collude again.
B. Which types of restrictive agreements are eligible for commitment [e.g. hardcore cartels, other types of cartels, vertical agreements only ...]? Are there violations which are excluded from the commitment possibility?	Not applicable.

C. List the criteria (if there are any) determining the cases which are suitable for commitment.	Not applicable.
D. Describe, which types of commitments are available under your competition law.[e.g.: behavioural / structural]	Not applicable.
E. Describe briefly the system [who can initiate commitment – your authority or the parties, in which stage of the investigation commitment may be initiated, etc.]	Not applicable.
I. Does a commitment decision necessitate that the parties acknowledge their liability for the violation?	Not applicable.
J. Describe how your authority monitors the parties' compliance to the commitments.	Not applicable.
K. Is there a possibility for parties to appeal a commitment decision at court?	Not applicable.

9. Investigative powers of the enforcing institution(s)⁹

A. Briefly describe the investigative measures available to the enforcing agency such as requests for information, searches/raids¹⁰, electronic or computer searches, expert opinion, etc. and indicate whether such measures requires a court warrant.	<p>Search and seizure warrants must be granted by a Court.</p> <p>Computers can be searched and seized if necessary pursuant to a search warrant. CADE may also conduct inspections at business premises without a court order, but with a 24 hours prior notice to the defendant. Requests for information are commonly used as an investigative measure not subject to court authorization. For more detailed information about the agency's investigative powers, see article 11 and article 13 VI of Law 12.529/2011, available in English</p>
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⁹ "Enforcing institutions" may mean either the investigating or the decision-making institution or both.

¹⁰ "Searches/raids" means all types of search, raid or inspection measures.

	<p>at https://cdn.cade.gov.br/portal-ingles/topics/legislation/laws/LAW%20N%C2%BA%2012529%202011%20%28English%20version%20from%2018%2005%202012%29.pdf.</p>
<p>B. Can private locations, such as residences, automobiles, briefcases and persons be searched, raided or inspected? Does this require authorisation by a court?</p>	<p>Yes, private locations, automobiles, briefcases and persons may be searched pursuant to a search warrant granted by a court.</p>
<p><u>C. Can servers located outside the territory (abroad or in a cloud) be inspected? Are there special rules for this investigative power? Please explain!</u></p>	<p>Yes. According to Brazilian Civil Procedure regime, a Brazilian company may be subject to an inspection without notice based on a judicial order.</p> <p>If the company servers are located outside the Brazilian territory (abroad or in a cloud), CADE's General Superintendence can also download and copy the electronic documents during the inspection based on the fact that the judicial order contains an specific authorization to copy documents hosted in foreign domains.</p> <p>However, if the company is not based in Brazil, an inspection depends on international cooperation mechanisms and it will vary according to the agreements established between Brazil and the country in which the order must be carried out.</p>
<p><u>G.D.</u> May evidence not falling under the scope of the authorisation allowing the inspection be seized / used as evidence in another case? If yes, under which circumstances (e.g. is a post-search court warrant needed)?</p>	<p>In general, the scope of the warrant is set broadly. According to the Brazilian Competition Law, CADE's General Superintendence may request to the Judiciary a search and seizure warrant for objects, papers of any kind, log books, computers and magnetic files from a company or an individual, whenever it is in the interests of administrative inquiries or administrative proceedings in order to impose administrative sanctions for violations to the economic order (Art. 13, VI, d).</p> <p>According to the Brazilian case law, if evidence concerning an anticompetitive conduct outside the scope of the warrant is found, it might be, as well, seized and used in a new investigation related to the evidence of the new anticompetitive conduct found. However, if this evidence refers to a conduct or crime under the jurisdiction of another public body, the latter must obtain a judicial authorization, in order to have access to it.</p>

<p>D.E. Have there been significant legal challenges to your use of investigative measures authorized by the courts? If yes, please briefly describe them.</p>	<p>CADE has been working on measures to protect confidential information in order to prevent sensitive information to be disclosed by court orders, and to ensure the rights and protection of the leniency applicants. Furthermore, there are ongoing advocacy initiatives, in order to explain to courts the importance of confidentiality in antitrust cases.</p>
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10. Procedural rights of businesses / individuals

<p>A. Key rights of defence in cartel cases: [e.g.: right of access to documents in the possession of the enforcing authority, right to a written statement of the case against the defendant, right to respond to that case in writing, right to respond orally, right to confront companies or individuals that make allegations against the defendant, right to legal representation before the enforcing authorities, right not to self-incriminate, etc.] Please indicate the relevant legal provisions.</p>	<p>The Brazilian legislation ensures that the following rights are granted to defendants:</p> <ul style="list-style-type: none"> - The right of access to file and documents in the possession of the enforcing authority; - the right to a written statement of the case against the defendant; - the right to respond to the case in writing or orally; - the right to confront companies or individuals that make allegations against the defendant; - the right to legal counsel, - the right against self-incrimination; - the right to be officially communicated of every decision adopted in the process; - the right to have reasonable deadlines to respond to accusations and questionings of the authority and third parties; - the right to produce all types of proofs (oral, documental, technical).
<p>B. Protection awarded to business secrets (competitively sensitive information): is there a difference depending on whether the information is provided under a compulsory legal order or provided under informal co-</p>	<p>The same rules apply to all confidential information, irrespective of where it was obtained. Commercial and personal information, which CADE considers (after submissions from the undertaking) might significantly harm legitimate interests, can be restricted.</p>

<p>operation? Please indicate the relevant legal provisions.</p>	<p>Sensitive information will only be used by the competition agency for a legitimate law enforcement purpose and the authorities will not disclose such information unless it is required by law or necessary to further a legitimate law enforcement purpose.</p>
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11. Limitation periods and deadlines

<p>A. What is the limitation period (if any) from the date of the termination of the infringement by which the investigation / proceedings must begin or a decision on the merits of the case must be made? <u>Please describe potential suspension or interruption opportunities of this limitation period and the requirements for such rules to apply!</u></p>	<p>A cartel case must be brought within 12 years of the end of the illegal activity. However, if the administrative proceedings are on hold for more than 3 consecutive years, such proceedings shall be closed without a decision in the merits of the case.</p> <p>Those limitation periods are interrupted by any administrative or judicial act of taking of evidence, or by the regular notification of the defendants. Those periods can be also suspended, which occurs while the cease and desist agreement is still in force (art. 46, Law no. 12.529/2011).</p>
<p>B. What is the deadline, statutory or otherwise (if any) for the completion of an investigation or to make a decision on the merits? <u>Please describe potential suspension or interruption opportunities of this limitation period and the requirements for such rules to apply!</u></p>	<p>The investigation at CADE starts with an Administrative Inquiry, which has a term of one hundred and eighty (180) days to be concluded, as of its starting date. This deadline can be extended, as often as necessary, for terms of sixty (60) days each, when the facts are complex. Every deadline renewal must be justified by the circumstances of the case, such as the complexity of the case and/or the need to deepen the analysis of a larger number of evidences and other documents brought to the Administrative Inquiry.</p> <p>If CADE's General Superintendence understands there is enough evidence on the Administrative Inquiry, it may open an Administrative Proceeding, by accusing formally the parties of violations against the economic order. The decision on the merits of the Administrative Proceeding has no deadline to be rendered.</p>
<p>C. What are the deadlines, statutory or otherwise (if any) to challenge the commencement or completion of an investigation or a decision</p>	<p>A company has five years from the rendering of CADE's final decision to appeal to the Judiciary.</p>

regarding sanctions? (see also 15A)

12. Types of decisions

A. List which types of decisions on the merits of the case can be made in cartel cases under the laws listed under Section 1. [E.g.: finding of an infringement, ordering to bring the infringement to an end, imposition of fines, etc.]

At the conclusion of a case, defendants can be condemned or the case can be filed by CADE.

Cartels, as an administrative offence, can be sanctioned with fines imposed on companies by CADE and they may range from 0,1 to 20 per cent of the company's revenues in the year preceding the initiation of the proceedings. The fine is applied in double if the practice is characterized as recidivism (new infringement within 5 years of previous condemnation). Individual managers responsible for unlawful corporate conduct may be fined in an amount ranging from 1 to 20 per cent of the corporate fine. Associations and other entities that do not engage in commercial activities may be fined from approximately BRL 50,000 to BRL 2 billion. Fines for repeated violations are doubled.

Apart from fines, the Brazilian Competition Law provides other sanctions, such as publication of the decision in a major newspaper at the wrongdoer's expense; the prohibition of the wrongdoer from participating in public procurement procedures and obtaining funding from public banks for up to five years; and recommendation to the fiscal authorities not to allow the company involved in the wrongful conduct to pay taxes in installments or to obtain tax benefits.

At the criminal level, the Judiciary may find the prosecuted individuals to be guilty or not of a cartel offense. The penalties may include the payment of criminal fines or imprisonment from two to five years.

B. List any other types of decisions on the merits of the case relevant particularly in hardcore cartel cases under the laws listed under Section 1 (if different from those listed under 12/A).

Possible decisions were listed under 12.A.

C. Can interim measures¹¹ be ordered during the proceedings in cartel cases? (if different measures for hardcore cartels please describe both¹².) Which institution (the investigatory / the decision-making one) is authorised to take such decisions? What are the conditions for taking such a decision?

Yes, at any phase of the administrative investigation, to assess violations or administrative proceedings in order to impose sanctions for violations to the economic order, the General Superintendent or the Reporting Commissioner may, at their initiative or upon the request of CADE's Chief Attorney, adopt preventive measures, upon indication or reasoned concern that the defendant directly or indirectly causes or may cause irreparable damage, or make ineffective the final outcome of the proceedings (article 84 of Law No. 12.529/2011).

13. Sanctions for procedural breaches (non-compliance with procedural obligations) in the course of investigations

A. Grounds for the imposition of procedural sanctions / fines [e.g. late provision of requested information, false or incomplete provision of information, lack of notice, lack of disclosure, obstruction of justice, destruction of evidence, challenging the validity of documents authorizing investigative measures, etc.]:

There are sanctions established by the Brazilian legislation for companies or individuals who fail to comply with requirements to provide information by, for example, destroying documents or providing false or misleading information.

According to the Law No. 12.529/2011,

Art. 40. The refusal and failure or unwarranted delay to supply information or documents requested by Cade or the Secretary for Economic Monitoring constitutes a violation punishable by daily fines of five thousand reais (BRL 5,000.00), which can be increased by up to twenty (20) times, if necessary, to ensure the effectiveness thereof, depending on the economic situation of the transgressor.

Art. 41. Unjustified absence of the defendant or third parties, when subpoenaed to provide clarification in the course of the investigation or administrative proceeding, shall subject

¹¹ In some jurisdictions, in cases of urgency due to the risk of serious and irreparable damage to competition, either the investigator or the decision-making agency may order interim measures prior to taking a decision on the merits of the case [e.g.: by ordering the immediate termination of the infringement].

¹² Only for agencies which answered "yes" to question 2.B. above

	<p>him/them to a fine of five hundred reais (BRL 500.00) to fifteen thousand reais (BRL 15,000.00) for each absence, depending on his/their economic situation.</p> <p>Art. 42. Preventing, obstructing or otherwise hindering the performance of inspections authorized by the Plenary of the Tribunal, the Reporting Commissioner or the General Superintendence during preparatory proceeding, administrative investigation, administrative proceeding or any other proceeding, shall subject the inspected party to a fine of twenty thousand reais (BRL 20,000.00) to four hundred thousand reais (BRL 400,000.00), depending on the economic status of the transgressor, upon the issuance of the notice of violation by the competent body.</p> <p>Art. 43. The deceitfulness or falsity of information, documents or statements made by any person to Cade or to the Secretary for Economic Monitoring shall be punishable with a fine of five thousand reais (BRL 5,000.00) to five million reais (BRL 5,000,000.00), depending on the seriousness of the facts and the economic status of the transgressor, without prejudice to other applicable legal sanctions.</p> <p>Art. 44. One who provides services to CADE or SEAE, in any way, and causes, even if recklessly, the improper dissemination of confidential information about the company, shall be punished with a fine of one thousand reais (BRL 1,000.00) to twenty thousand reais (BRL 20,000.00), without prejudice to the opening of other applicable procedures.</p>
<p>B. Type and nature of the sanction (civil, administrative, criminal, combined; pecuniary or other):</p>	<p>In cartel cases, sanctions may be civil, criminal, administrative or combined.</p>
<p>C. On whom can procedural sanctions be imposed?</p>	<p>Sanctions can be imposed against both the individuals and any kind of undertakings (without legal personality, companies, unions and associations).</p>

<p>D. Criteria for determining the sanction / fine:</p>	<p>Sanctions may be imposed by the competition agency or a court and may vary according to the seriousness of the infringement and the financial capacity of the individual/ corporation. According to the Law No. 12.529/2011,</p> <p>Art. 45. In the application of the penalties set forth in this Law, the following shall be taken into consideration:</p> <p>I - the seriousness of the violation;</p> <p>II - the good faith of the transgressor;</p> <p>III - the advantage obtained or envisaged by the violator;</p> <p>IV - whether the violation was consummated or not;</p> <p>V - the degree of injury or threatened injury to free competition, the national economy, consumers, or third parties;</p> <p>VI - the negative economic effects produced in the market;</p> <p>VII - the economic status of the transgressor; and</p> <p>VIII - any recurrence.</p>
<p>E. Are there maximum and / or minimum sanctions / fines?</p>	<p>Yes. See question 13.A.</p>

14. Sanctions on the merits of the case

<p>A. Type and nature of sanctions in cartel cases (civil, administrative, criminal, combined):</p> <p>On whom can sanctions be imposed? [E.g.: representatives of businesses, (imprisonment for individuals), businesses, in the case of associations of companies the associations</p>	<p>Defendants condemned for cartel conduct may be sanctioned in the administrative, civil and criminal spheres.</p> <p>Civil and administrative sanctions may be imposed on both individuals and any kind of undertakings (without legal personality, companies, unions and associations).</p> <p>Criminal sanctions may only be imposed on individuals.</p>
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<p>or the individual companies?]</p>	
<p>B. Criteria for determining the sanction / fine: [e.g.: gravity, duration of the violation, benefit gained from the violation]</p>	<p>According to the Law No. 12.529/2011,</p> <p>Art. 45. In the application of the penalties set forth in this Law, the following shall be taken into consideration:</p> <p>I - the seriousness of the violation;</p> <p>II - the good faith of the transgressor;</p> <p>III - the advantage obtained or envisaged by the violator;</p> <p>IV – whether the violation was consummated or not;</p> <p>V - the degree of injury or threatened injury to free competition, the national economy, consumers, or third parties;</p> <p>VI - the negative economic effects produced in the market;</p> <p>VII - the economic status of the transgressor; and</p> <p>VIII – any recidivism.</p>
<p>C. Are there maximum and / or minimum sanctions / fines?</p>	<p>See question 13.A.</p>
<p>D. Guideline(s) on calculation of fines: [name and reference number, availability (homepage address) and indication of the languages in which these materials are available]</p>	<p>No. See question 13.A.</p>
<p>E. Does a challenge to a decision imposing a sanction / fine have an automatic suspensory effect on that sanction / fine? If it is necessary to apply for suspension, what are the criteria?</p>	<p>There is no automatic suspensory effect, but courts may grant it, if requested by the party. If the fine is upheld by the courts, interest on the fine runs from the date when it was originally due. In addition, more recently, the courts have been requiring a court deposit of the fine amount being challenged.</p>

15. Possibilities of appeal

A. Does your law provide for an appeal against a decision that there has been a violation of a prohibition of cartels? If yes, what are the grounds of appeal, such as questions of law or fact or breaches of procedural requirements?	Yes. A defendant may appeal on errors of law, fact, or procedural breach to the Brazilian Judiciary.
B. Before which court or agency should such a challenge be made? [if the answer to question 15/A is affirmative]	Appeals against decisions rendered by CADE's Administrative Tribunal should be filed with a Federal court.

16. Private enforcement

A. Are private enforcement of competition law and private damage claims possible in your jurisdiction? If there is no legal provision for private enforcement and damage claims, what are the reasons for it?	Yes. According to the Law No. 12.529/2011, Art. 47. The aggrieved parties, on their own accord or by someone legally entitled and referred to in Article 82 of Law No. 8078, of September 11th, 1990, may take legal action in defense of their individual interests or shared common interests, so that the practices constituting violations to the economic order cease, and compensation for the losses and damages suffered be received, regardless of the investigation or administrative proceeding, which will not be suspended due to Tribunal action.
B. Laws regulating private enforcement of competition law in your jurisdiction [indication of the provisions and languages in which these materials are available; availability (homepage address)]	Law No. 10.406/2002, the "Brazilian Civil Code", which provides general rules regarding civil liability claims in its Title IX (available in Portuguese at http://www.planalto.gov.br/ccivil_03/Leis/2002/L10406.htm) Law No. 12.529/2011, the "Brazilian Competition Law", which sets the right of action of aggrieved parties against the offenders (available in Portuguese at http://www.planalto.gov.br/ccivil_03/ato2011-2014/2011/Lei/L12529.htm , and in English at https://cdn.cade.gov.br/portal-ingles/topics/legislation/laws/LAW%20N%C2%BA%2012529%202011%20%28English%20version%20from%2018%2005%202012%29.pdf).

	<p>Law No. 13.105/2015, the “Brazilian Civil Procedure Code”, which provides general rules regarding the its Title IX (available in Portuguese at http://www.planalto.gov.br/ccivil_03/ato2015-2018/2015/lei/l13105.htm).</p> <p>Law No. 8078/1990, the “Brazilian Consumer Defense Code”, which establishes the possibility of individual or class actions for the defense of individual or shared common interests related to consumer’s rights violations (available in Portuguese at http://www.planalto.gov.br/ccivil_03/leis/l8078compilado.htm).</p>
<p>C. Implementing regulation(s) on private enforcement (if any): [name and reference number, availability (homepage address) and indication of the languages in which these materials are available]</p>	<p>CADE’s Resolution No. 21 (September 2018), which regulates the procedures for access to documents and information contained in the Administrative Proceedings for the Imposition of Administrative Sanctions for Offenses to the Economic Order, including those arising from Leniency Agreement, Termination Commitment Agreement (TCC) and search and seizure lawsuits, in order to foster Civil Actions for Reparation for Damage Claims (ACRDC). Available in Portuguese at https://sei.cade.gov.br/sei/controlador_externo.php?acao=documento_conferir&codigo_verificador=0523083&codigo_crc=A2E13386&hash_download=9b3f71e8039de2ec1d9ac70868783b2d9a79cd1154c42349a295051bedd35a0a5172548281582b4fcbea05029db9139017f0aee5af7b44c84f9743a4d43c8b4a&visualizacao=1&id_orgao_acesso_externo=0.</p>
<p>D. On what grounds can a private antitrust cause of action arise? / In what types of antitrust matters are private actions available?</p>	<p>See question 16.A.</p>
<p>E. What pleading standards must the plaintiff meet to file a stand-alone or follow-on claim?</p> <ul style="list-style-type: none"> • is a finding of infringement by a competition 	<p>Both follow-on and stand-alone actions are accepted on the Brazilian system.</p> <p>There is no need to wait for a finding of infringement by the competition authority to begin a private action, as administrative and judicial spheres are independent. However, the finding of infringement can be used in a private</p>

<p>agency required to initiate a private antitrust action in your jurisdiction? What is the effect of a finding of infringement by a competition agency on national courts/tribunals ?</p> <ul style="list-style-type: none"> if a finding of infringement by competition authority is required, is it also required that decision to be judicially finalised? 	<p>antitrust action as an evidence of the existence of the conduct.</p>
<p>F. Are private actions available where there has been a criminal conviction in respect of the same matter?</p>	<p>Yes. According to the Brazilian General Civil Code, Art. 935. The civil liability is independent of the criminal, one may not question more about the existence of the fact, or about who its author is, when these questions are found to be decided in criminal judgment.</p>
<p>G. Do immunity or leniency applicants in competition investigations receive any beneficial treatment in follow-on private damages cases?</p>	<p>On regard of the disclosure of information given by the leniency applicants, the Brazilian antitrust authority protects some documents by being used by the plaintiffs in follow-on private damages cases; the documents produced by the authority based on the confession and on other information given by the leniency and the cease and desist applicants are considered classified and they are kept confidential – unless there is a judicial order for disclosure (for more info, see question 16.L).</p> <p>On the matter of damage claims, up to this date, the leniency applicants do not receive a different treatment than other parties related to the conduct and they are jointly and severally liable for the anticompetitive damages.¹³</p>

¹³ In July 2022, the Brazilian Congress approved a draft Law (Bill nº 11.275/2018) which changes some rules regarding private enforcement. This Bill statues, among other subjects, the right of plaintiffs to demand a “doble damage” claim against non-leniency and cease and desist applicants, with joint and several liability. As for the leniency and cease and desist applicants, their liability will be limited to the extension of the damage caused by then. However, by the time this template was uptaded, the Bill had not been fully approved, as the Presidential signature was still pending. <https://www.demarest.com.br/ccjc-aprova-o-projeto-de-lei-no-11-275-2018-que-estimula-aco-es-de-reparacao-de-danos-concorrenciais-no-brasil/>

H. Name and address of specialised court (if any) where private enforcement claims may be submitted to	Not applicable.
I. Information about class action opportunities	Not applicable.
J. Role of your competition agency in private enforcement actions (if at all)	CADE can be pointed as <i>amicus curiae</i> in private enforcement actions (art. 138 of the Brazilian Civil Procedure Code - Law No. 13.105/2015).
K. What is the evidentiary burden on plaintiff to quantify the damages? What evidence is admissible? <ul style="list-style-type: none"> • Role of your competition agency in the damage calculation (if at all) 	<p>The plaintiffs are responsible for the quantification of the damage in civil liability claims based on antitrust violations. The damages can be proved by any means accepted by the Brazilian Civil Code, such as confession; documents; or forensics (art. 212-232 of the Brazilian Civil Code).</p> <p>Cade has no obligation on quantifying the cartel's damage, as the anticompetitive effects are presumed and the standard of proof for cartel cases is limited to the existence of evidence of collusion (<i>per se</i> violations).</p>
L. Discovery / disclosure issues: <ul style="list-style-type: none"> • can plaintiff obtain access to competition authority or prosecutors' files or documents collected during investigations? • is your competition agency obliged to disclose to the court the file of the case (in follow-on cases)? • summary of the rules regulating the disclosure of confidential 	<p>CADE's Resolution No. 21 (September 2018) regulates the procedures for access to documents and information contained in the Administrative Proceedings for the Imposition of Administrative Sanctions for Offenses to the Economic Order, including those arising from Leniency Agreement, Termination Commitment Agreement (TCC) and search and seizure lawsuits, in order to foster Civil Actions for Reparation for Damage Claims (ACRDC). The Resolution is available in Portuguese at https://sei.cade.gov.br/sei/controlador_externo.php?acao=documento_conferir&codigo_verificador=0523083&codigo_crc=A2E13386&hash_download=9b3f71e8039de2ec1d9ac70868783b2d9a79cd1154c42349a295051bedd35a0a5172548281582b4fcbea05029db9139017f0aee5af7b44c84f9743a4d43c8b4a&visualizacao=1&id_orgao_acesso_externo=0.</p> <p>The Statutes of the Administrative Council for Economic Defense – RICADE regulates, in its Section II, the Confidentiality and Restricted Access to files, information, data, correspondence, objects and documents of interest of any of the several kinds of administrative proceeding. RICADE is available in Portuguese at</p>

<p>information by the competition agency to the court</p> <ul style="list-style-type: none"> summary of the rules regulating the disclosure of leniency-based information by the competition agency to the court 	<p>https://cdn.cade.gov.br/Portal/centrais-de-conteudo/regimento-interno/Regimento-interno-Cade-versao-05-2021.pdf and in English at https://cdn.cade.gov.br/Portal/centrais-de-conteudo/regimento-interno/Statutes-of-Cade.pdf.</p> <p>According to the Resolution No. 21, CADE's Administrative Procedure is public.</p> <p>Nonetheless, the Authority may keep the secrecy of files or documents gathered during the administrative procedure until the final decision given by CADE's Administrative Tribunal, in order to protect the investigations; to guarantee the effectiveness of CADE's Leniency and Cease and Desist programs; and to preserve the rules and best practices in CADE's international cooperation relations.</p> <p>Moreover, some documents and files will be kept in secret even after the final decision of CADE's Council.</p> <p>In the case of Leniency and Cease and Desist Agreements, CADE is forbidden to share the document developed by CADE's General Superintendence with the confession and other information provided by the applicant with third parties, even after the final decision of the Administrative Procedure. The only exceptions to this are i) if the agency is requested by a court order ii) or if the applicant consents to waiver.</p> <p>The same rule applies to other documents subject to judicial or legal confidentiality.</p>
<p>M. Passing-on issues:</p> <ul style="list-style-type: none"> how is passing-on regulated / treated in your jurisdiction? is standing to bring a claim limited to those directly affected or may indirect purchasers bring claims? 	<p>Up to this date, there is no regulation on passing-on defense in Brazil¹⁴. There is also a lack of jurisprudence regarding passing-on defense on the Brazilian Judiciary, as there is only a few precedents, in both sides.</p> <p>Any parties harmed by the cartel (direct or indirectly) can bring up a case upon the Judiciary, claiming civil damages. However, it is up to them to prove the damage suffered.</p>

¹⁴ In July 2022, the Brazilian Congress approved a draft Law (Bill nº 11.275/2018) which changes some rules regarding private enforcement. This Bill statues, among other subjects, the possibility of the defendants to allege the passing-on defense, pending on them the obligation to provide sufficient evidence of this claim. However, by the time this template was updated, the Bill had not been fully approved, as the Presidential signature was still pending. <https://www.demarest.com.br/ccjc-aprova-o-projeto-de-lei-no-11-275-2018-que-estimula-aco-es-de-reparacao-de-danos-concorrenciais-no-brasil/>

