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REMEDIES AND COMMITMENTS IN ABUSE CASES – Contribution from Brazil

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Remedies and Commitments in Abuse Cases

- Contribution from Brazil[1] –

1. CADE'S APPROACH TO REMEDIES AND COMMITMENTS

1. The Brazilian antitrust authority has published guidelines that consolidate the best practices and procedures typically applied in cease and desist agreements negotiation and include suggestions for designing, enforcing and monitoring these agreements. Even though these guidelines are not binding nor considered a rule, statute, or bylaw, they serve as a reference to the Brazilian competition community (e.g. lawyers, citizens, civil servants, firms, etc.), which considers them a significant source of information.

2. Moreover, although the guidelines on cease and desist agreements[2] focus on cartel investigations, whilst the guidelines on antitrust remedies[3] focus on merger review, both documents mention, in their introduction, that their bases and procedures also apply to unilateral conduct—which indeed occurs in practice.

3. The Guide on Antitrust Remedies describes CADE's remedies for abuse of dominant position:

> *"Remedies can also be determined unilaterally by the Tribunal of CADE or be established through a Cease and Desist Agreement (TCC in its acronym in Portuguese) in cases of anti-competitive practices under the terms of articles 36 and 38 of Law 12529/2011. Considering the information below, the remedies mentioned here shall concern cases of merger and acquisitions only; although they can be applied to anti-competitive practices."*

4. This extract reveals a significant difference between how CADE sees remedies and agreements.

5. In practice, remedies are measures the competition authority imposes. Even though its conditions can be negotiated with the parties involved in a merger or antitrust practice—which is advisable considering that it makes a remedy more feasible and lowers the chance of a company's prosecution—the remedies are to be imposed by CADE and fulfilled by the other party. These remedies may even be set unilaterally by the authority.

6. For instance, in the scope of a merger, a transaction can only be completed upon fulfilment of the remedy. If merger applicants fail to implement the remedy, the transaction cannot be consummated.

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[1] This document was jointly prepared by Carolina Helena Coelho Antunes Fontes and Marcus Vinicius Silveira de Sá, the Head of the Unilateral Conduct Unit and a Coordinator of Antitrust Analysis, respectively. It was translated from Portuguese into English by Arianne Mesquita, Ariel Menezes and Bruna Assunção, in-house translators at CADE's International Unit.

[2] Guidelines: Cease and Desist Agreements for cartel cases. https://cdn.cade.gov.br/Portal/centrais-de-conteudo/publicacoes/guias-do-cade/guidelines_tcc-1.pdf.

[3] Guide to Antitrust Remedies. https://cdn.cade.gov.br/Portal/centrais-de-conteudo/publicacoes/guias-do-cade/Guide-Antitrust-Remedies.pdf.

7. In cases of unilateral conduct, the remedy is an imposition with which the investigated company must comply, on pain of penalty. That is usually an adamant measure adopted only rarely and after the end of the investigation. The antitrust authority can only impose an obligation to do or not to do (that is, a remedy) provided it proves the effects of the practice, properly grants the adversarial principle and the right to defence, and the Tribunal of CADE decides on the case.

8. However, as described in the Guide on Antitrust Remedies, remedies can be part of agreements between CADE and the investigated party: the so-called cease and desist agreements, executed at any stage of proceedings.

9. All these considered, we discuss remedies next.

1.1. Remedies: rules and principles

10. The guidelines on antitrust remedies define "remedies" as procedures imposed by CADE or negotiated between the authority and the investigated party, which include (i) determining which practices and obligations the parties involved in a merger should take, (ii) the manner the practices are applied, (iii) the monitoring and (iv) fulfilment of remedies.

11. The document states effective remedies are the ones that completely solve competition concerns. Four guiding principles contribute to their effectiveness: proportionality, timeliness, feasibility, and verifiability.

12. Proportionality, according to the document, is the characteristic of being adequate and sufficient to revert the harm a practice has caused.

13. As for timeliness, a remedy should solve the competition concerns as soon as possible, considering "the longer the term of a remedy, the greater the monitoring costs and the more susceptible remedy effectiveness is to future events".

14. Feasibility means "the remedy shall be monitored, present actual means of resolution of incidents, and provide assurance on the mechanisms of compliance over time".

15. Finally, the verifiability principle signifies there should be mechanisms able to verify and monitor the implementation of the obligations and check the results.

16. As stated in the document, "the existence of a regulator for a specific sector does not prevent CADE from imposing remedies where it deems necessary to protect competition". Therefore, the Brazilian competition authority is not only able to adopt remedies in regulated sectors but commonly does so, as seen in numerous investigations into alleged antitrust violations that took place in these sectors.

17. Naturally, remedies in regulated sectors should heed the existing sectoral regulation. Thus, CADE must closely communicate with these agencies to design appropriate and efficacious remedies. For these reasons, CADE has cooperation agreements with multiple regulatory bodies, such as Antaq (the agency for waterway transport), Anatel (telecommunications), Anvisa (health), ANS (private health insurance), ANP (petroleum, natural gas, and fuels), Ancine (films), ANPD (data protection), and the Central Bank of Brazil[4].

[4] The full list is available at: https://www.gov.br/cade/pt-br/acesso-a-informacao/convenios-e-transferencias/acordos-nacionais/acordos-com-agencias-reguladoras. Accessed 2 September 2022.

18. Moreover, it is worth mentioning CADE has studies on several regulated markets[5] that help in understanding their dynamics and, consequently, designing remedies and cease and desist agreements. Some of these publications have entire chapters dedicated to remedies.

19. In 2020, the authority also published the working paper "CADE's antitrust remedies: A case law review"[6], which analyses how CADE applied antitrust remedies from 2014 to 2019 from the perspective of the guidelines and recommendations described in the Guide to Antitrust Remedies published in 2018.

20. Following, we will address cease and desist agreements, or TCCs, in their Portuguese initialism.

1.2. Commitments: proposing a cease and desist agreement

21. CADE has its own guidelines on cease and desist agreements, which describe this instrument as

> *"an agreement executed between CADE and the companies or individuals investigated for violation of the economic order, or both, 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 and agree to the commitments expressly provided thereunder."*[7]

[5] "Mercado de distribuição e varejo de combustíveis líquidos". https://cdn.cade.gov.br/Portal/centrais-de-conteudo/publicacoes/estudos-economicos/cadernos-do-cade/Caderno_Mercados-de-distribuicao-e-varejo-de-combustiveis-liquidos.pdf. "Atos de concentração nos mercados de planos de saúde, hospitais e medicina diagnóstica – 2022". https://cdn.cade.gov.br/Portal/centrais-de-conteudo/publicacoes/estudos-economicos/cadernos-do-cade/Cadernos-do-Cade_AC-saude-suplementar.pdf. "Atos de concentração nos mercados de planos de saúde, hospitais e medicina diagnóstica – 2018". https://cdn.cade.gov.br/Portal/centrais-de-conteudo/publicacoes/estudos-economicos/cadernos-do-cade/cadernos-do-cade-atos-de-concentracao-nos-mercados-de-planos-de-saude-hospitais-e-medicina-diagnostica-2018.pdf. "Mercado de Saúde Suplementar: Condutas – 2021". https://cdn.cade.gov.br/Portal/centrais-de-conteudo/publicacoes/estudos-economicos/cadernos-do-cade/Caderno-Saude-Suplementar_Condutas_Atualizado-VFinal.pdf. "Mercado de instrumentos de pagamento – 2019". https://cdn.cade.gov.br/Portal/centrais-de-conteudo/publicacoes/estudos-economicos/cadernos-do-cade/mercado-de-instrumentos-de-pagamento-2019.pdf. "Mercado de transporte marítimo de contêineres – 2018". https://cdn.cade.gov.br/Portal/centrais-de-conteudo/publicacoes/estudos-economicos/cadernos-do-cade/mercado-de-transporte-maritimo-de-conteineres-2018.pdf. "Mercado de transporte aéreo de passageiros e cargas – 2017". https://cdn.cade.gov.br/Portal/centrais-de-conteudo/publicacoes/estudos-economicos/cadernos-do-cade/mercado-de-transporte-aereo-de-passageiros-e-cargas-2017.pdf. "Mercado de serviços portuários – 2017". https://cdn.cade.gov.br/Portal/centrais-de-conteudo/publicacoes/estudos-economicos/cadernos-do-cade/mercado-de-servicos-portuarios-2017.pdf. "Mercado de Saúde Suplementar: Condutas – 2015". https://cdn.cade.gov.br/Portal/centrais-de-conteudo/publicacoes/estudos-economicos/cadernos-do-cade/mercado-de-saude-suplementar-condutas-2013-2015.pdf. "Varejo de gasolina – 2014". https://cdn.cade.gov.br/Portal/centrais-de-conteudo/publicacoes/estudos-economicos/cadernos-do-cade/varejo-de-gasolina-2014.pdf.

[6] Working Paper nº 02/2020 - CADE's antitrust remedies: A case law review. https://cdn.cade.gov.br/Portal/centrais-de-conteudo/publicacoes/estudos-economicos/documentos-de-trabalho/2020/documento-de-trabalho-n02-2020-remedios-antitruste-no-cade-uma-analise-da-jurisprudencia.pdf.

[7] Guidelines: Cease and Desist Agreements for cartel cases. https://cadn.cde.gov.br/Portal/centrais-de-conteudo/publicacoes/guias-do-cade/guidelines_tcc-1.pdf.

22. The agreement is outlined in Article 85 of the Brazilian Competition Law, as seen below:

> *"In the event of the administrative procedures mentioned in Article 48, Items 1 to 3, CADE may require—if it understands that it serves the interests safeguarded by law and is timely and suitable—the respondent to sign an agreement to stop the conduct under investigation or its harmful effects".*

23. An agreement is considered timely and suitable based on comparing the outcomes of executing it or not. In taking this decision, the authority's case law[8] indicates the need for assessing (i) whether the commitment can solve the alleged competitive issue; (ii) whether the financial contribution levied on the investigated party is sufficient, if applicable; and (iii) the stage of the proceeding when the party proposes the agreement, that is if it is in the initial stage of investigation or the more advanced stage of analysis.

24. Thus, to negotiate a cease and desist agreement, the authority forms a negotiation committee composed of a minimum of three of its civil servants. Finally, when the investigated party files an agreement request with the Office of the Superintendent General, the Superintendent-General submits it to the Tribunal of CADE with a suggestion to approve or reject it, as provided for in the guidelines for cease and desist agreements.

25. There are three main differences between negotiating a cease and desist agreement in the scope of a cartel and an abuse of dominance case. As CADE treats collusive agreements as an illegal per se, negotiation terms are more objective. Nonetheless, when it comes to probing unilateral conduct—whose illegal nature derives from its anti-competitive effects—it is somewhat more complex to define objective parameters.

26. The primary distinction between agreements reached in cartel and unilateral conduct investigations is that, for the former, the signatory must admit their participation in the conduct, as established in Article 185[9] of the Statutes of CADE[10]. As to the latter, there is no need to plead guilty to an anti-competitive practice.

27. The second difference is that, in cease and desist agreements for cartel proceedings, the signatory must cooperate with the investigation, providing, for instance, additional evidence to the case records. Conversely, in probes into abuse of dominance, CADE does not ask for cooperation—since a party rarely denies engagement—but discusses whether or not it negatively affects competition.

28. Finally, the third difference is that, for cartels, cease and desist agreements must levy on the probed party a financial contribution to the Fund for De Facto Joint Rights[11],

[8] For more information on this topic, see a study published by CADE in 2021, "TCC na Lei 12.529/11". https://cdn.cade.gov.br/Portal/centrais-de-conteudo/publicacoes/TCC%20na%20Lei%20n%C2%BA%2012.52911/TCC%20na%20Lei%20n%C2%BA%2012.529-11.pdf.

[9] "Article 185. In regard to investigations into agreements, arrangements, manipulation, or alliances amongst competitors, Cease and Desist Agreements must necessarily contain a statement by all signatories admitting their participation in the conduct under investigation".

[10] https://cdn.cade.gov.br/Portal/centrais-de-conteudo/regimento-interno/Statutes-of-Cade.pdf.

[11] Law 7347/1985 created the Fund for De Facto Joint Rights, a fund intended to repair the damage inflicted by antitrust violations on the environment; consumer; and goods and rights of artistic, aesthetic, historical, touristic, and landscape value; amongst other de facto joint rights. https://www.gov.br/mj/pt-br/acesso-a-informacao/perguntas-frequentes/consumidor/fundo-de-defesa-de-direitos-difusos. Accessed 5 September 2022.

whose value is set during the negotiation of the agreement under Article 184[12] of the Statutes of CADE. Even though it is not the rule, CADE may also impose financial contributions for abuse of dominance. In taking this decision, the authority considers the irreproachability of the practice, the party's recidivism, and the moment the party proposed the agreement—since the earlier the settlement is signed, the investigations use fewer public resources, and the competition harm ends sooner.

29. However, the timing of entering into a cease and desist agreement in a unilateral conduct case is strategic because there is a considerable information gap between the probed party and CADE. When the authority receives an agreement proposal, before all else, it assesses how timely and suitable it is to sign it because, as mentioned earlier, the sooner an anticompetitive practice ends, the better it is for the economy. Nevertheless, to initiate a negotiation, the authority needs to be assured of (i) the target market of the practice and its dynamics, (ii) the potential and actual effects of the practice, (iii) which obligations to do and not to do are necessary and sufficient to stop the harmful effects of the practice, (iv) what is the most appropriate, feasible, and prompt manner of verifying compliance with the obligations, and (v) what sufficiently deterring sanctions it can impose in case of non-compliance with the agreement.

30. Therefore, before entering into such an agreement, the authority should gather enough information. Often this is only possible after conducting a broad and appropriate fact-finding procedure. Recognising the ideal time for negotiation is paramount to mitigate the risk of winding up with an inefficient agreement that cannot to repress the effects it should, by design, stop.

31. It is important to note that, from 2012 to 2022, CADE signed 68 cease and desist agreements for unilateral practices. The authority considers this kind of agreement valuable to address concerns in unilateral conduct investigations. Negotiating solutions lowers the chances of prosecution and CADE introducing a unilateral measure that is unfeasible or results in unnecessary losses to a firm or an artificial distortion in an unrelated market.

32. To illustrate the theory presented above, we introduce the GuiaBolso and Bradesco[13] case, in which a cease and desist agreement was signed to eliminate potential competition concerns that could affect a nascent digital market in the finance sector.

2. GUIABOLSO V. BRADESCO CASE

33. CADE launched an administrative proceeding into the alleged antitrust violation committed by Bradesco. The conduct hampered the operation of GuiaBolso and, consequently, free competition in the financial services sector. The authority assessed whether the behaviour of Bradesco constituted market foreclosure as the bank refused to give GuiaBolso access to data and posed obstacles to data portability and interoperability.

[12] "Article 184. In regard to investigations into agreements, arrangements, manipulation, or alliances amongst competitors, or into activities intended to promote, obtain, or influence the adoption of agreements or concerted practices amongst competitors, Cease and Desist Agreements must necessarily include the obligation of making a financial contribution to the Fund for the De Facto Joint Rights, which is to be established during the negotiation process and cannot amount to less than the minimum provided for in Article 37 of Law 12529/2011".

[13] Administrative Proceeding no. 08700.004201/2018-38 (Claimant: Secretaria de Promoção da Produtividade e Advocacia da Concorrência – SEPRAC. Defendant: Banco Bradesco S.A. Interested Third Party: GuiaBolso Finanças Correspondente Bancário e Serviços Ltda.)

34. In this analysis, first we should first consider the involved parties.

35. Bradesco is a Brazilian financial institution that offers financial services and products in Brazil and abroad. Amongst them are loans and advances, deposits, credit card issuance, consortiums, insurance, leasing, foreign trade, payment collection, payment processing, supplemental retirement plan, asset management, and security brokerage services.

36. The interested third party, GuiaBolso, is a fintech that designed a smartphone application. Its initial goal was to provide users with a financial management system, which would be possible by accessing the banking information of users (duly authorised by the users through passwords). With access to their bank accounts, the app synthesises user information on account statements, future dating, credit cards, and others. In a structured manner, GuiaBolso grants users valuable information for money management that internet banking sometimes fail to provide.

37. Later, GuiaBolso started to use data to develop a user rating system: a risk classification based on the bank transactions of each client. Moreover, via a two-sided platform, the app began to offer credit services, operating as a marketplace for personal loan services. Through the app, other financial institutions could provide credit services to the users of GuiaBolso—regardless of their prior relationship with a given bank—considering the risk classification that GuiaBolso developed and made available to these institutions. Hence, the clients of Bradesco that used GuiaBolso, similar to those of other banks, could compare the prices of different loan providers online. They could, then, buy credit with other financial institutions at a much smaller switching cost than in the traditional market.

38. However, Bradesco started requiring the input of a random generated number token each time clients accessed their checking accounts. As a result, the Secretariat for the Promotion of Productivity and Competition Advocacy (SEPRAC) alleged that the conduct of Bradesco—supposedly related to data protection and the security of clients—ended up, in reality, hampering the operation of GuiaBolso and new potential competitors.

39. The imposition of an additional random token prevented the clients of Bradesco from hiring GuiaBolso since the fintech could not access their checking accounts. Moreover, Bradesco's clients would incur greater vulnerability as authorising third parties to access their account information would also allow them to carry out sensitive transactions in their accounts.

40. SEPRAC also affirmed Bradesco had economic incentives to restrain GuiaBolso's innovation since the fintech depended upon Bradesco's information and concurrently provided additional services that competed with those the bank offered.

41. During the discovery phase, GuiaBolso claimed that Bradesco not only had considerable shares in the relevant markets in which it operates but also owned and controlled the financial information of its clients, a non-replicable asset essential for the activities of the fintech.

42. Queried about it, Bradesco alleged GuiaBolso's data access behaviour was the same of scammers, very different from that of clients, which prompted a warning message from Bradesco's system. Allegedly, it justified adopting additional security measures such as the random token.

43. In its investigation, CADE observed an increase in the number of fintechs—companies that usually rely on banking information to advance and offer services appropriately. In other words, the authority found these firms had dependent and rival

relationships with banks: they needed their essential assets but also offered services that could substitute some of those commonly provided by banks.

44. The conduct, then, had vertical effects and demanded the identification and definition of at least two different markets: one, called source market, where Bradesco operated, and the other, called target market, where GuiaBolso acted.

45. The former would be a traditional market, common in CADE's analyses; hence, the authority focused on the latter, considered at the time a new market without set boundaries due to its innovative nature. Initially, CADE noted this market could be regarded as a marketplace for financial products and services, more precisely, the organisation of bank account information and personal credit offer.

46. Besides, it was found to be a multi-sided market, where banking information platforms provided their services to at least two different type of users. On one side of the platforms there are the individuals, holders of bank accounts that access the platform for their financial management system. On another side there are the financial institutions, which offer bank loans and base their interest rates on user profiles, considering the risk classification developed by the platform.

47. Network effects make the platform less appealing to financial institutions if its connection with individuals (clients) is impaired. Similarly, the platform is less valuable to individuals if fewer financial institutions are connected. Therefore, finance applications, such as GuiaBolso, are less attractive to financial institutions that offer credit services when they cannot access the checking account information of clients of banks with considerable market shares, such as Bradesco. Consequently, this creates a vicious cycle with fewer users interested in the application, which may impede financial apps' activities.

48. Against this backdrop, CADE considered it essential for finance applications and personal credit marketplaces to have information from every bank; hence, it was necessary to ensure there was no discrimination in bank data access.

49. The authority took into account numerous expert studies prepared by different antitrust authorities about fintechs and their competition implications in the finance sector, such as those of the European Parliament[14], Comisión Nacional de los Mercados y de la Competencia[15], Autoridade de Concorrência[16], and the Autoriteit Consument & Markt[17]. Many issues addressed in these documents were present in the case at hand, such as:

[14] Competition issues in the financial technology (FinTech) sector. http://www.europarl.europa.eu/RegData/etudes/STUD/2018/619027/IPOL_STU(2018)619027_EN.pdf.

[15] Market study on the impact on competition of technological innovation in the financial sector (Fintech). https://www.cnmc.es/sites/default/files/editor_contenidos/Notas%20de%20prensa/2018/181009%20Market%20Study%20on%20the%20impact%20on%20competition%20of%20technological%20innovation%20in%20the%20financial%20sector.pdf.

[16] Inovação Tecnológica e Concorrência no Setor Financeiro em Portugal. https://www.concorrencia.pt/sites/default/files/2021-06/Versa%CC%83o%20Final%20Issues%20Paper%20FinTech.pdf.

[17] Fintechs in the payment system: the risk of foreclosure. https://www.acm.nl/sites/default/files/documents/2018-02/acm-study-fintechs-in-the-payment-market-the-risk-of-foreclosure.pdf.

- Non-interoperability can be a dissuasive factor since it hampers access to the market; therefore, denying rivals access to data may constitute an exclusionary practice.
- A traditional financial institution often does not perceive fintechs as upstream providers of supplementary services but as competitors; consequently, there are incentives to restrain access to client data.
- There is a risk that incumbents foreclose the market to fintechs since they can only operate if banks grant them access to clients' banking information. Foreclosure can happen even in markets that do not directly compete with the original one. For instance, fintechs can organise clients' banking information and, based on it, offer them bank products that are more appropriate than the ones provided by their financial institutions.
- One of the main difficulties for entering the market and effectively competing is accessing users' banking information, usually held by the incumbent firms of the market.

50. The authority concluded Bradesco's behaviour of preventing GuiaBolso from accessing the checking account information of clients that expressly authorised it could be perceived as a subtle form of market foreclosure, potentially harming competition. Thus, CADE launched an administrative proceeding to impose administrative sanctions for antitrust violations.

51. Bradesco then proposed an agreement that later resulted in a cease and desist agreement signed to solve the potentially harmful practices CADE identified.

52. We should stress that one noticeable commitment Bradesco made was to develop an interface that allowed GuiaBolso (i) to request and get permission from its users who were clients of Bradesco; (ii) to access Bradesco's systems through encrypted communication, making possible the collection of data from consenting users. Additionally, to make the interface feasible and operational, Bradesco committed to complying with set levels of availability and response-time.

53. As Bradesco undertook the commitments and the legal requirements were met, the authority's investigative arm—the Office of the Superintendent General—proceeded to examine the timeliness and suitability of the proposed agreement.

54. To this end, the investigative body verified three main aspects: the effectiveness of the proposed agreement to tackle the potential competition issues, the sufficiency of the suggested financial contribution to the Fund for De Facto Joint Rights, and the penalties provided for partial or total non-compliance with the cease and desist agreement.

55. The authority also considered the timing of the agreement as the gradual implementation of open banking[18] was ongoing, per the sectoral regulations[19].

56. As to the efficiency of the agreement, CADE found it met the requirements as it facilitated the portability of Bradesco's client data, provided the clients expressly authorised it. Consequently, the data portability would mitigate a structural feature of the

[18] As of May 2022, Brazilian legislation uses the term "open finance".

[19] Resolution CMN-BCB no. 1/20. https://normativos.bcb.gov.br/Lists/Normativos/Attachments/51028/Res_Conj_0001_v4_P.pdf&ved=2ahUKEwj4wuya_oD6AhUxqJUCHe6MDEUQFnoECAQQBg&usg=AOvVaw3Q3BMs9YyFlN5s5qqL_AwA. Accessed 6 September 2022.

bank market: the heterogeneity of the information gap between the various market players of the sector. Hence, the agreement allowed for better services, reduced prices and increased quantities due to a more intense market rivalry.

57. In the end, CADE concluded the cease and desist agreement fulfilled the requirements to stop the potentially anticompetitive effects of the conduct and accepted it, believing that signing a TCC before open banking was implemented in Brazil translated into potentially pro-competitive effects on the Brazilian financial service market as the measure converged with policies of the sectoral regulatory agency aimed at increasing competition in the sector.

3. CONCLUSION

58. The Brazilian antitrust authority has a consistent framework of rules for applying antitrust remedies and negotiating agreements. Besides these rules, outlined in the Brazilian Competition Law and the Statutes of CADE, the Brazilian competition authority has prepared guidelines on their application: one for antitrust remedies and another for cease and desist agreement negotiations. Although none of the guides is specific for investigations into abuse of dominant position, they include relevant instructions for these cases.

59. Considering CADE's precedents, signing agreements to stop potentially harmful practices is a measure recurrently employed. As stated earlier, CADE entered into 68 cease and desist agreements as part of investigations of unilateral conduct in the past ten years. That is because, in investigations of alleged abuses of dominant position, stopping the potentially harmful effects of the practice may be more important than going through the whole stages of an administrative proceeding only to, in the end, convict the player and impose the administrative penalty.

60. In other words, CADE considers agreements valuable tools for probes into abuse of dominance since they reduce public costs and lower the chances of prosecution—especially because an agreed solution raises the likelihood of compliance and, consequently, of stopping the negative impact of the practice on the competition.

61. Conversely, CADE constantly evaluates its mistakes and successes in negotiating agreements. The authority seeks to understand the types of obligations that work, the best ways of monitoring compliance, and how to enhance its negotiating power to close the information gap with probed companies and prevent ineffective agreements.