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resolution of cartel cases in Latin America and the Caribbean**

- Contribution from Brazil -

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This Note his attached document from Brazil is circulated to the Latin American and Caribbean Competition Forum (LACCF) FOR DISCUSSION under Session III at its forthcoming meeting to be held on 14-15 October 2026 in Buenos Aires, Argentina.

Mr. Pablo Ramírez Ayala (PabloEmmanuel.RamirezAyala@oecd.org).

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Session I: Early resolution of cartel cases in Latin America and the Caribbean

- Contribution from Brazil¹ –

Introduction

1. Under the Brazilian competition regime,² the Administrative Council for Economic Defense (CADE) may enter into Cease-and-Desist Agreements (known by their Portuguese acronym, TCCs) with investigated parties as a mechanism for the early resolution of cartel cases.³ This tool is often regarded as a complement to CADE's leniency programme, as it provides an alternative for parties involved in cartel conduct that fails to qualify for leniency, which in Brazil is available only to the first applicant.
2. Over the years CADE has developed a strong TCC policy,⁴ which is an important cornerstone of the Authority's anti-cartel enforcement practice and reflects CADE's strong culture of negotiation as an effective enforcement tool.
3. TCCs offer several benefits to CADE. By allowing the early resolution of cases (at least with respect to some investigated parties), TCCs enable CADE to save time and resources, which can be then allocated to other cases. TCCs are particularly effective in the Brazilian context, where judicialisation is widespread, and judicial appeals following a final decision by CADE are very common and may last for several years. TCCs can also serve as a powerful investigation tool, enabling CADE to obtain additional and better-quality evidence, thereby improving the quality of investigations and reducing the need for more burdensome investigative measures. Moreover, TCCs have a deterrent effect, helping destabilise cartels, as infringers know that at any moment one or more co-conspirators may approach CADE and provide information about the collusive conduct.
4. For investigated parties, TCCs can also be attractive, as they ensure the early resolution of the case involving a lower payment than the amount they would be expected to pay at the end of the investigation, as well as more flexible payment conditions. Additionally, TCCs allow investigated parties to reduce the reputational impact that a cartel investigation may have on them.
5. Against this backdrop, this contribution will examine the use of TCCs by CADE. It will first present the relevant legal framework, including both procedural aspects and substantive conditions. It will then analyse CADE's enforcement experience, highlighting

¹ This contribution was prepared by Marcelo Guimarães, Head of CADE's International Unit, and Felipe Roquete, Acting General Superintendent of CADE.

² Article 85 of Law No. 12.529/2011.

³ It should be noted that Cease-and-Desist Agreements (TCCs) are also available in cases involving other anticompetitive practices, including abuse of dominance. Although the legal framework is broadly similar, the rules governing these agreements differ in certain respects. Accordingly, this contribution focuses exclusively on TCCs in cartel cases.

⁴ Since 2015, more than 450 TCCs have been signed, resulting in payments totalling BRL 5 billion. Available in Portuguese at: <https://qap.cade.gov.br/extensions/cadenumeros/cadenumeros.html>.

how TCCs have become an important tool in the Authority's anti-cartel enforcement policy.

1. 1. Legal framework

6. When Law No. 12.529/2011 entered into force in 2012, CADE took the opportunity to revisit its TCC policy. Although the instrument already existed under the previous legal framework, it had remained largely underused. In this context, building on the powers conferred by Law No. 12.529/2011 to regulate TCCs through secondary legislation,⁵ CADE comprehensively reformed the regime in 2013.⁶ This was the last major reform of the TCC framework and marked a turning point, transforming TCCs into an effective and widely used enforcement tool. Later, in 2016, CADE issued guidelines,⁷ consolidating the best practices and procedures typically followed during the negotiation of TCCs in cartel cases.⁸

7. A TCC is an agreement between CADE and the companies and/or individuals investigated for anticompetitive practices, under which CADE agrees to terminate the investigation with respect to the signatories, provided that they comply with the terms of the agreement and fulfil the commitments expressly set out therein.

8. Unlike leniency agreements, TCCs do not provide any benefits with respect to criminal liability. Nevertheless, TCC applicants may simultaneously negotiate a plea bargain with the Public Prosecutor's Office and/or the Federal Police.⁹ In such cases, CADE may facilitate communication between the applicants and the relevant authorities.

9. Moreover, TCCs do not provide immunity from private damage claims. However, TCC signatories are liable only for single damages (rather than double damages) and only for damages attributable to them (rather than being jointly and severally liable for damages attributable to other participants in the infringement).¹⁰

10. It should be noted that the decision to enter into a TCC is discretionary. This means that, even if a TCC applicant fulfils all the legal requirements, the applicant has no right to have the agreement accepted by CADE. CADE's decision is based on a duly reasoned assessment of the agreement's convenience and appropriateness, which must establish that the agreement serves the interests protected by law. Likewise, TCCs are voluntary for the investigated parties, which are not required to enter into such an agreement if they do not wish to do so.

⁵ Article 85, para. 14, of Law No. 12.529/2011.

⁶ Resolution No. 5 of 6 March 2013, which amended CADE's Internal Regulations (RICADE), specifically Articles 179 to 196.

⁷ CADE (2016), *Guidelines: Cease and Desist Agreement for cartel cases ("TCC")*, available in English at https://cdn.cade.gov.br/Portal/centrais-de-conteudo/publicacoes/guias-do-cade/guidelines_tcc-1.pdf.

⁸ In 2026, CADE began the process of revising its Guidelines, with the aim of incorporating the innovations developed over a decade of TCC negotiations.

⁹ Pursuant to Law No. 12.850/2013.

¹⁰ Article 47, paragraphs 2 and 3, of Law No. 12.529/2011.

1.1. Procedure

11. TCC applications are received through a single queue using a marker system that takes into account the order in which applications are submitted. The marker system is the same as that used for leniency applications. This means that second-in or subsequent applicants (who are no longer eligible for leniency) may apply for TCCs.

12. Upon receipt of the marker, the interested party must file the TCC application within five days. Interested parties may also choose to file the TCC application directly, without first requesting a marker.

13. TCCs can be negotiated at any procedural stage. If an application is submitted while the case is pending before CADE's General Superintendence (CADE's investigative arm), this body leads the negotiations. If the application is submitted while the case is before CADE's Tribunal (CADE's adjudicating body), the Reporting Commissioner leads the negotiations. In both cases, CADE's Tribunal has competence to approve the TCC application.

14. When a TCC application is submitted, a "negotiation commission", composed of at least three officials, is appointed. The commission is responsible for conducting the negotiations and forwarding its conclusion (i.e. a recommendation for or against settlement) to the General Superintendent or the Reporting Commissioner, who then submits it to CADE's Tribunal. When the negotiation commission is established, it is given a period within which to conclude the negotiations.¹¹ The submission of a TCC application does not suspend the investigation, which continues throughout the negotiation process.¹²

15. Each investigated party must apply for a TCC individually. However, investigated parties belonging to the same economic group may negotiate a TCC jointly.¹³ In particular, individuals may negotiate a TCC together with the company with which they are or were affiliated. In some circumstances, employees or former employees who participated in the infringement but have not yet been identified may be covered by a TCC through so-called "umbrella clauses". In such cases, the company pays an additional amount to ensure that new individuals (employees or former employees) who are subsequently identified as participants are also covered by the TCC. This mechanism aims to reduce procedural costs for CADE. Similarly, a company may negotiate a TCC with an "accession clause", allowing subsequently investigated individuals (employees or former employees) to be included in the settlement, provided that they agree to its terms.

16. Investigated parties may apply for a TCC only once in a given investigation.¹⁴ If the negotiations do not proceed, all documents submitted by the applicant are returned, and CADE retains no copies.¹⁵

¹¹ If the case is still before the General Superintendence, the period is typically 60 days, extendable for additional periods depending on the specific circumstances of the case. If the case is before the Tribunal, the period is 30 days, extendable for an additional 30 days. See Articles 181 and 182 of RICADE and CADE (2016), *Guidelines: Cease and Desist Agreement for cartel cases ("TCC")*.

¹² Article 85, paragraph 6, of Law No. 12.529/2011.

¹³ Article 180 of RICADE.

¹⁴ Article 85, paragraph 4, of Law No. 12.529/2011.

¹⁵ Article 179, paragraph 6, of RICADE.

17. CADE may keep TCC negotiations confidential, which is typically the case in practice.¹⁶ Once a TCC is signed, its terms are made public,¹⁷ while its annexes (including information and documents submitted by the applicants, as well as the “history of conduct”, as explained below) remain confidential, even after the conclusion of the investigation, and are accessible only to the other investigated parties for the purposes of exercising their rights of defence.

18. The establishment of clear procedures was essential to ensure consistency and coherence of the settlement policy, providing greater predictability in the process and ensuring an equal treatment across different cases.

19. During the implementation of a TCC, the administrative proceeding is suspended with respect to the signatory parties until the conditions set forth in the agreement have been fully complied with, at which point the proceeding is closed with respect to them.¹⁸ If a signatory party fails to comply with the conditions of the TCC, CADE will apply the sanctions provided for in the agreement and resume the investigation against that party.¹⁹

1.2. Requirements

20. Under the existing regime, a TCC in cartel cases must fulfil a number of requirements in order to be admitted.²⁰

21. First, the signatory party must acknowledge its participation in the investigated conduct.²¹ Since cartels constitute the most egregious competition violation and are therefore also criminalised in Brazil, CADE considers this is a necessary requirement to ensure deterrence and the effectiveness of its cartel enforcement practice. This requirement also aims to prevent TCCs from becoming more attractive than leniency agreements.

22. Second, the signatory party must immediately cease the anticompetitive conduct and commit not to engage in the investigated practice again. As part of the negotiation, CADE may also require the applicant to adopt additional measures that it considers necessary to achieve the specific objectives of the TCC. These may include, for instance, structural and/or behavioural measures aimed at stimulating or restoring competition in the market.²²

23. Third, as mentioned above, TCCs can be negotiated at any stage of the investigation. However, if a TCC is negotiated while the case is still under investigation before CADE’s General Superintendence, the signatory party must co-operate with the

¹⁶ Article 85, paragraph 5, of Law No. 12.529/2011.

¹⁷ A summary of all TCCs signed since 2012 is available in Portuguese at: <https://www.gov.br/cade/pt-br/assuntos/acordos/tccs>.

¹⁸ Compliance by TCC signatories with their obligations is assessed when CADE’s Tribunal rules on the main investigation or, where obligations remain ongoing, at a later stage once those obligations have been fulfilled (Article 193, paragraphs 2 and 3, of RICADE).

¹⁹ Article 85, paragraphs 9-11, of Law No. 12.529/2011.

²⁰ See Article 85, items I to III, and paragraph 2, of Law No. 12.529/2011, and Articles 184-186 of RICADE.

²¹ Article 185 of RICADE.

²² Article 85, paragraph 1, item I, of Law No. 12.529/2011.

ongoing investigation.²³ Such co-operation takes place during the TCC negotiations, when the applicant must share information and documents that help the General Superintendence identify other participants in the conduct and establish the infringement. Based on the information provided, the General Superintendence drafts a document known as “history of conduct”. The co-operation obligation also continues after the TCC is signed, throughout the administrative proceeding, by requiring the signatory party to provide any clarifications requested by CADE, as well as any procedural assistance that is within the signatory party’s capacity to provide. This requirement demonstrates that TCCs are not only a means of closing an investigation, but also as an investigative tool that can strengthen an ongoing investigation.

24. Fourth, the signatory party must pay a pecuniary contribution,²⁴ which is based on the expected fine, to which a percentage reduction is applied. The reduction varies according to the scope and usefulness of the co-operation provided by the party and/or the procedural stage at which the application is submitted (i.e. the applicant’s position in the application queue and whether the case is pending before CADE’s General Superintendence or Tribunal):²⁵

- 30% to 50% for the first TCC applicant while the case is pending before CADE’s General Superintendence;
- 25% to 40% for the second TCC applicant while the case is pending before CADE’s General Superintendence;
- Up to 25% for any subsequent TCC applicant while the case is pending before CADE’s General Superintendence; and
- Up to 15% for TCC applicants while the case is pending before CADE’s Tribunal.

25. The precise percentage of the reduction is determined on a case-by-case basis. The TCC Guidelines provide further details on the assessment of the level of co-operation provided by applicants for the purpose of determining the applicable reduction, as well as on the calculation of the expected fine.

26. CADE may reduce the pecuniary contribution if the applicant demonstrates that it has compensated for the harm caused by the anticompetitive practice covered by the agreement, in order to incentivise private enforcement.²⁶

27. Likewise, reductions under a TCC may be combined with leniency-plus discounts, i.e. where a TCC applicant applies for a leniency agreement in relation to another collusive practice of which CADE is not aware.²⁷

²³ Article 186 of RICADE. Although not mandatory for cases already pending before CADE’s Tribunal, co-operation may nevertheless be required at this stage, depending on the circumstances of the case and at the discretion of the Reporting Commissioner (CADE (2016), *Guidelines: Cease and Desist Agreement for cartel cases (“TCC”)”).*

²⁴ Article 85, paragraph 1, item III, and paragraph 2, of Law No. 12.529/2011. The pecuniary contribution goes to the Federal Fund for the Defense of Diffuse Rights, which is also the recipient of fines imposed at the conclusion of CADE’s cartel investigations.

²⁵ Articles 187 and 188 of RICADE.

²⁶ Article 12 of Resolution No. 21 of 11 September 2018.

²⁷ CADE (2016), *Guidelines: Cease and Desist Agreement for cartel cases (“TCC”)*, available in English at https://cdn.cade.gov.br/Portal/centrais-de-conteudo/publicacoes/guias-do-cade/guidelines_tcc-1.pdf.

28. Importantly, no TCC may provide for a percentage reduction greater than that granted under any TCC previously signed in the same case.²⁸

29. The staggered approach to reductions based on the applicant's position in the application queue incorporates elements of game theory, encouraging infringers to compete with one another to pursue the negotiated solution.

30. With regard to the payment of the pecuniary contribution, CADE may allow it to be paid in a single instalment (typically within 90 days of the agreement being signed), without monetary adjustment, or in instalments, subject to monetary adjustment (typically over a period of up to two years, although longer periods may be accepted). In determining the payment terms, CADE takes into account the amount of the pecuniary contribution, the signatory party's financial situation, the deterrent effect of the contribution, among other relevant factors.²⁹

31. Finally, a TCC must establish the amount of the fine to be imposed in the event of total or partial non-compliance with the obligations undertaken under the agreement.³⁰

2. CADE's enforcement experience

32. Especially following the reform of the TCC policy in 2013, the number of settlements in cartel cases have grown significantly. TCCs are now very common in cartel cases, often with several settlements signed in the same investigation by different investigated parties.

33. While 43 TCCs were signed by CADE between 1994 and May 2012 (covering both cartels and other infringements), 364 TCCs were signed in cartel cases from May 2012 (when Law No. 12.529/2011 entered into force) through September 2026. The figures below show the number of TCCs signed in these cases, as well as the corresponding pecuniary contributions:

Table 1.

Type of conduct	TCCs	Pecuniary contributions (BRL)
Cartel	364	5 039 492 977.41
Abuse of dominance	100	248 352 904.08
Other	58	40 658 761.21
Total	522	5 328 504 642.70

34. The increasing use of TCCs has resulted not only in greater pecuniary contributions and immediate cessation of infringements, thereby shortening investigations and increasing overall deterrence, but has also strengthened the quality of CADE's investigations. 75% of TCCs in cartel cases between 2012 and 2025 were negotiated while the case was pending before CADE's General Superintendence, where co-operation by TCC signatories is mandatory. This indicates that the majority of TCCs directly contributed to the evidentiary material of the investigations.

²⁸ Article 189 of RICADE.

²⁹ Article 196 of RICADE and CADE (2016), *Guidelines: Cease and Desist Agreement for cartel cases ("TCC")*, available in English at https://cdn.cade.gov.br/Portal/centrais-de-conteudo/publicacoes/guias-do-cade/guidelines_tcc-1.pdf.

³⁰ Article 85, paragraph 1, item II, of Law No. 12.529/2011.

35. It should be noted that there was a peak in the number of TCCs and related pecuniary contributions between 2015 and 2018, driven by a number of major cartel investigations concerning public procurement for infrastructure works, involving large construction companies with significant revenues.

36. Moreover, TCCs have been particularly important in international cartel cases. As widely discussed, the enforcement of competition law against cross-border collusion involves a number of procedural challenges, including gathering evidence, serving investigated parties abroad, and securing payment of fines. In this context, TCCs enable CADE to overcome territorial barriers to access evidence, locate infringers, and secure the advance payment of fines from companies and/or individuals with no assets in the country, which could otherwise be very difficult.

37. Over the past decades, CADE has opened more than 40 international cartel cases, and TCCs have been signed in almost two thirds of these cases. As an illustration, in October 2025, CADE's Tribunal approved seven TCC applications related to an investigation into an alleged international cartel in the offshore currency market, amounting to BRL 80 million in pecuniary contributions.³¹ The investigation, which is still pending before CADE's Tribunal, was launched in 2015 and involves financial institutions operating globally. Nine other TCCs had already been signed in the case, through which signatory parties had paid approximately BRL 235 million.³²

38. The use of TCCs has also been prominent in CADE's first-ever investigations into collusive practices in labour markets.

39. The first investigation was launched in 2019 following a leniency agreement and focuses on the alleged exchange of competitively sensitive HR information in the healthcare products, equipment and services industry.³³ In this case, seven TCCs have been signed, involving 45 investigated parties (seven companies and 38 individuals) and resulting in pecuniary contributions of over BRL 60 million.³⁴ Notably, CADE's Tribunal rejected a TCC application on the grounds that the co-operation provided by the applicant was insufficient to justify the settlement, as several other TCC applicants had already submitted similar evidentiary material.³⁵

40. Two other investigations opened in 2024 also concern the exchange of competitively sensitive HR information.³⁶ Together, these investigations involve more than 60 investigated parties, including large Brazilian and multinational companies. In 2025,

³¹ CADE (2025), *CADE collects around BRL 80 million in cases involving offshore currency market*, <https://www.gov.br/cade/en/matters/news/cade-collects-around-brl-80-million-in-cases-involving-offshore-currency-market>.

³² Administrative Proceeding No. 08700.004633/2015-04.

³³ Administrative Proceeding No. 08700.004548/2019-61.

³⁴ TCC Applications No. 08700.001552/2021-92, 08700.001663/2021-07, 08700.001742/2021-18, 08700.002147/2021-91, 08700.002471/2021-18, 08700.001017/2022-12 and 08700.002940/2025-14; CADE (2022), *CADE signs six agreements in antitrust investigations*, <https://www.gov.br/cade/en/matters/news/cade-signs-six-agreements-in-antitrust-investigations>.

³⁵ TCC Application No. 08700.004057/2022-16.

³⁶ Administrative Proceedings Nos. 08700.000992/2024-75 and 08700.001198/2024-49.

TCCs were reached in both cases, involving six investigated companies and resulting in pecuniary contributions of over BRL 95 million.³⁷

41. These examples indicate that TCCs have also been considered by investigated parties in emerging areas of enforcement, where there is not yet established caselaw from CADE's Tribunal. This trend is also aligned with CADE's leniency policy, as reflected in the recent update to the Leniency Guidelines, which expressly expanded the range of conduct eligible for leniency to include wage-fixing and no-poach agreements, as well as the exchange of competitively sensitive information.³⁸

42. As for the conditions included in TCCs, while most cases focus on pecuniary contributions and co-operation with the investigations, the use of other measures has also emerged as a complement, although still to a limited extent. As mentioned above, behavioural and/or structural measures may also be negotiated as part of a TCC under the Brazilian competition regime.

43. The most common measure negotiated in this context is a behavioural obligation requiring the signatory party to introduce or maintain an effective competition compliance programme to prevent future infringements and facilitate the identification and reporting of such practices. For instance, this was the case with the TCC signed with Álya Construtora S.A. in March 2025, covering 19 administrative proceedings concerning competition infringements in public procurements for engineering works and services. In addition to co-operating with CADE and paying a pecuniary contribution of BRL 125 million, the company committed to adopting a competition compliance programme.³⁹ Similar obligations were also included in the TCCs signed in the 2019 labour market investigation mentioned above.⁴⁰

44. The use of structural measures in TCCs in cartel cases remain rare, given the level of intervention they entail (as is also the case with structural remedies imposed as sanctions at the end of a cartel investigation). A landmark case concerns an investigation into a cartel in the distribution and retail markets for liquid fuels in the Federal District, opened in 2009 following a complaint.⁴¹ During the investigations, dawn raids were conducted and interim measures were imposed on one of the investigated parties (Cascol Combustíveis para Veículos Ltda., hereafter "Cascol"), which is an unusual measure in cartel cases. The interim measures were based on robust evidence of an ongoing collusive practice allegedly led by Cascol and on the risk that, absent immediate intervention, the conduct could continue or intensify, resulting in the suppression of competition among fuel stations. The measures consisted of an intervention in the company's management and the appointment

³⁷ TCC Applications Nos. 08700.006723/2024-12, 08700.007313/2024-99, 8700.007344/2024-40, 08700.007218/2024-95, 08700.007218/2024-95 and 08700.009296/2024-24.

³⁸ CADE (2025), CADE's Antitrust Leniency Programme, https://cdn.cade.gov.br/Portal/centrais-de-conteudo/publicacoes/guias-do-cade/Guia%20Leniencia%20do%20Cade%202025_EN_v4.pdf.

³⁹ TCC Application No. 08700.008998/2024-91; CADE (2025), *CADE signs six agreements in antitrust investigations*, <https://www.gov.br/cade/en/matters/news/cade-signs-six-agreements-in-antitrust-investigations>.

⁴⁰ TCC Applications No. 08700.001552/2021-92, 08700.001663/2021-07, 08700.001742/2021-18, 08700.002147/2021-91, 08700.002471/2021-18, 08700.001017/2022-12 and 08700.002940/2025-14; CADE (2022), *CADE signs six agreements in antitrust investigations*, <https://www.gov.br/cade/en/matters/news/cade-signs-six-agreements-in-antitrust-investigations>.

⁴¹ Administrative Proceeding No. 08012.008859/2009-86.

of a provisional administrator, aiming to prevent the continuation or intensification of the alleged anticompetitive practices while the investigation was ongoing.

45. In 2016 Cascol apply for a TCC, which was approved by CADE's Tribunal in 2017.⁴² In addition to acknowledging its participation in the cartel and paying a pecuniary contribution of BRL 90.4 million, Cascol also co-operated with the investigation by submitting documentary evidence corroborating the facts reported.

46. Moreover, behavioural and structural remedies were negotiated as part of the TCC to promote greater competition in the affected market, as merely ceasing the anticompetitive practice would not have been sufficient to achieve this outcome. This was the first time a structural measure was negotiated under a TCC in a cartel case – and, to date, remains the only example. Cascol committed to divesting some fuel stations, as well as introducing a compliance programme and implementing a corporate restructuring, including changes to the company's governance structure aimed at professionalising its management and strengthening its internal controls.

47. The remaining investigation was finally concluded in June 2025, resulting in the conviction of seven fuel stations and the imposition of fines exceeding BRL 150 million.⁴³

48. Finally, it is worth mentioning a recent case involving pricing software in the retail fuel sector.⁴⁴ While this is not precisely a cartel case (the company was investigated for inducing uniform commercial behaviour, which constitutes a stand-alone infringement under Brazilian competition law), its outcome provides useful insights for future cases involving algorithmic collusion, as well as into the potential use of TCCs in such cases.

49. In April 2026, a TCC was reached.⁴⁵ In addition to making a pecuniary contribution, the investigated party co-operated extensively with CADE to explain the functioning of the pricing tool under scrutiny. The signatory party also committed to a number of behavioural obligations, including: (i) appointing a compliance officer and introducing a competition compliance programme; (ii) prohibiting the imposition of prices suggested by the algorithm; (iii) introducing procedures to ensure the segregation of clients' data and strategies; (iv) adopting confidentiality obligations regarding clients' sensitive data; (v) notifying CADE when the market share of its clients reaches a specified threshold in given locations; (vi) granting CADE access to the company's facilities and pricing system; and (vii) allowing CADE to require an audit, at the expense of the signatory party, to verify the implementation of compliance mechanisms in the pricing system.

50. This case illustrates that TCCs may also have an important advocacy value, particularly in emerging areas of enforcement. In this case, beyond bringing the specific case to an end, the TCC allowed CADE to send a clear message to the market that the use of pricing algorithms must be carefully designed and implemented, with appropriate safeguards to prevent anticompetitive outcomes.

⁴² TCC Application No. 08700.004602/2016-26.

⁴³ CADE (2025), *CADE fines fuel cartel in over BRL 150 million in Federal District*, <https://www.gov.br/cade/en/matters/news/cade-fines-fuel-cartel-in-over-brl-150-million-in-federal-district>

⁴⁴ Administrative Proceeding No. 08700.006280/2024-60.

⁴⁵ TCC Application No. 08700.010553/2024-71; CADE (2026), *CADE reaches settlement in investigation into the use of pricing algorithms*, <https://www.gov.br/cade/en/matters/news/cade-reaches-settlement-in-investigation-into-the-use-of-pricing-algorithms>.

3. Key aspects of CADE's recent experience

51. CADE's TCC policy, as demonstrated above, has strengthened the effectiveness of the Authority's enforcement actions. However, in cartel investigations, it is necessary to avoid the risk of what has come to be known as "leniency inflation".⁴⁶ In other words, competition authorities should use settlements to ensure the effectiveness of investigations, without, however, undermining the deterrent effect of their actions.

52. The excessive use of settlements – without contributing additional elements to the investigation or strengthening the body of evidence, and with the sole purpose of expediting the investigative process – may reinforce the perception among companies that competition authorities lack effective tools for detecting cartels.

53. In this regard, CADE has sought to assess, on a case-by-case basis, the appropriateness of negotiating agreements, given the characteristics of the market, the parties involved, and the conduct under investigation, in order to make TCCs a tool for enhancing the investigative process and, consequently, the quality of the investigation.

54. Similarly, in cartel cases, the negotiation process may take a significant amount of time, since the internal investigations conducted by companies to secure additional evidence are not a trivial matter. In this regard, CADE's recent experience indicates that the most appropriate strategy for maintaining adequate incentives to encourage settlements is to allow the investigation to proceed as usual, even while the TCC is being negotiated.

55. Such an approach not only avoids delaying the completion of the investigation but also prevents TCCs from being used by those under investigation as a means of postponing the final decision on the conduct.

56. In this context, CADE has been drafting new provisions aimed at preventing TCCs from being misused, thereby ensuring both their effectiveness and their consistency as a tool for investigating cartels.

57. Recent TCCs have included additional obligations that (i) require companies and/or individuals to withdraw any lawsuits challenging the investigation that is the subject of the agreement; (ii) provide that, in the event of a breach of the agreement, all instalments of the pecuniary contribution become immediately due; and (iii) state that, in the event of a declaration of non-compliance with the agreement, the proceedings need not return to investigative phases that have already been completed.

58. Finally, CADE has faced the challenge of addressing the burden of monitoring compliance with TCCs, primarily because nearly all of the obligations imposed consist of behavioural measures. In this regard, monitoring costs are rising, requiring CADE to develop the appropriate expertise, within its technical staff, to ensure that compliance with the agreements can be assessed in a timely and effective manner.

59. The lessons learned from 14 years of negotiating settlements in cartel cases, as well as in other anticompetitive conduct cases, will enable CADE to update its Guidelines in order to incorporate best practices and ensure transparency and predictability in TCC negotiation processes.

⁴⁶ Marvão, Catarina and Spagnolo, Giancarlo (2022), *Leniency Inflation, Cartel Damages and Criminalization*, Available at: <https://ssrn.com/abstract=3180685>.

4. Conclusion

60. Overall, CADE's experience shows that TCCs have become a central component of its anti-cartel enforcement policy, allowing the Authority to deliver efficient enforcement outcomes. Indeed, TCCs provide an effective mechanism for the early resolution of cases, restoring competitive conditions in the market in a more timely and effective manner, while generating pecuniary contributions and valuable evidence for investigations, and strengthening deterrence.

61. The flexibility provided by the Brazilian legal framework on TCCs enables CADE to address a range of enforcement challenges, in light of the particularities of each case. CADE has the necessary discretion to assess the convenience and appropriateness of each TCC and to ensure that the terms negotiated adequately protect the public interest. At the same time, the legal framework, including the relevant guidelines, also provide parties with greater legal certainty regarding the applicable procedures and obligations, enabling them to better assess whether to engage in TCC negotiations.

62. Looking forward, TCCs are likely to remain an important tool for strengthening the effectiveness, deterrence and adaptability of CADE's cartel enforcement.