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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
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Latin American and Caribbean Competition Forum

**LATIN AMERICAN AND CARIBBEAN COMPETITION FORUM - Session III: Early
resolution of cartel cases in Latin America and the Caribbean**

- Contribution from Panama -

14-15 October 2026

This Note is an attached document from Panama 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 III: Early resolution of cartel cases in Latin America and the Caribbean

- Contribution from Panama –

Overview of the regime for the early resolution of cartel cases in Panama

1. Introduction

1. As a general rule, exceptional mechanisms for dispute resolution in Panama are governed by the Code of Civil Procedure¹. Among the exceptional means of terminating proceedings is the settlement agreement (transacción), which may be entered into at any stage of judicial proceedings, provided that the parties agree to settle the dispute and that the settlement is legally valid for submission to the court hearing the case.
2. Article 533 of the Code of Civil Procedure of the Republic of Panama provides that no settlement may be entered into in proceedings to which the State is a party without the express authorisation of the Cabinet Council or of the body empowered by law to grant such authorisation.
3. With regard to administrative proceedings in general, Law No. 38 of 31 July 2000², Article 153, provides that where a settlement, withdrawal, or acceptance of a claim involves a public authority as a party, the constitutional and legal provisions requiring compliance with special conditions for the validity of such measures must be observed.
4. The provisions described above derive from the Political Constitution of the Republic of Panama³ itself. Article 200(4) assigns to the Cabinet Council the power to authorise settlements in cases in which the State is a party and requires the prior favourable opinion of the Attorney General of the Nation before such authorisation may be granted.

2. Special competition law provisions

5. In the specific case of cartels, Law No. 45 of 31 October 2007⁴, which establishes rules on consumer protection and competition law (hereinafter, Law 45), provides that the Consumer Protection and Competition Authority (ACODECO) is responsible for

¹ Law No. 402 of 9 October 2023. Available at: https://www.gacetaoficial.gob.pa/storage/gacetas/2023/10/29887_A/100993.pdf.

² Which Approves the Organic Statute of the Office of the Solicitor General of the Administration, Regulates the General Administrative Procedure, and Establishes Special Provisions / Office of the Solicitor General of the Administration. <https://www.procuraduria-admon.gob.pa/ley-38/>

³ In force since 1972. Available at: https://www.organismojudicial.gob.pa/uploads/wp_repo/blogs.dir/cendoj/CONSTITUCIONES_POLI_TICAS/constitucion_politica.pdf.

⁴ Published in Official Digital Gazette No. 25,914 of Wednesday, 7 November 2007. Available at: <https://www.gacetaoficial.gob.pa/storage/gacetas/2007/11/25914/7277.pdf>.

conducting administrative investigations and bringing judicial proceedings aimed at obtaining a declaratory judgment from the Competition and Consumer Affairs Courts of the Judicial Branch of Panama declaring the unlawful nature of the conduct in question.

6. More specifically, Article 86(15) of Law 45 establishes, as one of ACODECO's functions, the following:

*“...to discontinue, at any stage of the administrative investigation, and even after judicial proceedings have been initiated before the competent authority, the investigation or to withdraw from the judicial proceedings, **through the execution of settlements**, subject to prior compliance with the legal requirements, provided that the economic agents under investigation or subject to proceedings accept measures relating to the conduct or acts under investigation, including penalty clauses guaranteeing compliance with the agreement.”*

7. In line with the above, Executive Decree No. 8-A of 22 January 2009, which regulates Title I of Law No. 45, provides in Article 30, in addition to ACODECO's power to discontinue an investigation or withdraw from judicial proceedings through the execution of settlements, that economic agents must offer commitments or guarantees concerning the cessation or modification of the conduct under investigation or litigation, including penalty clauses to ensure compliance with the settlement and provide the authority with certainty regarding compliance with the law.

8. The purpose of a settlement is to secure the immediate cessation or modification of the conduct causing the market distortion. Additionally, it seeks to maintain ongoing oversight of the companies with which an agreement has been reached. Such monitoring is carried out through competition audits, commencing once judicial approval becomes final or, in the case of an out-of-court settlement, once it has been duly published in Panama's Official Gazette.

9. Another objective of the settlement mechanism is the acknowledgment by the companies that they have been investigated or prosecuted by the authority. This has represented a significant development in the Panamanian experience, since, although no judicial ruling formally declaring the conduct unlawful is issued through a declaratory judgment, companies often prefer to reach an early resolution of the dispute and, at a minimum, acknowledge that they have been investigated for the possible commission of anticompetitive conduct.

10. In general, when an agreement is reached between the investigated parties seeking an early resolution and ACODECO in relation to an administrative investigation into allegedly anticompetitive conduct, whether through a judicial or out-of-court settlement, that agreement provides an opportunity for the prompt restoration of normal market conditions while also saving the authority time and resources, given that proceedings before the courts are typically lengthy and costly.

11. Although the judicial procedure is fundamentally oral and includes limited periods for the taking of evidence, experience has shown that proceedings concerning allegedly anticompetitive conduct take, on average, approximately ten (10) years to conclude before the Judicial Branch. Accordingly, the possibility of reaching a settlement represents a viable alternative.

3. Procedure

12. By means of a submission filed with the Administrator of ACODECO, economic agents interested in reaching a settlement (whether judicial or extrajudicial) must offer commitments and guarantees aimed at bringing the conduct to an end.

13. It is the responsibility of ACODECO's National Directorate for Competition to carry out the technical assessment required to determine whether the commitments and guarantees offered are sufficient and appropriate to cease or modify the conduct, and to submit a report to the Administrator in his capacity as the highest administrative authority.

14. In determining the adequacy of the commitments offered, the following factors⁵ shall be taken into consideration:

- The offer of commitments or guarantees must be made by a person authorised to legally bind the investigated or defendant undertaking.
- The offer must consist of appropriate and viable mechanisms for ceasing or modifying the conduct or practices that gave rise to the investigation.
- The offer must include clear deadlines and specific timeframes for the implementation of the proposed measures, so as to enable verification that the mechanisms proposed for the cessation or modification of the conduct have been effectively carried out. It must also include mechanisms for verification through competition audits.
- The offer must include instruments or mechanisms that ensure compliance with the commitments. Such mechanisms may include, among others, performance bonds, sureties, bank guarantees or trust arrangements, for an amount not exceeding the value of the sanctions that could be imposed on the investigated or defendant economic agents. These instruments must be made in favour of the National Treasury.
- If the commitments and guarantees are considered sufficient and appropriate, they may be accepted and the investigation or judicial proceedings suspended. Otherwise, the proposal will be rejected and the investigation or proceedings will continue in the ordinary course.
- Once ACODECO and the interested economic agents have formalised the settlement agreement, it is submitted to the Attorney General of the Nation for review in order to obtain a favourable opinion. Once that opinion has been obtained, the agreement is submitted to the Cabinet Council for the corresponding authorisation.
- Where the investigation remains at the administrative stage, the settlement becomes duly approved once it has been published in the Official Gazette of the Republic of Panama.
- Where judicial proceedings are already underway, once the settlement has been authorised by the Cabinet Council and published in the Official Gazette, the settlement agreement is submitted to the judge hearing the case, who has the authority to approve or reject it.

⁵ Article 28 of Executive Decree No. 8-A of 22 January 2009. Available at: <https://www.gacetaoficial.gob.pa/storage/gacetar/2009/04/26254/17181.pdf>.

4. Transactions

15. The following table shows the judicial and extrajudicial settlements reached with economic agents from 2010 to the present. No particular market or sector has shown a higher frequency of settlements than any other.

16. The monetary contributions in balboas refer to payments offered by economic agents as part of their commitments. However, the legislation does not establish a financial contribution as a mandatory requirement for reaching a settlement. Such contributions are allocated either to the National Treasury or to specific educational programmes in the field of competition and consumer protection.

Table 1. Amount of Judicial and Extrajudicial Settlements, by Economic Activity and Number of Economic Agents
Years 2010–2026 (up to July)

Activity	Economic Agents	Year	Amount (B/.)
JUDICIAL SETTLEMENTS			
Electronic Interconnection in Banking Networks	1	2010	25,000.00
Insurance	9	2010	330,000.00
Milling Industry	2	2010	35,000.00
Poultry Processors	9	2011	475,000.00
Sugar Production and Marketing	5	2012	115,000.00
Dairy Processors	4	2012	400,000.00
Containerised Freight Transport	5	2013	25,000.00
Sugar Production and Marketing	3	2021	75,000.00
Telecommunications	3	2023	600,000.00
Electronic Payment Services through Card-Based Payment Systems	2	2025	100,000.00
Total Judicial Settlements			2,180,000.00
EXTRAJUDICIAL SETTLEMENTS			
Services – Sale of Beer and Soft Drinks	1	2012	5,000.00
Distribution of Gas / Bottled Water	1	2015	25,000.00
Total Extrajudicial Settlements			30,000.00
TOTAL			2,210,000.00

Source: ACODECO

5. Conclusions

- To date, the commitments or measures adopted in settlement agreements have been behavioural in nature, and compliance with them has been verified through audits conducted in accordance with Panama's Competition Audit Guidelines⁶ and the parameters and procedures established in the respective settlement agreement.
- Panamanian legislation governing settlements does not require the payment of a specific monetary amount as a condition for reaching a settlement agreement. However, for compliance and penalty-clause purposes, the legislation expressly requires the inclusion of instruments or mechanisms that ensure fulfilment of the obligation and can be enforced immediately in the event of non-compliance. Such mechanisms may include performance bonds, sureties, bank guarantees, among others, in amounts not exceeding the penalties that could be imposed on the economic agents under investigation or subject to proceedings, and must be made payable to the National Treasury.

⁶ Resolution No. A-029 of 16 June 2009. Available at: <https://www.gacetaoficial.gob.pa/storage/gacetitas/2009/08/26340/19774.pdf>.