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

- Contribution from Portugal -

14-15 October 2026

This Note his attached document from Portugal 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.

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

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1. Introduction

1. Cartels are hard-core restrictions of competition and are among the most serious infringements of competition law. This is reflected in the Portuguese Competition Authority's (AdC) 2026 competition policy priorities, which continue to place cartels and other horizontal practices, including those affecting public procurement, labour markets and liberal professions, among its enforcement priorities.¹

2. Their secretive nature also makes cartels particularly difficult to detect and investigate. Leniency programmes address the detection difficulty by encouraging participants to disclose their conduct and provide evidence.² Nonetheless, once proceedings are under way, settlement complements leniency by providing a faster and more efficient route to conclude investigations.

3. At EU level, the European Commission introduced a settlement procedure for cartel cases in 2008 through Commission Regulation (EC) No. 622/2008, which amended Regulation (EC) No. 773/2004, together with the Commission Settlement Notice.³ In Portugal the settlement mechanism was introduced into its competition regime through Law No. 19/2012 of 8 May (Competition Act). Unlike the Commission procedure, which applies only to cartel investigations, the Portuguese procedure is available more broadly, to any proceedings concerning infringements of competition law.⁴ Given the focus of this roundtable, the analysis below addresses its use in cartel enforcement.

4. Against this background, this contribution examines the Portuguese settlement framework, its interaction with leniency, the legal changes recently introduced and the lessons emerging from selected enforcement cases.

¹Autoridade da Concorrência, Prioridades de Política de Concorrência para 2026 (Lisbon: Autoridade da Concorrência, December 22, 2025), 2-3, <https://www.concorrenca.pt/sites/default/files/documentos/Prioridades%20de%20Pol%C3%AAdtica%20de%20Concorr%C3%AAncia%20para%202026.pdf>.

²Regulation no. 747/2024, Procedure for applying for an exemption from or a reduction in a fine pursuant to Law No. 19/2012 of 8 May, https://www.concorrenca.pt/sites/default/files/documentos/regulamentos/Regulamento_747_2024_11%20de%20julho.pdf.

³Commission Regulation (EC) No 622/2008 of 30 June 2008 amending Regulation (EC) No 773/2004, as regards the conduct of settlement procedures in cartel cases, OJ L 171, July 1, 2008, 3-5; European Commission, “Commission Notice on the conduct of settlement procedures in view of the adoption of Decisions pursuant to Article 7 and Article 23 of Council Regulation (EC) No 1/2003 in cartel cases,” OJ C 167, July 2, 2008, 1-6.

⁴Law no.19/2012 of 8 May, as amended by Law no. 17/2022, of 17 August (Competition Act), arts. 22 and 27; European Commission, “Cartel Cases Settlement Procedure,” accessed October 8, 2026, https://competition-policy.ec.europa.eu/antitrust-and-cartels/procedures/settlement_en.

2. Framework and procedure

5. Under Portuguese law, settlement proceedings may take place any time, either during the investigative phase (Article 22 of the Competition Act) or during the prosecution phase (Article 27 of the Competition Act). The procedure requires the party concerned in the case to recognise its participation in and responsibility for the infringement, or waive the right to challenge the decision before the courts, in exchange for a reduction in the fine imposed.⁵

6. This instrument has voluntary nature and pursues several objectives, including increasing procedural efficiency, faster case resolution, resource savings, reduced litigation and enhance deterrence through the timely imposition of sanctions.

7. During the investigative phase, settlement may begin on the initiative of the AdC or following a written expression of interest by a party concerned in the case.

8. The AdC assesses whether there is a procedural interest in opening discussions and may terminate them at any time, in relation to one or more parties, if it considers that they no longer allow procedural gains. This decision cannot be subject to appeal by the undertakings.

9. The fact that the Authority has discretion throughout the process limits the scope for settlement to be used as a delaying tactic.

10. As for the proceedings, the AdC informs the party of the facts attributed to it, the supporting evidence and the range of the potentially applicable fine. If discussions are successful, the party presents a written settlement submission reflecting their outcome and recognises, or waives the right to contest, its participation in and responsibility for the infringement.

11. The AdC then assesses the settlement submission and, in case it is acceptable, issues a settlement notice containing a simplified account of the main facts and their legal characterisation, the sanctions imposed and the percentage reduction of the fine. Once the party confirms the notice and pays the fine, or the first instalment where payment by instalments has been authorised, the settlement notice becomes a final decision. Thus, settlement preserves a sanctioning outcome while shortening the path towards a final decision.

12. Furthermore, settlement remains available during the prosecution phase. Article 27 of the Competition Act permits a party concerned in the case to submit a settlement submission until the final decision. Following the 2022 amendment of the Competition Act, the AdC may also suspend the period for responding to the Statement of Objections for up to 30 working days while settlement discussions take place. The reform further allows that suspension to begin before a formal settlement submission is made, giving the parties time to explore this route.

13. The Portuguese law also allows for hybrid cases, in which one or more parties settle while the AdC continues the ordinary proceedings against the others. In 2024, the AdC adopted the Terms of the Settlement Procedure providing further guidance on these situations. In particular, it focuses on ensuring the rights of defence, the presumption of innocence, impartiality and procedural fairness of the non-settling parties to be preserved.

⁵ Autoridade da Concorrência, Termos do Procedimento de Transação (Lisbon: Autoridade da Concorrência, July 2024), paras. 1-4, available in Portuguese: <https://www.concorrenca.pt/sites/default/files/documentos/legislacao/Termos%20do%20Procedimento%20de%20Transa%C3%A7%C3%A3o.pdf>.

Hence, settlement with some participants can generate procedural efficiencies even where other parties may choose to litigate.

3. Incentives, discretion and leniency

14. The Portuguese legal framework affords the AdC broad discretion as to the use of the settlement mechanism. The Authority assesses whether the procedure is appropriate in light of the circumstances of the case and on the range of reduction of the fine that might be justified. In making that assessment, the AdC considers the substantive and procedural circumstances of the case, as well as the need to maintain an adequate deterrent effect.

15. The timing of settlement is particularly relevant. A proposal made during the investigation can contribute to the definition of the facts and legal characterisation before a Statement of Objections is issued and can remove one or more parties from the prosecution phase later on. Although a later settlement may still reduce litigation and produce an earlier final decision, the procedural savings will most likely be smaller. Hence, the AdC expressly identifies the degree of procedural savings generated, which considers the procedural stage at which the settlement is reached as a key parameter in calculating the reduction of the fine.

16. Accordingly, the AdC first calculates the fine under the methodology set out in its 2024 Fining Guidelines and then applies a settlement reduction determined on a case-by-case basis. The guidelines further confirm that, if a party also qualifies for leniency, the settlement and leniency reductions are cumulative.

17. In fact, the settlement mechanism and the leniency programme pursue different objectives and are complementary. While leniency incentivises a party to come forward and expose a cartel, settlement encourages cooperation in bringing proceedings to an earlier conclusion. Moreover, provided that the relevant legal requirements are met, an undertaking may benefit from both mechanisms concurrently.

18. As the enforcement experience illustrated below demonstrates, this complementarity may also be mutually reinforcing. While leniency applications may strengthen incentives to engage in settlement proceedings and facilitate subsequent settlement by bringing forward evidence and clarifying the conduct under investigation, an established settlement practice may, in turn, strengthen incentives to approach the Authority under the leniency programme.

4. The 2022 reform and the 2024 Terms

19. Law No. 17/2022 amended the settlement provisions when Portugal transposed Directive (EU) 2019/1⁶. The reform materially changed the conditions for settlement. Currently, a party might simply waive its right to appeal. Under the former Article 27, a settlement submission during the prosecution phase was tied to the written reply to the Statement of Objections and required a confession of the facts and the acceptance of responsibility. The amended provision replaces that formulation with recognition of the participation in and responsibility for the infringement, or waiver of the right to appeal.

⁶ Directive (EU) 2019/1 of the European Parliament and of the Council of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market, OJ L 11, 14.1.2019, pp. 3–33.

20. The reform also introduced greater flexibility in the timing and consequences of settlement. It permits a settlement submission until the final decision. During the investigative phase, the party receives information regarding the range of the potentially applicable fine, as opposed to the information on the legal amount of the fine, as was previously provided.

21. Once settlement becomes final, the facts accepted or not contested by the party, together with their legal characterisation, cannot be challenged in court. Conversely, an unsuccessful settlement submission and settlement notice cease to have effect and cannot be used as evidence against the parties concerned.

22. Finally, in July 2024, the AdC adopted detailed Terms of the Settlement Procedure. The Terms systematise the steps followed by the Authority and seek to improve predictability and legal certainty for parties considering settlement. Furthermore, they explain the Authority's approach to the initiative, bilateral discussions, formal proposals, final decisions and access to the file. In practical terms, these systematise the information regarding the moment when discussions may be opened, the information exchanged with the parties, the factors relevant to procedural gains and the treatment of settlement material if negotiations fail.

5. Enforcement experience

23. The settlement mechanism has become a recurrent part of Portuguese competition enforcement. As of the fourth quarter of 2026, the AdC reports 15 decisions on restrictive practices across 2025 and 2026 based on settlement proceedings. The cases below are selected to illustrate distinct features of the mechanism rather than to provide a catalogue of settlement decisions: its interaction with leniency, its use in hybrid proceedings, and its application at different procedural stages. Taken together, the examples also illustrate how leniency and settlement can reinforce each other in practice, including in investigations regarding anticompetitive practices in the labour-markets.

24. The interaction with leniency is visible from the earliest Portuguese settlement practice, including the prefabricated school buildings cartel (PRC/2014/2). The investigation concerned a bid-rigging cartel, originated from a leniency application and became the first proceeding under the 2012 Competition Act to use the settlement mechanism. The case therefore illustrates the distinct but complementary roles of the two tools: leniency assisted the detection and proof of the infringement, while settlement supported a more rapid conclusion of the proceedings.

25. The insurances cartel (PRC/2017/10) adds an evidentiary dimension to that interaction between leniency and settlement. The investigation began with a leniency application and included a later applicant that also benefited from reduction of the fine. Some parties then settled after the Statement of Objections while proceedings continued against others.

26. A second pattern is the use of hybrid settlement without leniency, illustrated by the railway maintenance cartel (PRC/2016/6). Some parties concluded the proceedings through settlement during the prosecution phase, while the case continued against non-settling parties. It therefore shows that a hybrid settlement can produce procedural efficiencies independently.

27. The timing of settlement provides a further distinction. In the teleradiology cartel (PRC/2021/3), settlement proceedings took place during the investigative phase. Two parties concluded their participation in the case through settlement while the investigation

continued in relation to other parties. By resolving part of the case before the prosecution phase, settlement reduced the number of parties and issues that had to proceed through the subsequent procedural stages.

28. Also, the clinical analyses and COVID-19 testing cartel (PRC/2022/2) combines several of these features under the amended framework. Settlement decisions were adopted for some parties while the proceedings continued and culminated in a final decision concerning the remaining parties in July 2024; one settling party also benefited from leniency. The case confirms that, under the amended framework, settlement can operate alongside leniency and within a hybrid procedure without preventing the AdC from pursuing the investigation.

29. The IT consultancy no-poach case (PRC/2022/3) shows the same combination in enforcement against anticompetitive practices in labour markets. The case involved a request for a reduction of the fine under the leniency programme, and the proceedings regarding three of the four parties involved were concluded through the settlement mechanism during the investigative phase. Proceedings continued against the remaining party and the case was closed in February 2025.

30. The ongoing PRC/2024/2 investigation extends this experience beyond no-poach agreements. Having its origin in a leniency application, it concerns exchanges of information on wages and other working conditions in industry and related sectors and has already generated several settlement decisions during the investigative phase. Although the investigation is not yet concluded, it illustrates the use of settlement in other anticompetitive investigations related to labour-market coordination.

31. The interaction may also operate in the opposite direction. Against the background of an increasingly established settlement practice, the AdC has received several leniency applications concerning distinct types of conduct. While this does not by itself establish causation, it is consistent with settlement practice reinforcing the incentives created by the leniency programme.

6. Private enforcement and concluding observations

32. Under Law No. 23/2018, a final AdC decision declaring a competition law infringement creates an irrebuttable presumption of the existence, nature and material, personal, temporal and territorial scope of the infringement for the purposes of a damages action. A settlement decision is therefore capable of having consequences in subsequent private litigation. This exposure forms part of the broader set of incentives that an undertaking will consider when deciding whether to settle.

33. At the same time, the Portuguese law protects the settlement process itself. The Competition Act contains rules governing access to settlement material and the use of information generated during discussions. Furthermore, if discussions fail, the settlement submission and settlement notice cease to have effect. These safeguards are relevant because an efficient settlement procedure depends on parties being able to explore resolution without turning unsuccessful discussions into an additional source of evidence against them.

34. Overall, the Portuguese experience suggests that the value of settlement lies in the combination of procedural flexibility and a clear enforcement outcome. The investigated party receives greater certainty, an earlier conclusion and a reduction of the fine. In parallel, the AdC achieves important procedural savings, notably by reducing subsequent litigation,

while preserving both a formal finding of infringement and the deterrent effect of the sanction imposed.

35. Lastly, the coexistence between settlement and leniency has proved particularly relevant for effective cartel enforcement. Leniency assists the Authority in discovering and proving the infringement, while settlement reduces the resources needed to bring the proceedings to a conclusion. The 2022 legislative reform and the 2024 Terms have made the procedure clearer and more predictable. Hence, the current Portuguese framework seeks to preserve incentives for cooperation while linking the benefit granted in settlement to the procedural efficiencies achieved and to the need for effective deterrence. The recent enforcement experience also suggests that this relationship can work in both directions, with leniency facilitating settlement and an established settlement practice reinforcing incentives to apply for leniency.