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Private Enforcement of Competition Law – Note by Brazil

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Brazil[1]

1. Introduction

1. The Brazilian competition regime encompasses both public and private enforcement, which are complementary tools for ensuring an effective competitive environment in the country. On the one hand, infringements of competition law can be investigated and sanctioned administratively by the Administrative Council for Economic Defense (CADE). In addition, cartels are criminalised, and those involved may face criminal prosecution by public prosecutors. On the other hand, victims of competition infringements may seek compensation for damages through civil actions against infringers. While public enforcement aims at ceasing anticompetitive practices, punishing infringers, and deterring future offences,[2] the main objective of private enforcement is to compensate victims for the damages suffered, although it also contributes to deterrence.

2. Despite the increasing number of enforcement actions by CADE in recent decades, private enforcement has remained underdeveloped. This is attributable to several factors, including a lack of awareness of infringements; the absence of a culture of seeking compensation for damages among firms and consumer associations; legal uncertainty regarding the statute of limitations; difficulties in accessing evidence of the anticompetitive conduct and in proving and quantifying the harm caused by it; the limited familiarity of judges with competition law; as well as procedural issues, such as the lengthy duration of judicial proceedings, the high costs involved, and the risks arising from the lack of a well-established case law.[3]

3. In recent years, several initiatives have been undertaken to boost private damages claims, including legislative reforms and measures by CADE. However, many challenges remain.

4. Against this background, this contribution will first provide an overview of the Brazilian regime for private enforcement, highlighting recent reforms introduced to strengthen damages claims. Then, it will discuss the interplay between public and private enforcement, with a particular focus on CADE's role in supporting damages claims. Finally, it will provide some insights into practical examples, followed by some conclusions.

[1] This contribution was prepared by Marcelo Guimarães, Head of CADE's International Unit, and proofread by Izabel Cristina Medina Brum, Karine Neumann Gonçalves, and Nathália Oliveira Silva, in-house translators at CADE.

[2] It should be noted that fines imposed by CADE are paid into the Federal Fund for the Defence of Diffuse Rights, which aims to provide redress for harm caused to diffuse and collective rights, including those relating to consumers, the environment and cultural heritage, primarily by funding projects in these areas. In other words, injured parties are not directly compensated through the fines imposed by CADE.

[3] These challenges have been extensively discussed in the academic literature in Brazil, including through empirical research. See, for instance, Ragazzo, C. and Veloso, I. (2023), *Ações de Reparação de Danos Concorrenciais no Brasil: Obstáculos e Sugestões*, https://repositorio.fgv.br/items/48d7801b-55cf-4100-ac088d77b491f90.

2. The Brazilian framework for private enforcement

2.1. Overview of the regime

5. Law No. 12.529/2011 (the Brazilian Competition Act, hereafter "Competition Act") establishes the right of victims to pursue private enforcement of competition law infringements. Accordingly, pursuant to Article 47, anyone who has suffered harm caused by an anticompetitive practice may seek compensation for it through the courts. The private enforcement regime is comprised within the broader civil liability framework established under the Brazilian Civil Code, meaning that it is necessary to prove (i) the anticompetitive conduct, (ii) the harm, and (iii) the causal link between them (i.e. that the harm suffered resulted from the anticompetitive practice at issue).[4]

6. The Competition Act provides that actions for damages arising from anticompetitive conduct may be brought by injured parties, either individually or collectively. Individually, damages claims may be filed by affected consumers, firms, or public entities (in cases of bid-rigging in public procurements). Collective actions may be brought by entities authorised by law to act on behalf of a group of injured parties through so-called public civil actions. The entities authorised to bring such actions are: (i) public prosecutors; (ii) governments at the federal, state, and municipal levels; (iii) public administrative entities responsible for consumer protection; and (iv) associations that have been legally established for at least one year and whose institutional purposes include consumer protection.

7. Collective actions may seek redress for diffuse or collective rights, or for homogeneous individual rights (i.e. those arising from a common origin and held by multiple identifiable individuals). In the former case, monetary compensation is paid into a public fund as a form of collective redress.[5] In the latter case, compensation is intended to be paid directly to the affected individuals, following the liquidation of their individual claims (these actions can therefore constitute private enforcement in the strict sense). Although these actions share some features with class actions in other jurisdictions, the Brazilian regime has its own procedural specificities, and such actions remain uncommon in the competition field.

8. The legislation does not specify whether only injured parties directly affected by an anticompetitive practice may bring an action. Accordingly, parties that are not directly involved in a legal relationship with the infringers may also bring an action, provided that they can demonstrate they have suffered harm (e.g. final consumers of products incorporating cartelised goods).

9. Moreover, private and public enforcement are independent, which means that stand-alone actions are expressly permitted, and damages claims do not depend on the existence of investigations or decisions by CADE. Conversely, CADE's proceedings are not affected by the filing of a lawsuit by injured parties. However, CADE's infringement decisions are an important source of evidence for substantiating damages claims, particularly in view of the difficulties involved in obtaining evidence to establish the elements necessary for a successful claim, as further discussed below. For this reason, most

[4] The subjective element (i.e. intent or negligence) need not be established, as antitrust liability is strict under Article 36 of the Competition Act.

[5] For instance, in cases falling within the jurisdiction of the Federal Courts, compensation is paid into the Federal Fund for the Defence of Diffuse Rights, which is also the recipient of fines imposed by CADE.

damages claims are follow-on actions in practice, relying on CADE's decisions that have already established an infringement.

10. It should also be noted that civil liability arising from anticompetitive behaviour is joint and several among all infringers. In other words, victims may seek full compensation from any or all infringers.[6]

11. The Competition Act provides that CADE shall be notified and may, at its discretion, intervene in judicial proceedings involving the application of that legislation,[7] which include damages claims arising from competition law infringements.[8] However, CADE's current understanding is that it should not intervene in disputes between private parties. Instead, it should focus on public enforcement and encourage private enforcement within the scope of its public enforcement mandate, as further discussed below. In such cases, CADE may participate in the proceedings as *amicus curiae* to provide clarifications regarding its administrative proceedings, although such interventions remain uncommon.

2.2. The 2022 legislative reform

12. In 2022, a legislative reform[9] was enacted to strengthen private enforcement in Brazil and enhance its effectiveness as a complement to public enforcement, in line with the recommendations made in the 2019 OECD Peer Review.[10] The reform sought to address some of the most pressing challenges facing private competition claims.

2.2.1. Statute of limitations

13. The Competition Act did not contain a specific provision governing the statute of limitations for private competition claims. This led to considerable debate before the courts, with the prevailing view being that the general three-year limitation period established under the Brazilian Civil Code should apply. Likewise, the starting point of this period was not clearly established, which gave rise to debate over whether the three-year limitation period should begin to run from the date on which the anticompetitive practice took place or from the date on which the claimant became aware of the competition infringement at issue, with multiple possible interpretations of the latter.[11] In this context, victims were discouraged from bringing claims due to the resulting legal uncertainty. Moreover, where claims were brought, they could, under a stricter interpretation, be dismissed as time-barred, as was frequently the case in practice.

[6] This stems from the general rule of civil liability under the Brazilian Civil Code (Article 942).

[7] Article 118 of the Competition Act.

[8] AgInt AREsp No. 1.567.390/SP, decided on 14 April 2025.

[9] Law No. 14.470/2022, which entered into force in November 2022 and amended Law No. 12.529/2011.

[10] OECD (2019), *OECD Peer Reviews of Competition Law and Policy: Brazil*, https://www.oecd.org/en/publications/oecd-peer-reviews-of-competition-law-and-policy-brazil-2019_8657b785-en.html

[11] For example, the date of purchase of the product, the opening of a CADE investigation, or the issuance of a final decision by CADE.

14. The legislative reform introduced a specific five-year limitation period for private competition claims.[12] It was also established that the limitation period begins to run from the claimant's unequivocal knowledge of the infringement. In follow-on actions, such knowledge is deemed to occur upon publication of CADE's final decision.[13] In stand-alone actions, by contrast, the starting point must be determined on a case-by-case basis, taking into account when the claimant became effectively aware of the infringement, as recognised by the courts.[14] The reform further established that the limitation period is suspended while CADE's investigation is ongoing.[15]

15. These changes represented important improvements, especially in cartel cases. Cartels are typically concealed practices, and victims often only become aware of the infringement when it has been sanctioned by CADE. The concealed nature of cartels also makes it particularly difficult for victims to identify and obtain evidence of the infringement, the resulting harm, and the causal link between them. Therefore, CADE's decisions often constitute a valuable source of evidence for private enforcement. Indeed, many damages claims are follow-on actions. If the limitation period had already expired by the time CADE issued its decision, damages claims could in practice have been severely constrained, given the duration of CADE's investigations.

2.2.2. Double damages and liability of leniency and cease-and-desist signatories

16. The reform also introduced a double-damages rule for private claims arising from hard core cartels and inducement to uniform commercial conduct.[16] In other words, under this rule, infringers are liable to compensate victims for twice the amount of damages suffered.

17. This measure was intended to increase the costs associated with competition law infringements and further deter anticompetitive practices in Brazil, while creating greater incentives for victims to bring private competition claims.

18. Double damages do not apply to leniency and cease-and-desist signatories, who remain subject to civil liability despite the benefits they receive in the context of public enforcement.[17] In addition, such signatories are now exempt from joint and several liability with other infringers, being liable only for the damages they caused.[18] These provisions aim to ensure that leniency and cease-and-desist signatories are better off than other infringers, thereby providing additional incentives for infringers to come forward and apply for leniency or enter into cease-and-desist agreements. Overall, these provisions increase the synergies of public and private enforcement, as further discussed below.

19. Regarding cease-and-desist agreements in particular, the bill originally included a provision stipulating that such agreements must contain a clause requiring applicants to agree to submit to arbitration any disputes concerning damages claims where victims opted

[12] Article 46-A, Paragraph 1, of the Competition Act.

[13] Article 46-A, Paragraphs 1 and 2, of the Competition Act.

[14] See, for instance, AgInt EDcl REsp n. 2.224.259/SP, Superior Court of Justice, decided on 22 June 2026.

[15] Article 46-A of the Competition Act.

[16] Article 47, Paragraph 1, of the Competition Act.

[17] Article 47, Paragraph 2, of the Competition Act.

[18] Article 47, Paragraph 3, of the Competition Act.

for this method of dispute resolution. This was intended to promote private enforcement by facilitating the use of arbitration in damages claims, which could help expedite proceedings.

20. Nevertheless, this provision was vetoed by the President of the Republic on the grounds that requiring cease-and-desist agreements to include an arbitration clause could increase costs for the parties and, consequently, discourage them from entering into such agreements, which are important instruments of public enforcement.

21. Despite the veto, there are currently no legal restrictions preventing parties from agreeing to arbitration for private enforcement claims. Indeed, CADE has already referred to this possibility in previous cease-and-desist agreements.[19]

2.2.3. Burden of proof

22. As mentioned earlier, some of the main challenges to effective private enforcement in Brazil are the complexity and cost involved in proving the elements required by law (i.e. the competition law infringement, the resulting harm, and the causal link between them).

23. In this context, the legislative reform introduced a provision expressly establishing that CADE's infringement decisions constitute *prima facie* evidence that may substantiate private competition claims, including for the purposes of granting interim relief.[20]

24. Although in practice judges already considered CADE's infringement decisions as evidence, the new provision gives greater evidentiary weight to CADE's decisions in damages claims, shifting the burden of proving the infringement from the claimant to the defendant, and thereby contributing to more effective and efficient judicial proceedings.

25. This reform was justified by the need to address the evidentiary burden placed exclusively on victims seeking compensation, particularly considering the length and complexity of judicial proceedings. In sum, the provision was intended to facilitate follow-on actions by reducing the burden on victims to establish an infringement that had already been investigated and sanctioned by CADE, thereby encouraging them to pursue private claims more actively.

26. Moreover, the Brazilian Supreme Court had already held that courts should accord deference to CADE's decisions and that judicial review should be limited to assessing their legality and potential abuse.[21] This further reinforces the relevance and evidentiary weight given to the competition authority's decisions.

27. However, claimants in follow-on actions are still required to prove the specific harm they suffered and the causal link between the anticompetitive practice (already established by CADE) and such harm. This is because CADE's decisions – especially in cartel cases, which are assessed as by object violations – typically do not establish the harm resulting from the infringement, let alone the specific harm suffered by individual claimants.

28. With regard to proof of harm, an important element frequently debated in private claims concerns the passing-on effect. This is particularly relevant because, as mentioned

[19] See, for instance, CADE Case No. 08700.001940/2020-92.

[20] Article 47-A of the Competition Act.

[21] RE No. 1083955 AgR, decided in May 2019.

above, both direct and indirect purchasers of products affected by anticompetitive practices may bring damages claims.

29. In practice, where claims are brought by purchasers other than final consumers, defendants often argue that the harm (i.e. the overcharge) was passed on downstream and that, consequently, the claimant did not ultimately bear the resulting harm and is therefore not entitled to compensation. However, there was considerable debate over which party bore the burden of proving the passing-on effect.

30. In this regard, the legislative reform introduced a provision expressly allocating to defendants the burden of proof regarding passing-on. Accordingly, where defendants invoke the passing-on defence, they must prove whether, and to what extent, the overcharge was passed on. Once again, this measure was intended to facilitate and encourage victims to bring private competition claims.

3. The interplay between public and private enforcement and CADE's role in supporting damages claims

31. As previously stated, private enforcement is an important component of overall competition policy and contributes significantly to deterrence. However, it is paramount to strike the right balance between public and private enforcement so that they complement each other, rather than undermine their effectiveness.

32. Public enforcement supports private enforcement, for instance, by providing infringement decisions that can substantiate damages claims. Indeed, evidence gathered by competition authorities (e.g. through leniency and cease-and-desist agreements and dawn raids) can assist victims in bringing private competition claims, especially in view of the challenges involved in obtaining such evidence independently. Moreover, victims may often be unaware of competition law infringements, which may be brought to their attention through the actions of the competition authority, thereby triggering private enforcement. CADE therefore has an important role to play in strengthening private enforcement.

33. In 2018, CADE adopted Resolution No. 21/2018 to regulate third-party access to documents and information contained in administrative proceedings before the agency, including information obtained through leniency and cease-and-desist agreements, as well as during dawn raids.[22] The aim is to facilitate access to the evidence gathered by CADE during its investigations, thereby encouraging the filing of damages claims, while at the same time safeguarding the leniency and cease-and-desist programmes, which are important pillars of public enforcement.

34. As a general rule, the Resolution establishes disclosure of documents and information, at the appropriate procedural stage, in accordance with the applicable provisions of Brazilian law governing access to information held by public authorities. In particular, prior to the ruling by CADE's Tribunal that concludes the case, the agency will

[22] The adoption of this Resolution was also prompted by judicial decisions that raised questions and created legal uncertainty regarding the disclosure of confidential information and documents contained in CADE case files for the purposes of damages claims. It should be noted that in September 2026, CADE launched a proposal to amend its Internal Regulations (RICADE). Among the proposed changes, Resolution No. 21/2018 aims to be incorporated in that document, preserving the existing regime while introducing a few targeted improvements, including enhanced communication of CADE's decisions to public prosecutors and victims (CADE (2026), *CADE opens public consultation on Statutes amendments*, https://www.gov.br/cade/en/matters/news/cade-opens-public-consultation-on-statutes-amendments).

maintain a public case file containing at least the names of investigated parties, the anticompetitive behaviour under investigation, a summary of the facts, and the relevant legal provisions relating to the alleged infringement. Until that point, the documents, information, and procedural acts necessary to clarify the matter should remain confidential.

35. Confidentiality, including after CADE's Tribunal has issued its final decision in the case, is the exception and covers: (i) the "history of conduct," a document prepared by CADE based on self-incriminating documents and information voluntarily submitted in the context of negotiations for a leniency or cease-and-desist agreement, which describes the investigated anticompetitive conduct – thereby ensuring that leniency and cease-and-desist signatories are not exposed to greater civil liability, and are therefore not worse off than other co-infringers; (ii) information submitted by the applicant during negotiations for a leniency or cease-and-desist agreement that are subsequently unsuccessful; (iii) information constituting a trade secret; (iv) competitively sensitive information; (v) information subject to statutory confidentiality provisions (e.g. tax, banking, capital markets, commercial, professional, and industrial confidentiality), as well as the confidentiality of judicial proceedings; and (vi) information subject to confidentiality pursuant to a judicial decision. Such documents and information may be disclosed to third parties only in exceptional circumstances, namely: (a) where expressly provided for by law; (b) pursuant to a specific judicial decision; or (c) with the authorisation of the leniency or cease-and-desist signatory, subject to CADE's consent and provided that disclosure does not prejudice the investigation.

36. Moreover, the Resolution provides guidance on how to assess requests for access to confidential information, including factors such as the legitimacy of the applicant; the specific facts and grounds supporting the request; its reasonableness and proportionality; the procedural stage of the proceedings before CADE; the need to preserve the investigation; the need to safeguard public enforcement; and the need to preserve Brazil's participation in international programmes aimed at combating competition infringements. The Resolution also states that CADE may intervene in judicial proceedings concerning requests for access to confidential information to ensure compliance with these requirements.

37. Finally, the Resolution establishes that CADE may consider duly demonstrated compensation in damages claims as a mitigating circumstance when setting fines or establishing the pecuniary contribution in the context of cease-and-desist agreements. In practice, the possibility of such a reduction is often included in cease-and-desist agreements, but typically as a prospective provision, meaning that, at the time the agreement was entered into, the applicant had not yet provided compensation for the harm caused, and the agreement provides that a reduction will be applied if duly demonstrated. This is particularly relevant for cease-and-desist agreements in which the pecuniary contribution is to be paid in instalments.[23] In a few cases, however, a discount based on compensation had already been applied at the time the agreement was entered into.[24]

[23] For example, this was the case with the cease-and-desist agreement executed in the context of an investigation into bid-rigging in public procurement for the rental of equipment and vehicles for the maintenance, upgrading, and improvement of rural roads in the state of Paraná (CADE Case No. 08700.001940/2020-92). During the implementation of the agreement, the settling party provided effective compensation for the harm suffered, and the reduction stipulated in the agreement was therefore applied.

[24] See, for instance, CADE Case No. 08700.005033/2017-17, related to a bid-rigging in public procurement for orthoses, prostheses, and special medical materials.

38. Following the issuance of Resolution No. 21/2018, CADE adopted Ordinance No. 869/2019, establishing the procedures for interested parties to request access to confidential information and documents contained in restricted-access case files for substantiating damages claims.

39. CADE has since received several requests for access to information classified as confidential following the issuance of infringement decisions. In light of the regime described above, in general, the authority's approach is to assess the nature of the documents and the risks arising from their disclosure, and to allow access where this can be done without undermining leniency and cease-and-desist agreements.

40. In particular, CADE may allow access to confidential versions of infringement decisions issued by CADE's Tribunal, with competitively sensitive information (such as revenue figures) redacted. These documents are highly relevant for damages claims, as they typically describe the available evidence in detail (either by reproducing, referencing, or summarising it) supporting the finding of anticompetitive conduct and the participation of the parties found liable. Therefore, they can provide sufficient information to support potential damages claims.

41. In such cases, the documents are provided to a designated person upon execution of a confidentiality and responsibility undertaking, whereby the recipient acknowledges their duty to maintain confidentiality and undertakes to use the documents solely for the purpose of bringing damages claims. In addition, if the information disclosed is used in judicial proceedings, it must be filed under a restricted-access regime to preserve its confidentiality. Any subsequent breach is subject to administrative, civil, and criminal liability.

42. To promote the dissemination of its decisions and encourage follow-on damages claims, CADE's Tribunal typically orders, when finding a cartel infringement, that the decision be widely publicised, including by sending it to public prosecutors and, in some cases, to companies potentially affected by the anticompetitive conduct.

43. Seeking to further institutionalise this approach, CADE proposed amendments to its Internal Regulations in September 2026. Among other changes, the proposal would introduce a provision requiring CADE, following an infringement decision, to send a copy of the decision, together with guidance on how to access the case file, to the relevant public prosecutors and identified victims, whether individuals or legal entities, including through their representative entities.[25]

44. Public prosecutors have a particularly important role to play in seeking compensation for harm, as they can bring so-called civil public actions, through which collective redress can be sought.[26] Such actions typically concern diffuse or collective interests, and monetary compensation awarded does not go directly to individual victims.

[25] CADE (2026), *CADE opens public consultation on Statutes amendments*, https://www.gov.br/cade/en/matters/news/cade-opens-public-consultation-on-statutes-amendments.

[26] It should be noted that CADE has entered into cooperation agreements with various public prosecution services across Brazil to facilitate coordination between the authorities, including for the purposes of civil public actions. Cooperation agreements between CADE and public prosecution services are available at: https://www.gov.br/cade/pt-br/acesso-a-informacao/transparencia-e-prestacao-de-contas/acordos-cooperacao-tecnica/acordo-nacionais/acordos-com-o-ministerio-publico.

In practice, these proceedings have been a common mechanism to seek redress for anticompetitive conduct in Brazil.

45. More broadly, CADE can also use its advocacy powers to raise awareness of victims' right to bring damages claims for competition law infringements. This is especially relevant as many victims (including, but not limited to, consumers and SMEs), as well as their representative entities, may be unaware of their right to bring such claims.

46. On the other hand, private enforcement can also contribute to more effective public enforcement, since it creates additional incentives for wrongdoers to come forward and apply for leniency or enter into cease-and-desist agreements, especially where appropriate safeguards ensure that they will not be worse off than other co-infringers, as mentioned above.

47. Looking ahead, once private enforcement becomes a more developed and effective tool in Brazil, it could play an essential complementary role to public enforcement, and its potential could be considered by CADE when developing its prioritisation strategies. In this scenario, private enforcement could ensure that competition infringements are more broadly addressed, as competition authorities have limited resources and therefore cannot pursue every antitrust violation through public enforcement.

4. Examples of damages claims in practice

48. Although damages claims are not yet well established in Brazil, an increasing number of actions have been brought in recent years, especially following infringement decisions by CADE.

49. As previously mentioned, CADE does not play a role in individual damages claims. For this reason, the agency lacks a complete picture of all claims for compensation filed.[27] Nonetheless, some recent examples are highlighted below to illustrate damages claims in practice, without seeking to provide a comprehensive assessment of the matter.

50. In terms of numbers, the largest portion of damages claims consists of public civil actions brought by public prosecutors seeking to protect diffuse or collective rights. Recent successful examples include two cartel cases in the liquified petroleum gas (LPG) market.

51. The first concerns an LPG cartel in the state of Pará. In December 2016, CADE found an infringement involving a cartel that operated between 2003 and 2005, imposing a fine of approximately BRL 39 million.[28] Following that decision, the Prosecution Service of the State of Pará filed a public civil action for collective damages in April 2018. In August 2020, the first-instance court awarded compensation of BRL 770 000 against the party sanctioned by CADE. The decision was subsequently upheld by the second-instance

[27] Empirical academic literature has provided a more extensive overview of damages claims in Brazil. See, for instance, Ragazzo, C. and Veloso, I. (2023), *Ações de Reparação de Danos Concorrenciais no Brasil: Obstáculos e Sugestões*, https://repositorio.fgv.br/items/48d7801b-55cf-4100-ac03-88d77b491f90. It should also be noted that some damages claims are subject to confidentiality.

[28] CADE Case No. 08012.002568/2005-51.

court in June 2024.[29] Finally, in May 2026, the Superior Court of Justice upheld the decision.[30]

52. The second example refers to a cartel in the LPG market in the Central-West Region of Brazil. The Prosecution Service of the Federal District filed a stand-alone public civil action in September 2013, while CADE's investigation was ongoing, seeking collective compensation from three companies for their involvement in the cartel. In March 2015, the first-instance court dismissed the case for insufficient evidence to establish an anticompetitive practice. On appeal, however, in June 2016, the second-instance court found that a cartel had existed and ordered each company to pay BRL 250 000 in compensation.[31] The decision was upheld by the Superior Court of Justice in July 2026.[32] CADE ruled on the case in May 2023, imposing a fine of BRL 19.9 million on one of the companies that were defendants in the public civil action. The other two companies entered into cease-and-desist agreements with CADE, paying pecuniary contributions of BRL 7.3 million and BRL 2.9 million, respectively.[33]

53. Regarding damages claims brought by individual parties, despite the increasing number of actions filed over the years, successful outcomes remain limited. Such actions have been brought in several cartel cases, especially following CADE decisions (e.g. in relation to cartels in the hospital gas, orange, cement and metro sectors). However, many of these claims have been dismissed on statute-of-limitations grounds or because the evidence was deemed insufficient to establish the specific harm suffered by the claimants. Many others are still pending, even after several years.

54. An interesting recent example concerns a cartel in the Brazilian market for steel rebars used in civil construction. In September 2005, CADE found the infringement and imposed fines totalling BRL 345 million.[34] Shortly after, in January 2006, a company allegedly harmed brought an action against one of the firms found liable, seeking compensation for the harm resulting from the cartel. In April 2012, the first-instance court dismissed the claim on the grounds that it was time-barred, and the decision was upheld on appeal in June 2016.[35] The case was subsequently brought before the Superior Court of Justice, which ruled in December 2023 that the claim was not time-barred and remanded the case to the first instance for reassessment.[36] In February 2026, the court of first instance issued a new decision, finding that the anticompetitive conduct, the resulting harm, and the causal link had been established based not only on CADE's decision but also on expert evidence. The court accordingly awarded the claimant BRL 43,5 million in lost profits, in addition to other amounts. Nevertheless, the decision is still subject to further judicial review.

55. These examples illustrate several substantive and procedural challenges with damages claims in Brazil, particularly the lengthy duration of judicial proceedings. The

[29] TJPA Case No. 0829385-36.2018.8.14.0301.

[30] REsp No. 2.241.478/PA.

[31] TJDFT Case No. 0036211-12.2013.8.07.0001.

[32] REsp No. 2231744/DF.

[33] CADE Case No. 08012.006043/2008-37.

[34] CADE Case No. 08012.004086/2000-21.

[35] TJMG Case No. 1.0024.06.984815-8/033.

[36] REsp No. 1.998.098/MG.

steel rebar case is particularly telling: a decision awarding compensation was issued only 21 years after CADE's infringement decision, and the ruling remains subject to appeal.

56. Moreover, in many cases, even after lengthy judicial proceedings, the claims are ultimately unsuccessful, leaving claimants liable for litigation costs and attorney's fees.

5. Conclusion

57. As discussed in this note, in practice, injured parties or representatives authorised by law continue to face several challenges that reduce the incentives to bring damages claims in Brazil or hinder successful outcomes in such actions. Thus, there is scope to further strengthen private enforcement.

58. Recent reforms introduced by the Brazilian Congress and CADE have the potential to change this reality in the coming years. While it is still too early to assess their impact, these changes address many of the major obstacles that have hindered the filing and success of damages claims. In particular, the rules governing the statute of limitations and the burden of proof have been recalibrated, which may facilitate the pursuit of damages claims.

59. Nevertheless, many challenges remain to be addressed. The lack of a standard methodology accepted by courts for calculating damages,[37] the information asymmetry between injured parties and wrongdoers, the length of judicial proceedings, and the limited expertise of courts in competition law continue to pose significant obstacles to effective private enforcement.

60. CADE has a powerful role to play in promoting private enforcement, including through its enforcement proceedings and advocacy initiatives, especially by engaging more closely with public prosecutors, victims, whether individuals or legal entities (including SMEs), as well as their representative entities, with a view to broadening access to damages claims.

61. This is particularly relevant, as private enforcement is a crucial component of competition law and policy. It has a significant potential to complement and strengthen public enforcement, ultimately helping to ensure that anticompetitive practices are effectively deterred.

[37] An important contribution to this discussion was the development of a practical guide by the Ministry of Finance on calculating overcharges in damages claims (SEPRAC (2018), *Manual Advocacia da Concorrência – Cálculo de Danos em Cartéis: Guia Prático para o Cálculo do Sobrepreço em Ações de Reparação de Danos,* https://www.gov.br/fazenda/pt-br/composicao/orgaos/secretaria-de-reformas-economicas/publicacoes/guias-e-manuais/manual_carteis.pdf/view).