A glimpse into Brazil’s experience in international cartel investigations: Legal framework, investigatory powers and recent developments in Leniency and Settlements Policy

International | Concurrences N°3-2016
www.concurrences.com

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Introduction

1. International cartels can cause harmful effects to consumers and to the economy, possibly leading to higher overcharges than domestic ones.¹ Their impact can be especially severe for developing countries.² In Latin America only, the estimated overcharges due to the 84 global cartels discovered between 1990 and 2000 are worth at least 35 billion dollars.³ International cartel enforcement, which has been considered a top priority by competition authorities in North America and Europe for several decades, has been on the rise in the so-called “Rest of the World” (ROW): Africa, Asia and Latin America.⁴

2. In this paper, the authors present a brief overview of Brazil’s experience in this area,² examining improvements and challenges to overcome. As the statistics⁵ show, the Brazilian Competition Authority (the Administrative Council for Economic Defense — CADE, in its Portuguese acronym) has made important improvements in the prosecution of international cartels in the last decade and

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⁴ For the purposes of this paper and due to limitations of our research, we will consider as international cartel investigations only the ones in which the alleged violations are international in a geographic sense and have alleged potential effects in Brazil. They include cartels that operated nationally, but were part of an international agreement. They do not include national cartels with one or more offenders located outside Brazil.
⁵ All the numbers presented in this paper were extracted from CADE’s proceedings and information, and aggregated by the authors. They have been updated to April 30, 2016. Any inaccuracy is the authors’ responsibility only.
a half. From 2000 to April 2016, the Authority opened 43 new proceedings to investigate international cartels (see figure 1 below). Even though the first two investigations started in the year 2000, the prosecution of international cartels in Brazil truly took off in 2009, with the opening of 7 new proceedings in the same year. Likewise, 35 of the 43 proceedings were initiated between 2009 and April 2016, which indicates that in the last seven years Brazil has opened 81% of the total number of investigations into international cartels. This leads to the inference that the enforcement of international cartels in Brazil has only really started recently and is rising.

Figure 1. Number of new proceedings per year in Brazil (international cartels only)

3. Within the same time frame (i.e., from 2000 to April 2016), 27 leniency agreements regarding either fully or at least partially international cartels allowed the initiation and/or the continuation of the international cartel investigations (see figure 4 below), and 44 settlement agreements were signed related to international cartel proceedings (see figure 5 below).

4. However, challenges associated with the investigation of this kind of violation still need to be dealt with by the Authority. As the numbers indicate, only 14 of the 43 proceedings against international cartels resulted in a formal final decision by CADE’s Tribunal8 by April 2016 (32%). 10 of them ended convicted (23%) and 4 closed (9%). In 14 cases, the authorities are still trying to locate all the companies and/or individuals involved and notify them of being subject to investigation in order to initiate the legal deadline for presenting their defenses (32%).9 Further cases are under investigation by CADE’s investigative body (the General Superintendence—SG/CADE in its Portuguese acronym) (21%) and 6 are awaiting a final decision by CADE’s Tribunal (14%) (see figure 2 below).

Figure 2. Current phases of the proceedings per year (international cartels only)

5. When it comes to the 15 older cases, i.e. those started between 2000 and 2009, SG/CADE has already made a recommendation for 14 (93%). The majority of those 14 cases have already been judged by CADE’s Tribunal (12), the majority with conviction (9) and a few closed (3). There are other 2 cases awaiting final decision by CADE’s Tribunal. However, when it comes to the 28 newer cases, i.e. those started from 2010 to April 2016, the majority of those (22) are either pending notification of the defendants (14) or under the regular proceeding of this evidentiary stage (8). 4 of them are awaiting a final decision by CADE’s Tribunal. 1 was convicted and 1 closed. Therefore, the bottleneck associated with locating and notifying the defendants seems to have narrowed since 2010.

6. The bottleneck was probably caused by at least two factors. One is that the above period coincided with the Brazilian Competition Authority’s decision to intensify

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7 In these cross-border violations, companies and individuals involved are typically located in different countries, all around the world, as well as most of the evidence and the witnesses, making it difficult to the authorities to get together all the pieces of the puzzle. Besides, language barriers and procedural obstacles can also represent a great burden when dealing with transnational investigations.

8 At the end of each investigation, CADE’s General Superintendence (hereafter “SG/CADE”), which is the investigative body, issues an opinion either on the condemnation or the closing of the case and submits it for judgment by CADE’s Tribunal (which is the final decision body).

9 By convicted, we also considered the proceedings closed after a settlement. By closed, we also considered cases that are still under investigation, but already had their international part closed.

10 According to Art. 70 of Law 12,529/2011, in “the decision initiating the administrative proceeding, the respondent shall be notified so that, within thirty (30) days, he presents a defense and specifies the evidence to be produced, and presents the complete qualifications of up to three (3) witnesses. The initial notice shall contain the entire contents of the decision approving the initiation of the administrative proceeding and representation, as the case may be.” In case of international cartels, individual defendants residing outside Brazil also have to be notified. The exact location of foreign individuals is often an obstacle for the Authority, especially when they are former employees of the companies being investigated or when they live in countries with personal data protection laws that forbid the employers to provide their addresses.
I. Legal framework on cartels in Brazil and CADE’s main investigatory powers

9. In Brazil, cartels are an administrative\(^1\) as well as a criminal\(^2\) violation. Regarding the administrative prosecution of international cartels, the Brazilian Competition Law adopts the “effects doctrine” and therefore applies it to any practice performed, in full or in part, on the national territory, or that produces or may produce effects thereon.\(^3\) It is also relevant to note that CADE considers cartels as a violation by its object, and therefore it is not required to prove its actual effects\(^4\).

10. Although Brazilian Law could theoretically reach a wide scope of national and international cartels around the world with any kind of actual or potential direct/indirect impact on the Brazilian economy, CADE only prosecutes the ones that fulfill the minimum requirements established by the Authority. In a recent leading case,\(^5\) SG/CADE made public what those requirements are, providing a clear position on at least three types of international cartels. These are: (i) international cartels of global scope or involving specific regions or countries in which there is evidence of the inclusion of Brazil in the scope of the agreement—this type of cartel can be prosecuted and punished under Brazilian jurisdiction; (ii) international cartels of global scope or involving specific

11. In the administrative area, the Brazilian Competition Law (Law No. 12.529/2011) is the legislation governing the prosecution. The administrative prosecution focus on companies and individuals that agree, join, manipulate or adjust with competitors, in any way, on one of the following market variants: (i) the prices of goods or services individually offered; (ii) the production or sale of a restricted or limited amount of goods or the provision of a limited or restricted number, volume or frequency of services; (iii) the division of parts or segments of a potential or current market of goods or services by means of, among others, the distribution of customers, suppliers, regions or time periods; or (iv) the prices, conditions, privileges or refusal to participate in public bidding. Those acts will be considered administrative violations in Brazil under any circumstance if they have as an objective or may have, regardless of fault, even if not achieved, one of the following effects: (a) to limit, restrain or in any way injure free competition or free initiative; (b) to control the relevant market of goods or services; (c) to arbitrarily increase profits; and (d) to exercise a dominant position abusively.


12. In the criminal area, the Brazilian Economic Crimes Law (Law No. 8.137/1990, Article 4, II) is the legislation governing the prosecution. The criminal prosecution focus only on the individuals that reach an agreement, compromise, adjustment or alliance among offers aiming at one of the following objectives: (a) artificially fixing prices or quantities sold or produced; (b) regional control of the market by a company or group of companies; (c) control of a distribution or supply network, detrimental to the competition. Those acts of the individuals face a penalty in Brazil of two to five years of imprisonment and fines, and the prosecution is charge of the Public Prosecution Service—either by the State Prosecutors or the Federal Prosecutors.

Law No. 12.529/2011 (Brazilian Competition Law), Article 2.

13. In order to resort to international legal cooperation mechanisms, based in Mutual Legal Assistance Treaties or reciprocity agreements, it is usually required a direct [related to their official language]. Specific requirements related to the translation are those of the requested country.

\(^1\) This tendency of prosecution against individuals is also verified in the United States, for instance. According to the Deputy Assistant Attorney General of the Department of Justice, Brent Snyder, “During the 1990s, the Antitrust Division prosecuted almost equal numbers of individuals (476) as corporations (480). From 2000–2009, we prosecuted more than twice as many individuals (453) as corporations (220). And during the most recent five-year period, we prosecuted almost three times as many individuals (352) as corporations (123).” B. Snyder, Individual Accountability for Antitrust Crimes, Remarks as Prepared for the Yale School of Management—Global Antitrust Enforcement Conference, Feb. 19, 2016.

\(^2\) In the administrative area, the Brazilian Competition Law (Law No. 12.529/2011, Article 2) is the legislation governing the procedure. The administrative proceeding focus on companies and individuals that agree, join, manipulate or adjust with competitors, in any way, on one of the following market variants: (i) the prices of goods or services individually offered; (ii) the production or sale of a restricted or limited amount of goods or the provision of a limited or restricted number, volume or frequency of services; (iii) the division of parts or segments of a potential or current market of goods or services by means of, among others, the distribution of customers, suppliers, regions or time periods; or (iv) the prices, conditions, privileges or refusal to participate in public bidding. Those acts will be considered administrative violations in Brazil under any circumstance if they have as an objective or may have, regardless of fault, even if not achieved, one of the following effects: (a) to limit, restrain or in any way injure free competition or free initiative; (b) to control the relevant market of goods or services; (c) to arbitrarily increase profits; and (d) to exercise a dominant position abusively.


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Law No. 12.529/2011 (Brazilian Competition Law), Article 2.
regions or countries in which there is evidence that some or all of the participants in the collusion exported the cartelized product directly to Brazil—this type of cartel can be prosecuted and punished under Brazilian jurisdiction, and even companies that did not export their products directly to Brazil may be subject to liability; (iii) cartels involving regions of the world or specific countries in which there is no evidence that its members exported the cartelized product directly to Brazil, but only indirectly—this type of cartel may or may not be prosecuted and punished under Brazilian jurisdiction depending on the materiality and substantiality of the potential effects of the conduct in Brazil.

11. To investigate domestic and/or international cartels, CADE has the most common and relevant investigatory powers available for competition authorities around the world. Since 2000, Brazil has had a well-structured and strong Leniency Program as well as the power to request search and seizure warrants. Additionally, in 2012, Brazil acquired the power to make unannounced inspections, and in 2013 it introduced a major change in its Settlements Policy, which resulted in an impressive increase in the use of this investigative tool.

12. When it comes to international cartels, Brazil usually relies intensively, even though not exclusively, on Leniency and Settlements Agreements. In addition, the Authority often resorts to the use of decisions and settlements from other jurisdictions as an investigative resource. Moreover, international cooperation with other antitrust authorities is being intensified. For instance, when a case originates from a leniency agreement, international cooperation is commonly established if the leniency applicant provides SG/CADE with a waiver, either procedural or full, which may continue during the entire proceeding. Finally, informal cooperation to exchange impressions and non-confidential information about the case is usual too.

13. Through the use of all of these instruments, Brazil has investigated some of the most well-known international cartels, such as the ones in the lysine, hydrogen peroxide, gas and air insulated switchgears (GIS) and AIS, marine hoses, air cargo, compressors, sodium perborate, graphite electrodes, TFT-LCD, CRT glass, soda ash, Cathode Ray Tube for television sets (CPT), Color Display Tubes for computer monitors (CDT), DRAM, submarine cables, air and sea international transport services/...
freight forwarding,\textsuperscript{41} methionine,\textsuperscript{42} ODD,\textsuperscript{43} TPE plastic,\textsuperscript{44} ABS plastic,\textsuperscript{45} auto parts,\textsuperscript{46} capacitors,\textsuperscript{47} FOREX,\textsuperscript{48} and shipping markets.\textsuperscript{49} markets.

14. In the light of recent developments, in the next two sections we will focus our analysis on the impact of two of CADE’s investigatory powers in international cartel investigations: the Brazilian Leniency Program (II.) and the Brazilian Settlement Policy (III.).

15. Leniency\textsuperscript{50} Programs are an important, if not the most important, investigatory tool to fight cartels.\textsuperscript{51} The Brazilian Leniency Program was started in 2000, and since then it has been able to attract different companies and/or individuals in different markets and provide them with relevant benefits to cooperate\textsuperscript{52} with the Authority.\textsuperscript{53}

16. In the administrative sphere, the first candidate entering into a leniency agreement can obtain full immunity or a reduction of the applicable fine. In the criminal sphere, entering into a leniency agreement leads to the suspension of the limitation periods\textsuperscript{54} and prevents the criminal prosecution of the candidate with respect to the antitrust crimes set forth in the Economic Crimes Act (Law No. 8.137/1990) and other crimes directly related to participation in a cartel, such as those set forth in the

\textsuperscript{50} For the purpose of this paper, “leniency” refers to full immunity, amnesty or reduction in fine in the case CADE is already aware of the reported violation but still doesn’t have enough evidence against the candidate. According to article 86, paragraph 4, of Law No. 12.529/2011, combined with article 208 of the Internal Rules of CADE, once CADE’s Tribunal declares that the leniency agreement has been fulfilled, the leniency recipients will benefit from: (i) administrative immunity under Law No. 12.529/2011, in cases in which the leniency agreement’s proposal is submitted to CADE’s General Superintendence when this authority was not aware of the reported violation; or (ii) a reduction by one to two-thirds of the applicable fine under Law No. 12.529/2011, in cases in which the leniency agreement’s proposal is submitted to the SG/CADE after this authority becomes aware of the reported violation.


\textsuperscript{52} According to the Brazilian Competition Law, there are six cumulative requirements to apply for a leniency agreement, which are the following: (i) the company and/or individual must be the first in with respect to the violation reported or under investigation; (ii) the company and/or individual must cease its participation in the violation reported or under investigation; (iii) when the agreement is proposed, CADE’s General Superintendence must not have sufficient evidence to ensure the conviction of the company and/or the individuals; (iv) the company and/or individuals must confess the wrongdoing; (v) the company and/or individual must fully and permanently cooperate with the investigation and the administrative proceeding, and attend, at their own expenses, whenever requested, at all procedural acts, until a final decision is rendered by CADE on the reported violation; and (vi) the cooperation must result on the identification of the others involved in the violation and the collection of evidentiary information and documents of the offense reported or under investigation.

\textsuperscript{53} According to article 86 of Law No. 12.529/2011, the government body responsible for negotiation and execution of Leniency Agreements is the SG/CADE. CADE’s Tribunal does not participate in the negotiation and execution of Leniency Agreements and is only responsible for issuing a final decision as to whether or not the agreement has been fulfilled, at the time of the judgment of the administrative proceeding (art. 86, paragraph 4, of Law No. 12.529/2011). Although arts. 86 and 87 of Law No. 12.529/2011 do not expressly require the participation of the state and/or federal Public Prosecutor Services for entering into a Leniency Agreement, CADE’s consolidated experience shows that, in light of the criminal repercussions of a cartel, the Prosecution Service should be invited to co-sign, as it is the competent entity to bring criminal charges and initiate a public criminal action. Hence, the state and/or federal Public Prosecutor Services can participate in the agreement as an interested party, in order to grant greater legal security for the leniency recipients and facilitate the criminal investigation of the cartel.” In this sense, the administrative and the criminal investigations are independent in both spheres, including in international cartel investigations.

\textsuperscript{54} In Brazil, Article 46 of Law No. 12.529/2011 provides for a five-year limitation period determined either from the date when the anticompetitive practice took place or, in the event of a permanent or continued violation, the date on which it ceases. In situations where the conduct investigated under the Antitrust Law is also a criminal violation (such as cartels), the limitation period is twelve years, applied both to the Criminal Public Prosecutor and to CADE.
17. Over the years, domestic and international corporations and/or individuals became aware of the Brazilian Leniency Program and started applying for Leniency—perhaps realizing the threat of severe sanctions and fearing detection. From 2000 to April 2016, Brazil has signed 54 new leniency agreements and 17 addendums, referring to domestic, international and mixed cartels (see figure 3 below). Even though the legislation came into force in 2000, the first leniency agreement was signed only in 2003, paving the way for the first ever cartel search and seizure warrant in Brazil. Of the more than fifteen years of the Leniency Program, twelve of which included signing leniency agreements, the last four need to be highlighted. From 2012 to April 2016, 31 new leniency agreements were signed, which represent 57% of the total number of new leniency agreements signed in the history of the Brazilian Program. These numbers clearly demonstrate the importance of the Brazilian Leniency Program in detecting cartels.

Figure 3. Number of new leniency agreements/addendums per year in Brazil (including domestic, international and mixed cartels)

18. Among the new leniency agreements, Brazil has a diversified portfolio of domestic, international or mixed (domestic and international) cartel investigations (see figure 4 below). Twenty-seven of the total of 54 new leniency agreements relate to domestic cartels (50%), 13 to international cartels (24%) and 14 to mixed (16%). Whereas in the beginning of the Brazilian Leniency Program the new agreements were mostly related to international cartels, this is no longer the case in recent years even though Brazil continues to use leniency agreements to detect international violations. From 2003 to 2011, 30% of the total of 23 new leniency agreements were domestic cartels, 35% international and 35% mixed ones. On the other hand, from 2012 to April 2016, 65% of the total of 31 new leniency agreements were domestic cartels, 16% international and 19% mixed ones.

Figure 4. Types of cartels investigated as a result of leniency agreements per year in Brazil

19. The above numbers clearly reveal some important features in the Brazilian Leniency Program, especially regarding the direction it has been taking in the last four years. The first feature is that the leniency applicants have to provide strong information and evidence not only on the existence of the collusion, but also about the potential anticompetitive effects of the international cartel in Brazil. The second feature is that Brazil is prosecuting a wide range of types of cartels, including domestic, international and mixed ones, in different markets. The third one is that the Brazilian investigations of international cartels are not reliant exclusively on the Leniency Program. The fourth feature is that the new leniency agreements, each time more robust, are generating external impacts on the Settlements Policy in Brazil, which is visible from the fact that, in 2015, 90% of the new leniency agreements were followed by at least one request to settle. And the fifth feature is that the domestic and international business community—including lawyers, business employees, compliance staff, individuals, etc.—is becoming more aware of Brazil’s activities on the prosecution of cartels, which in turn increases the effectiveness of the Brazilian Leniency Program.

55 An addendum to the leniency agreement means signing of a document to include individuals to the original leniency agreement. “It should be noted that an Addendum to the Leniency Agreement will be possible only upon the fulfilment of the requirements for execution of a Leniency Agreement, such as having participated in the conduct, confessing the wrongdoing, and collaborating with the investigations, and as long as the SG/CADE does not have sufficient evidence to ensure a conviction.”

56 For “mixed” cartels, we refer to those investigations in which the alleged violation operated both domestic and internationally.

57 Before the entry into force of the Law No. 12.529/2011 (Brazilian Competition Law), the law governing the competition issues was the Law No. 8.884/1994.
To further enhance transparency, accessibility, predictability and legal certainty in the Brazilian Leniency Program, in 2015 CADE released the preliminary version of its Frequently Asked Questions (also available in English\textsuperscript{60}). The FAQs are meant to provide further insight for the national and international competition community into the Brazilian Leniency Program.

III. Brazilian Settlement Policy

21. In Brazil, the Settlement Agreement signed with the Competition Authority in a cartel investigation is called TCC, which is the Portuguese acronym for Termo de Compromisso de Cessação (Cease and Desist Consent/Agreement). Through this instrument CADE can suspend and afterwards close the investigations against companies and/or individuals charged for collusive violations under certain circumstances and subject to the commitment of ceasing the practice and paying a pecuniary contribution. The TCC, unlike the leniency agreement, does not offer any automatic criminal benefits.\textsuperscript{61}

22. Until 2013, there were few cartel cases in which TCCs were actually used since the regulation of the instrument did not provide enough incentives for the Authority and for the defendants to settle. On the one hand, the TCC did not require an obligation on the defendants’ part to cooperate with the investigations, making it less attractive for the Authority to settle when there was enough evidence for a conviction. On the other hand, there were no clear rules on how the amount of the pecuniary contribution would be defined, making it less attractive for defendants to settle due to a lack of legal certainty about the outcomes of the negotiations.

23. In 2013, however, CADE changed its Settlement Policy.\textsuperscript{62} The goal was to make TCCs more similar to leniency agreements in terms of incentives and thus to encourage companies and/or individuals involved in cartel cases to cooperate with the Authority when they were not the first in and therefore did not qualify for a leniency agreement.\textsuperscript{63} Accordingly, more stringent requirements were established to sign a TCC in a cartel investigation. To settle in such a case, defendants now have not only to (i) cease their involvement and (ii) pay a pecuniary contribution, but also to (iii) admit the practice that is being investigated, and, in order to have greater financial benefits, they have to (iv) cooperate with the investigations by providing evidence and/or explaining, translating and supplying details about documents and information.

24. The new Settlement Policy also introduced clear discount slots\textsuperscript{64} related to the expected fine. While a proceeding is still being investigated by SG/CADE, the first TCC applicant can be granted a reduction of 30 to 50% of the expected fine, the second one can receive a reduction of 25 to 40% and the others a reduction of up to 25%. The exact amount of the discount is primarily determined by the quality of the cooperation with the investigation as whole. If, however, the proceeding is already at CADE’s Tribunal to be decided, cooperation is not required by the regulation (although it can be requested by the Authority) and the TCC applicant can receive a reduction of up to only 15% of the expected fine.

25. In the context of those changes, Brazil has seen an impressive increase in the number of TCCs signed. Regarding international cartels, until 2013, Brazil had 14 TCCs in international cartel cases (see figure 5 below).\textsuperscript{65} After the new Settlement Policy came into force, that is from 2013 to April 2016, the country had 30 TCCs, which is more than a twofold increase.\textsuperscript{66}

Figure 5. Number of TCCs per year in Brazil (international cartels only)

26. This shift in Brazil’s Settlement Policy represents important steps for the country’s cartel enforcement as more TCCs translate into less procedural costs, into shorter proceedings, into better-documented cases with high chances to result in convictions and into advance

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\textsuperscript{61} Since the TCC does not generate automatic benefits in the criminal sphere, the Prosecution Service does not participate in the agreement and may bring criminal action against the parties to the TCC. Nevertheless, if the person interested in entering into a TCC with CADE also wishes to concurrently negotiate a cooperation agreement with the Prosecution Service and/or the Federal Police, then SG/CADE can assist in the interaction with the Prosecution Service and/or Federal Police, and the negotiation and execution of any agreements will be up to the discretion of such authorities.

\textsuperscript{62} Article 179 and following of Cad’s Internal Rules.

\textsuperscript{63} As explained above, in Brazil, only the first one to contact the Authority is eligible to a leniency agreement.

\textsuperscript{64} The Department of Justice of the United States uses the expression “cooperation discounts” to refer to the “discount slots” mentioned in this paper.

\textsuperscript{65} Before 2008, there wasn’t any TCC signed on cartel investigations.

\textsuperscript{66} It is relevant to note that the number of TCC’s subscribers had an even bigger increase, given that, after the entry into force of the new Settlement Policy, companies and their employees can sign the TCC jointly, what was not an option before.
payment of pecuniary contributions for the Authority. The impact for international cartel investigations is particularly relevant, as the cooperation can help the Competition Authority to break territorial barriers to access evidences, to locate offenders and to collect advanced payments of fines from companies and/or individuals with no assets in Brazil.  

27. Finally, it is worth mentioning that another development in Brazil’s Settlement Policy was announced in January 2016, when CADE released the preliminary version of its Guidelines for TCC negotiations in cartel cases. The Guidelines contain CADE’s best practices in the field and also aim to provide more transparency and predictability for the negotiations. The document explains all the steps of the negotiation process and indicates clearly the Authority’s criteria for establishing the base amount and the percentages of the expected fine, and for calculating the exact percentage of the discount on the expected fine within the established discount slots. This step forward might also help the international competition community gain a clearer insight into the Brazilian Settlement Policy.

Final observations

28. In this paper, we attempted to provide a glimpse into the Brazilian experience in international cartel investigations. Recent improvements in the Leniency Program and Settlement Policy seem to have boosted Brazil’s results. In our opinion, some factors provided the incentives and legal certainty that the parties involved in anti-competitive misconducts need to “become clean” with Brazilian authorities. Among those factors, the relentless cartel enforcement promoted by CADE’s Tribunal with its increasingly heavy fines evince the threat of severe sanctions and the high risk of detection. Additionally, the above-mentioned definition and consolidation of clearer and more objective applicable criteria regarding requirements and internal proceedings of the Leniency and Settlement programs provided transparency, predictability and certainty, This context has resulted in a greater number of investigations and has provided even more incentives for the companies and/or individuals currently investigated to settle up and to early approach the competition authority for leniency. Hence, that has helped improving of the quality of CADE’s international cartel cases, as they have been able to count on more confessions and on robust evidences. In a virtuous circle, this has paved the way to even better decisions and higher penalties.

29. However, due to the specificities of this kind of investigation, access to evidence, location of offenders, enforcement of decisions and, above all, deterrence of international cartels may remain challenges to overcome in Brazil. These challenges are likely to be shared by other competition authorities from developing countries—and may also be faced by the ones in developed countries. Additionally, it is important to note that 29 of the 43 proceedings opened to investigate international cartels in Brazil have not had yet a final decision of CADE’s Tribunal (67%). These cases might provide further basis for even deeper discussions on the Brazilian policy regarding the prosecution of international cartels and the criminal prosecution of those involved.

30. One of the keys to overcoming the above challenges can be the strengthening of cooperation between competition authorities. To deal with global suboptimal deterrence, in our opinion, it is crucial that competition authorities join their resources in the fight against such a geographically dispersed violation. Important traditional strategies such as Leniency and Settlement Agreements may reach some limit and new approaches in this field should be considered, especially in multi-jurisdiction investigations, where there is the risk of global exposure. We advocate the establishment of an international intelligence network to share non-confidential filings of international cartel cases, non-confidential information of interest to specific countries, successful strategies, etc., through the creation of an appropriate data warehouse. In our view, this could have a huge impact on the performance and results, especially those of competition authorities from developing countries, such as Brazil.
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