THE ANTITRUST LENIENCY PROGRAM AND ITS SPILLOVERS ON OTHER LENIENCY PROGRAMS IN BRAZIL

EL PROGRAMA DE CLEMENCIA ANTIMONOPOLIO Y SUS REPERCUSIONES EN OTROS PROGRAMAS DE CLEMENCIA EN BRASIL

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ABSTRACT

This paper aims to carry out a descriptive analysis of the Antitrust Leniency Program in Brazil, considered the precursor of other Leniency Programs in Brazilian legislation, such as the Anti-Corruption Leniency Program and the Leniency Program in the financial market. First, it is presented a brief historical review of the Program, followed by an explanation of the requirements for signing a Leniency Agreement in Brazil. Second, the paper details all phases of the negotiation process of an Antitrust Leniency Agreement. Finally, it will highlight some of the spillovers of its Program in other fields of Brazilian jurisdiction, with a brief comparison between the different Leniency Programs existent in Brazil in terms of Type of infraction; Competent institution; Legal bases; Infra-legal bases; Possible beneficiaries; Administrative benefits; Criminal benefits and Civil benefits.

RESUMEN

Este trabajo tiene como objetivo realizar un análisis descriptivo del Programa de Clemencia Antimonopolio en Brasil, considerado el precursor de otros Programas de Clemencia en la legislación brasileña, como el Programa de Clemencia Anticorrupción y el Programa de Clemencia en el mercado financiero. En primer lugar, se presenta una breve reseña histórica del Programa, seguida de una explicación de los requisitos para la firma de un acuerdo de clemencia en Brasil. En segundo lugar, el documento detalla todas las fases del proceso de negociación de un Acuerdo de Clemencia antimonopolio. Por último, se destacan algunos de los efectos de su Programa en otros ámbitos de la jurisdicción brasileña, con una breve comparación entre los diferentes Programas de Clemencia existentes en Brasil en términos de Tipo de infracción; Institución competente; Bases legales; Bases infra-legales; Posibles beneficiarios; Beneficios administrativos; Beneficios penales y Beneficios civiles.

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KEYWORDS

Leniency Agreement | Cease and Desist Agreement | Cartel | Brazil

PALABRAS CLAVE

Acuerdo de Clemencia | Acuerdo de cese y desistimiento Cartel | Brasil

SOBRE EL ARTÍCULO

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CONTENT

I. A brief overview; **II.** Cade's Leniency Program history and requirements for signing an agreement, **II.1.** Precedence, **II.2.** Termination of the practice, **II.3.** Lack of sufficient evidence against the proponent when asking for a marker, **II.4.** Confession, **II.5.** Cooperation with the investigation and throughout the process, **II.6.** Cooperation's results, **II.7.** Other specific requirements from other Leniency Programs in Brazil; **III.** Negotiation process of an Antitrust Leniency Agreement, **III.1.** Marker proposal and the waiting queue **III.2.** Information and documents submission, **III.3.** Signing of the Leniency Agreement, **III.4.** Making public (or not) the Leniency Agreement, III.5. Final declaration of compliance with the Leniency Agreement by Cade's Tribunal; IV. The success of Cade's Leniency Program on fighting cartels in Brazil and its spillovers on other leniency programs in Brazil such as the Anticorruption Leniency Program and the Leniency Program in the financial markets; References.

I. A BRIEF OVERVIEW

In Brazil, both the Antitrust Leniency Agreement and the Antitrust Cease and Desist Agreements "represent the main pillars of the public prosecution of cartels in Brazil" (Athayde & Fidelis, 2016).

The term "leniency" encompasses the notion of "tolerance" or "clemency". A "Leniency Agreement" consists of an agreement between the investigating public authority and a private agent, through which the authority grants immunity or a reduction of the penalty applicable to the agent, receiving, in exchange, evidence, material and procedural collaboration throughout the investigations. Hence, a "Leniency Program" consists of the legal framework that provides incentives by the investigating public authority to private agents that seek the negotiation of an agreement (Athayde, 2019).

In its turn, the Cease-and-Desist Agreements (TCCs in Brazilian acronym) differs from the Leniency Agreement since there is no mandatory obligation strengthen the ongoing investigations, but the agreement may be signed to bring the investigation to an end, as a non-prosecution agreement. In most of the cases, those Cease-and-Desist Agreements do not grant immunity, but only reduction of the penalties applicable to the private agent. And that difference in terms of benefits is intentional, since the incentives for the agents to cooperate with the authorities should decrease the longer it takes for the private agent to bring the information to the public authorities (Athayde, 2021).

In the antitrust context in Brazil, both Antitrust Leniency Agreement and the Antitrust Cease and Desist Agreements are managed by the Competition Watchdog, the Administrative Council of Economic Defense (CADE in Brazilian acronym).

Both instruments have their own requirements, are negotiated at specific times and stages of the investigation, and result in different benefits to individuals and/or legal entities that collaborate in the field of competition law (Athayde & Roriz, in press). Having that in mind, and aware that both instruments needed better understanding, Cade published its Guidelines on the Leniency Program

and on the Cease-and-Desist Policy involving cartels persecution, seeking to make its policies and practices more transparent and predictable[3].

Taking all that into consideration, the present paper aims to describe the Brazilian Antitrust Leniency Program, observing its possible positive spillovers on other fields and how it overcomes the impacts on the competition area. That point is relevant since Brazil has new leniency agreements tools in the Anticorruption field (Law 12.846/2013 and Law 12.850/2013) and in the Financial markets (Law 13.506/2017).

To achieve such goals, the paper will firstly present the Antitrust Leniency Program legislative history and its requirements (II). Secondly, the phases for entering into Antitrust Leniency Agreement with CADE (III). Finally, it will be possible to point out some thoughts about the existence (or not) of positive spillovers on other fields with the leniency agreements tools, such as in the anticorruption and financial markets fields. For that purpose, a brief comparison will be made between the different Leniency Programs in Brazil by Type of infraction; Competent institution; Legal bases; Infralegal bases; Possible beneficiaries; Administrative benefits; Criminal benefits and Civil benefits (IV).

II. CADE'S LENIENCY PROGRAM HISTORY AND REQUIREMENTS FOR SIGNING AN AGREEMENT

Cade's Leniency Program was introduced by Law n. 10.149/2000, which amended Law n. 8.884/94, with the objective of strengthening the activity of repression of violations of the economic order of the Brazilian System for the Defense of Competition (SBDC). It was the first legislation to bring this type of agreement to Brazil, which currently finds its bases in arts. 86 and 87 of Law n. 12.529/2011.

The basic premise of the Leniency Program is that the undertaking of the Leniency Agreement confess and collaborate with the investigations, bringing information and documents that allow the authority to identify the other co-authors and prove the violation reported or under investigation[4].

In general, Leniency Agreements are signed in cartel cases, i.e., when competing companies coordinate and agree for the purpose of, or with the potential to produce the following effects, even if not achieved: (i) limiting, falsifying, or otherwise hindering free competition or free enterprise; (ii) dominating a relevant market for goods or services; (iii) arbitrarily increasing profits; and (iv) exercising a dominant position abusively (article 36, introductory paragraph, I to IV, of Law n. 12.529/2011). For Brazilian's competition authority, the Antitrust Leniency Agreements represent one of the main pillars of the public prosecution of cartels (Athayde & Fidelis, 2016).

The prosecution of cartels in Brazil is carried out at three levels: administrative, criminal and civil. The benefits of entering into an Antitrust Leniency Agreement can be enjoyed both in the administrative and criminal spheres, as stated in art. 86, paragraph 4, combined with art. 87 in the Law n. 12.529/2011. In the administrative sphere, as long as the requirements mentioned above are accomplished, the leniency applicant will avoid administrative fines (if Cade's General Superintendence does not have prior knowledge of the reported violation) or a reduction by one to two-thirds of the applicable administrative fines (if the SG-Cade already has prior knowledge).

3 See Cade's Antitrust Leniency Program Guidelines. Available at: https://cdn.cade.gov.br/Portal/assuntos/programa-de-leniencia/guidelines-cades-antitrust-leniency-program-2020.pdf; Cade's TCC Guidelines. Available at: https://cdn.cade.gov.br/Portal/centrais-de-conteudo/publicacoes/guias-do-cade/guidelines_tcc-1.pdf.

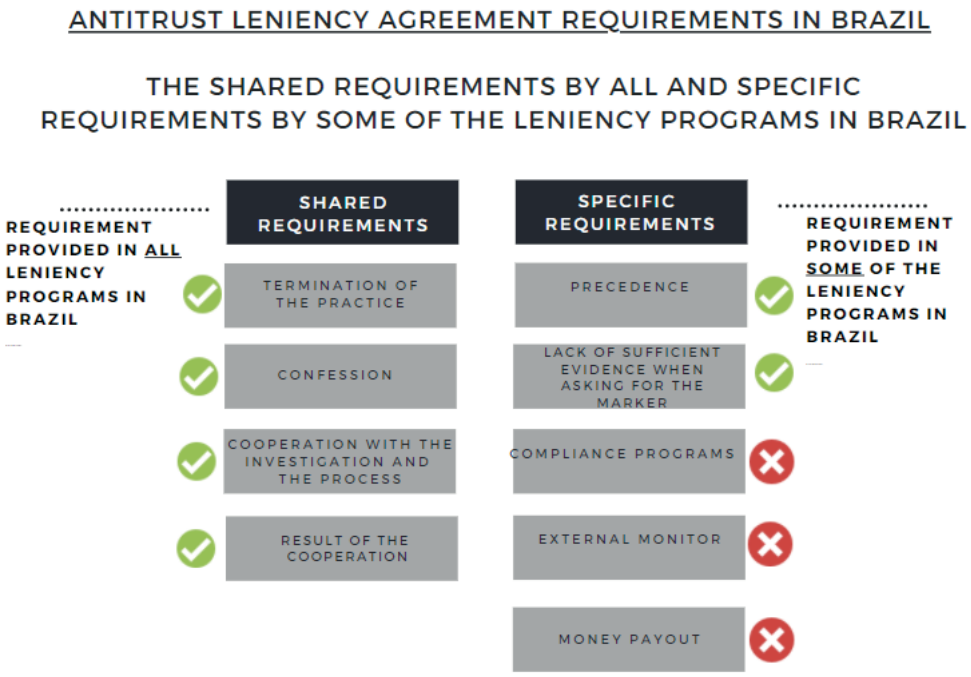
4 For more information about the characteristics of an efficient and effective Leniency Program, see: International Competition Network [ICN]. (2017) Checklist for efficient and effective leniency programmes. Available at: https://www.internationalcompetitionnetwork.org/portfolio/leniency-program-checklist/

In the criminal sphere, the celebration of a Leniency Agreement will suspend the limitation period and grant protection from criminal conviction and prison terms with respect to the antitrust offenses set forth in the Economic Crimes Act (Law n. 8.137/1990) and other crimes directly related to participation in a cartel, such as those set forth in Law n. 8.666/1993 and in article 288 of the Criminal Code (criminal conspiracy) (CADE, 2020).

Both benefits, in the administrative and in the criminal sphere, are definitively granted upon declaration of fulfillment of the Leniency Agreement by the plenary session of Cade's Tribunal, when the administrative proceeding is finally decided (art. 86, §4, of Law n. 12.529/2011) (Athayde & Fidelis, 2016). On the other hand, there's no benefit granted for the leniency applicant in the civil sphere, which may be held jointly liable for civil damages resulting from the overcharge caused by the cartel (art. 927 of the Civil Code).

The requirements for signing a Leniency Agreement in Cade are listed in art. 86 of Law n. 12.529/2011, and art. 197, of Cade's Bylaws (RICade), according to which it is necessary: (i) "precedence" – the company must be the first to qualify with respect to the violation reported or under investigation (2.1); (ii) "termination of the practice" – the company and/or individual ceases to participate in the reported or under investigation violation (2.2); (iii) "at the time of filing, there must not exist enough evidence against the proponent" - at the time of filing the agreement, the General Superintendence must not have sufficient evidence to ensure the conviction of the company and/or the individual (2.3); (iv) "confession" – the company and/or individual confesses their participation in the conduct (2.4); (v) "cooperation with the investigation and throughout the entire process" - the company and/or individual cooperates fully and permanently with the investigation and the Administrative Proceeding, appearing, at its own expense, whenever requested, in all procedural acts, until Cade's final decision about the reported infraction (2.5); and (vi) "cooperation's results" – the cooperation of the company and/or individual must result in the identification of the others evolved in the violation and also in information and documents that prove the violation reported or under investigation (2.6) (Athayde & Roriz, in press). When comparing the requirements to sign a leniency agreement in Brazil with the other provisions provided by the anticorruption field (Law 12.846/2013 and Law 12.850/2013) and in the financial markets (Law 13.506/2017), as well as in the soft law, it is possible to differentiate the requirements that are shared by all leniency programs in Brazil from the requirements that are specific by some legislations (2.7). The Antitrust Leniency Agreement requirements in Brazil may be provided as following:

Image 1 – ANTITRUST LENIENCY AGREEMENT REQUIREMENTS IN BRAZIL - THE SHARED REQUIREMENTS BY ALL AND SPECIFIC REQUIREMENTS BY SOME OF THE LENIENCY PROGRAMS IN BRAZIL



Source: Athayde (2021). Translated to english.

II.1. Precedence

The precedence requirement means that Cade only grants one Leniency Agreement (immunity) per conspiracy – not per market/product. In that sense, only the first company to seek the antitrust authority about a conduct and qualify as an undertaking will be able to receive the benefits. For all the latecomers who want to collaborate, there's the possibility to propose a Cease-and-Desist Agreement (TCC) to Cade, which benefits are significantly lower. As stated by OECD (2001), it is important for the effectiveness of the Leniency Program that the first one the confess receives the "best deal", which provides incentives for companies to be the first and, consequently, greater instability for cartels.

It is possible that companies from the same economic group are undertakings of the leniency agreement[5]. Likewise, the benefits of the agreement can be extended to its directors, managers and employees (current or past), provided that they cooperate with the investigations and sign the instrument together with the proposing company[6]. But in the event that the proponent of the Leniency Agreement is only an individual(s) and the agreement is made without the participation of the company, its benefits will not extend to the company to which the employee is or was linked[7]. This non-automatic extension of benefits is to increase the instability of the cartel, so that all participants involved, whether they are companies or individuals, still have a strong incentive to report the anticompetitive practice to Cade as soon as possible (CADE, 2020). This is a requirement provided for in only some of the existing Leniency Programs in Brazil (Athayde, 2021).

5 Art. 86, §6°, of Law n. 12.529/2011, and art. 197, §1°, of RICade.

6 Art. 197, §1° and § 2°, of RICade.

7 Art. 197, § 3°, of RICade.

II.2. Termination of the practice

The requirement that the company and/or individual ceases to participate in the reported or under investigation violation is required from the moment of the proposal of agreement to Cade's General Superintendence (SG/Cade). That is, from the moment the proponent begins to negotiate with the antitrust authority, it will be no longer able to participate in the collusive agreement, under penalty of non-compliance with one of the requirements provided for in Law n. 12.529/2011. This is a requirement provided for in all existing Leniency Programs in Brazil (Athayde, 2021).

II.3. Lack of sufficient evidence against the proponent when asking for a marker

The requirement that, at the time the agreement is proposed, the SG/Cade must not have sufficient evidence to ensure the conviction of the company and/or the individual, is an "internal obligation" for the SG/Cade to analyze its evidentiary framework, at the time of filing the Antitrust Leniency Agreement, in order to assess the availability or not of the "marker" to start the negotiation.

It means that, if there's already an Administrative Proceeding[8] filed at SG/Cade, it is no longer possible to sign a Leniency Agreement with companies and/or individuals, as it has already been considered that there is strong evidence against those represented.

On the other hand, if there is an Administrative Inquiry[9], it is necessary to analyze the evidence contained in the specific records, to verify its robustness and, therefore, whether there is "sufficient evidence" to ensure the proponent's conviction. The discussion in the Administrative Inquiry involves an analysis of whether there is the possibility of starting the negotiation of a "Partial Leniency Agreement" with the proponent, which can be done in the case of an Administrative Inquiry in an initial or even an intermediate phase, when, despite having "prior knowledge" of the conduct, Cade still doesn't have sufficient evidence to ensure the Proponent's conviction.

Finally, if there is a Preparatory Procedure, it is necessary to assess whether there is effective "prior knowledge" of the infringement, since, according to RICade, its establishment aims to determine whether the conduct under analysis is a matter of jurisdiction of the Brazilian Competition Defense System ("SBDC" in brazilian acronym). If the Preparatory Procedure already has relevant information about the anti-competitive conduct and if Cade's competence is verified, there is no requirement for a Total Leniency Agreement, it might only be the case of a Partial Leniency Agreement. But if the Preparatory Procedure only contains representations made through the "Denunciation Channel"[10], news in the media or information about the existence of an investigation in another Public Administration body not yet investigated by Cade and lacking sufficient evidence to establish an administrative proceeding, it might be the case of a Total Leniency Agreement. This is a requirement provided for only in some of the existing Leniency Programs in Brazil (Athayde, 2021).

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8 Art. 145 of RICade: "The administrative proceeding for the imposition of administrative sanctions for infractions to the economic order shall be instituted by the General Superintendent, guaranteeing to the accused the adversary proceeding and full defense".

9 Art. 140 of RICade: "The administrative inquiry, an investigative procedure of an inquisitorial nature, will be instituted by the General Superintendence to investigate violations of the economic order, when the evidence is not sufficient for the initiation of an administrative proceeding".

10 The "Denunciation Channel" is an online tool available to any citizen who wants to file a complaint to Cade. Through this online channel, it is possible to report anticompetitive practices such as cartel, tie-in sales of products and services, creation of difficulties for the operation of competing companies, among others. Transactions not notified to the autarchy may also be reported, possible breaches of Agreements on Concentration Control signed in acts already authorized by Cade and other types of complaint related to transactions approved by the antitrust authority.

II.4. Confession

Regarding the requirement for the company and/or individual to confess its participation in the conduct, the confession is formally registered when written down in the Leniency Agreement, which contains an express clause referring to the confession of participation of the company and/or natural person in the collective anti-competitive conduct denounced. The Leniency Agreement model was modified in 2020 by the SG/Cade, and the specific confession clause was modified to become leaner, without the previously existing mention that the undertaking declared to be unaware of other anti-competitive practices in addition to those described in the Conduct History of that agreement (Athayde & Roriz, in press). This is a different condition from that required for the conclusion of a TCC, in relation to which only the "recognition of participation in the conduct" is required. This is a requirement provided for in all existing Leniency Programs in Brazil (Athayde, 2021).

II.5. Cooperation with the investigation and throughout the process

The requirement of full and permanent cooperation with the investigation and Administrative Proceeding is an important obligation imposed on the undertakings. In that sense, it is not enough that the proponents collaborate at the beginning of the investigation, presenting information and documents, and that, after signing the agreement, they let the antitrust authority carry out all the procedures without any cooperation. It is, therefore, cooperation as an obligation of means.

Cade considers all the efforts made by the undertakings throughout the investigation. An example of cooperation is not only material collaboration, with the presentation of information and documents, but also procedural collaboration (Athayde & Fernandes, 2016), for example, through the presentation of sworn translation of documents, which proved to be very important in the context of Administrative Proceedings in international cartels (Athayde, 2019).

According to an Organization for Economic Co-operation and Development (OECD) report, the level of cooperation required by Cade is generally greater than those required in the American and European jurisdictions, and the agreements signed may be perceived as too onerous. However, according to the organization, with the increasing number of cases deriving from Leniency Agreements, and with the confirmation of the Leniency Program by the Brazilian courts, this characteristic tends to change in the future[11]. Attention must be paid, therefore, so that the Antitrust Leniency Program finds the right measure between the requirement of full and permanent cooperation, which brings real benefits to the investigation and the Administrative Proceeding, without, however, taking the pendulum too far to the point of discouraging companies and individuals to seek authority. This concern is especially relevant regarding smaller cartels, involving medium and small companies, in states and/or municipalities (Athayde & Roriz, in press). This is a requirement provided for in all existing Leniency Programs in Brazil (Athayde, 2021).

II.6. Cooperation's results

This requirement refers to an obligation imposed to the undertakings within the limits of their knowledge, establishing cooperation as an obligation of result. It is, therefore, the requirement that the cooperation of the company and/or natural person results in the identification of others involved in the infringement and in obtaining information and documents that prove the infringement reported or under investigation.

At this point, it is analyzed whether it was from the signing of the Leniency Agreement that it was possible to carry out a "search and seizure action", for example, or whether it was through the agreement that

11 For more information, see: OECD. OECD peer reviews of competition law and policy: Brazil. 2019. Available at: www.oecd.org/daf/competition/oecd-peer-reviews-of-competition-law-andpolicy-brazil-2019.htm

important information and documents about the conduct were obtained. Therefore, it is understood that the fulfillment of such requirement must be analyzed by Cade's Tribunal when the Administrative Proceeding is being judged, at which time it confirms (or not) the benefits to the undertakings and declares the compliance (or non-compliance) with the agreement. SG/Cade, then, can only carry out a prospective analysis of the information and documents presented by the proponent of the agreement and of what are the perspectives regarding the investigation.

It is certain that, the more robust the evidentiary arsenal brought by the proponents is, the greater the chances that SG/Cade understands that this requirement will be fulfilled and, therefore, understands the possibility of signing the Leniency Agreement.

It is worth noting that a possible decision by Cade's Tribunal for filing an Administrative Proceeding initiated by a Leniency Agreement due to insufficient evidence does not necessarily mean non-compliance with the cooperation requirement by the undertakings. In this sense, a discussion held by the Administrative Tribunal at the end of 2017 is mentioned[12], when the filing of two investigations initiated from a Leniency Agreement in the auto parts market was decided by the Counselors, but the benefits of the Leniency Agreement were confirmed, resulting in the extinction of possible punishment of the undertakings. This is a requirement provided for in all existing Leniency Programs in Brazil (Athayde, 2021).

II.7. Other specific requirements

There are some requirements provided for in only some of the existing Leniency Programs in Brazil (Athayde, 2021), such as the existence or the implementation of a compliance program (i), the subordination to a external monitor after the Leniency Agreement (ii); and the money payout (iii).

The adoption of a compliance program (i) is not mandatory in the Antitrust Leniency Program, but only by those agreements regarding anticorruption signed by the General Controller (CGU in Brazilian acronym) or the Public Prosecution Office (MP in Brazilian acronym). In short, the Compliance Program is seen as a tool that promotes measures aimed at preventing or curbing illegal practices inside the company. It is a way of transferring to the companies part of their responsibility in controlling the practice of infractions before the Public Administration.

In addition, an external monitor (ii) may be required only when entering into a leniency agreement with the Public Prosecution Office in Brazil, as a way to monitor and ensure compliance with the best practices and other established requirements.

Finally, the money payout (iii) may be either as a fine or as a compensation for damages, and it is a very common requirement in leniency programs, although not mandatory in all Leniency Programs. It is not a requirement provided in the Antitrust Leniency Program, but only by those agreements regarding anticorruption signed by the General Controller (CGU in Brazilian acronym) or the Public Prosecution Office (MP in Brazilian acronym). The requirement of anticipating the value of damages, however, does not mean to exclude or completely rule out any future actions of other co-legitimates in the search for full compensation for damages, when applicable.

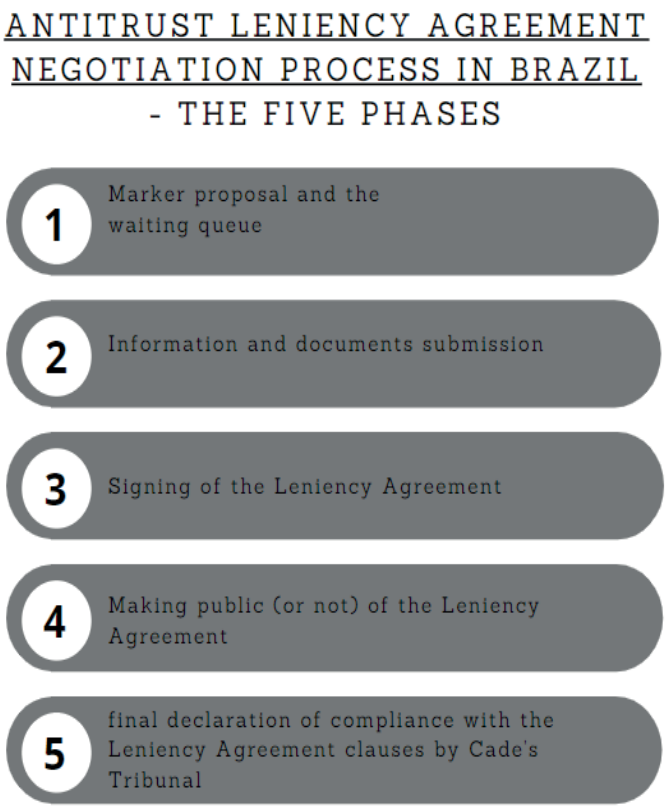
III. NEGOTIATION PROCESS OF AN ANTITRUST LENIENCY AGREEMENT

The negotiation of an Antitrust Leniency Agreement is carried out in five phases: (i) phase of the Leniency Agreement proposal and the granting of a password ("marker") or waiting queue (3.1);

12 CADE. Administrative Inquiry n. 08700.010322/2012-23. Reporting Counselor: João Paulo de Resende. Judged in Dec. 2017; CADE. Administrative Inquiry n.08700.010319/2012-18. Reporting Counselor: Paulo Burnier da Silveira. Judged in Dec. 2017.

(ii) phase of submission of information and documents proving the reported or under investigation violation (3.2); (iii) phase of signing the Leniency Agreement by SG/Cade (3.3); (iv) stage of making public (or not) the Leniency Agreement (3.4); and (v) phase of the final declaration of compliance with the Leniency Agreement by the CADE Administrative Tribunal (3.5). The negotiation and signing of the leniency agreements used to be carried out by the Chief of Staff of the SG/Cade, but after the Resolution n. 32/2021, there was a change in CADE's structure to create a new General Coordination in charge of the Leniency Program.

Image 2 – ANTITRUST LENIENCY AGREEMENT NEGOTIATION PROCESS IN BRAZIL - THE FIVE PHASES



Source: Athayde (2021). Translated to english.

III.1. Marker proposal and the waiting queue

In order to carry out the Leniency Program, Cade has established a marker system, which means that the first company or individual to contact Cade to report a conduct and propose a Leniency Agreement, will first request a marker that will state that it is the first leniency applicant in relation to such conduct.

The marker request is what marks the beginning of the first phase of the Leniency's Agreement's negotiation. It starts when the request is submitted to Cade's General Superintendence together with information regarding the reported violation, namely: (i) "who?" - a complete identification of the leniency applicant, as well as the identity of the other known perpetrators of the reported violation; (ii) "what?" - the market, products, and services affected by the reported violation; (iii) "when?" - the estimated duration of the reported violation, when possible; and (iv) "where?" - the geographic area

affected by the reported violation (in the event of an international cartel, it must be stated that the conduct has at least the potential to generate effects in Brazil) (CADE, 2020).

After receiving the marker request, the General Superintendence will internally verify whether a marker is available regarding the reported conduct, by examining, for example, whether there has been a prior request for a marker by another company related to the same conduct or if there is prior knowledge of the conduct in Cade and, in that case, if there's sufficient evidence to ensure the conviction of the company or individual involved in the violation. This analysis will be made within 5 business days (article 198, paragraph 2, RICade), but the answer to the applicant is generally provided on the same day or on the day after the application is made (CADE, 2020).

If the marker is available and the applicant obtain the "marker declaration", whenever a second, third, fourth or so on company and/or individual inquires SG/Cade about a leniency application, these latecomers stay "in line" in the event the marker becomes available again. Cade internally prepares a waiting list in order of arrival, ensuring the confidentiality of ongoing negotiations and not allowing the proponents to be aware of their position in the queue, which could give them incentives for destruction of evidence, for example. On the other hand, there are incentives for the late proponent to continue on the waiting list, since if the first negotiation is not fruitful, the next one will be invited to negotiate a new agreement. The uncertainty is important because it generates incentives for the participants in the conduct to seek the antitrust authority earlier, further destabilizing the arrangements between competitors (Athayde, 2019).

If the marker does not become available and/or the Leniency Agreement is signed, the second-in applicant and all subsequent applicants, in order of arrival, can propose a Cease-and-Desist Agreement (TCC) to Cade (Athayde & Fidelis, 2016). Signing a "TCC" generates benefits in the administrative sphere, but not automatically in the criminal sphere, and the requirements for the proponent are: (i) paying a pecuniary contribution; (ii) admitting their own participation in the investigated conduct; and (iii) cooperating with the investigation. The financial contribution is established based on the amount of the expected fine, which will be subject to a percentage reduction that varies according to the time of the "TCC" proposal's filing and the extent and usefulness of the proponent's collaboration[13].

III.2. Information and documents submission

After granting the first marker, SG/Cade will indicate a deadline for the proponent to present the "Leniency Agreement Proposal". This means that, within the period indicated in the term (usually a period of 30 days), proponents must submit the information and documents they already have available about the reported anti-competitive offense. Cade's Leniency Program Guidelines (2020) specifies the information and documents that, as a rule, must be provided by the proponent at this first meeting.

After a technical analysis by SG/Cade, if the proponent's effort to present all the required information and documents is evidenced, but there are still gaps, the validity of the marker and the negotiation may be extended. To this end, a new term of meeting will be granted (art. 201, III and IV, of RICade), which will define, on a case-by-case basis, the intermediate period for the presentation of missing information and documents (art. 198, § 3, with article 204 of RICade). Thus, several renewals can be carried out by SG/Cade, until it reaches enough information and documents to sign the agreement.

13 According to art. 186, I, II and III of Cade's Bylaws, the application of the pecuniary contribution under the TCC will vary as follows:

I - percentage reduction between 30% and 50% of the expected fine for the first represented that request TCC in the scope of the investigation of a conduct; II - percentage reduction between 25% and 40% of the expected fine for the second Respondent that request TCC in the scope of the investigation of a conduct; and III - percentage reduction of up to 25% of the expected fine for other Defendants who require TCC in the context of the investigation of a conduct.

The negotiation will only be concluded when the interim deadlines defined by SG/Cade come to an end, as stated by art. 204 of RICade.

SG/Cade may also request interviews with the individuals proposing the leniency agreement, who must attend to clarify the technical team's doubts. In these interviews, several detailed information can be obtained by the antitrust authority, becoming a valuable tool throughout the negotiation.

Based on all the information and documents submitted by the proponent, SG/Cade prepares a document called "History of Conduct", which consists of a detailed description of the anti-competitive conduct. It is a document attached to the leniency agreement, prepared and signed by SG/Cade, and with which the proponents agree. Thus, the History of Conduct is not signed by the proponent of the Leniency Agreement or by their lawyers, but is entirely supported by the information that the proponents present to SG/Cade, so that all the confessions about the practices are in its terms. Cade makes available on its website a model of "History of Conduct" [14], in line with the pillar of transparency, predictability and legal security of the Leniency Programs.

Once all the information and documents required by SG/Cade's technical team have been submitted, the proposal for the Antitrust Leniency Agreement is forwarded to the Substitute General Superintendent for analysis. The Substitute General Superintendent may request new arrangements and/or explanations from the leniency applicant or may forward the proposal to the General Superintendent for final analysis. If the analysis is positive, the proposal will be considered complete by SG/Cade and the case will move on to the phase of execution of the Leniency Agreement.

III.3. Signing of the Leniency Agreement

The procedures for signing the Leniency Agreement are initiated by both the leniency applicants and SG/Cade after the conclusion of the phase of submission of information and documents. All the leniency applicants must sign the Leniency Agreement, including the company and/or the individuals, or their respective legal representatives with specific powers for applying to, negotiating, confessing and entering into the Leniency Agreement. They must also obtain certified copies of documents, sworn translations, and consular authentication of foreign documents and take technical precautions when obtaining electronic evidence.

In this phase, SG/Cade also initiates contact with the offices of the Public Prosecution Service for submission of the Leniency Agreement, when additional information might be requested by the Public Prosecutor.

After that, the parties will validate the terms of the Leniency Agreement and date will be set for its signing. Thereafter, SG/Cade may initiate an Administrative Inquiry (art. 66, paragraph 1 of Law n. 12.529/2011) or an Administrative Proceeding (art. 69 of Law n. 12.529/2011) to investigate the reported infraction, as well as carry out others investigative measures of the case, such as "search and seizure" (art. 13, VI, "d", of Law n. 12.529/2011) and/or inspection (art. 13, VI, "c", of Law n. 12.529/2011), request of information (art. 13, VI, "a", of Law n. 12.529/2011) and/or other intelligence procedures. According to Craveiro (2020), there was authorization and execution of search and seizure warrants in 42% of the cases arising from Leniency Agreements judged by Cade until August 2020.

14 CADE. History of conduct model. Available at: https://cdn.cade.gov.br/Portal/assuntos/programa-de-leniencia/modelo-de-acordo-e-documentos-relacionados/Hist%C3%B3rico%20da%20Conduta%20%28Modelo%29.pdf

III.4. Making public (or not) the Leniency Agreement

As a rule, the contents of the Leniency Agreement and all its related documents are confidential and will not be disclosed, even after a preliminary investigation or an administrative proceeding is opened by Cade, except in the case of a court order or by express authorization of the leniency recipients. It is observed that the proponents of the Leniency Agreement are now called undertakings of the agreement. The undertakings's identity will be treated as confidential and not publicly released until the final judgment by Cade's Administrative Tribunal of the Administrative Proceeding related to the violation reported.

The defendants in the Administrative Proceeding opened in connection with the Leniency Agreement will be prohibited to disclose information and/or documents to third parties, other government bodies, or foreign authorities. Those defendants, i.e., the companies and individuals investigated for the reported violation, will have access to the identity of the leniency recipients and other information and documents of the Leniency Agreement. Access to such information, however, must be used strictly in light of due process principles and defendants' contradictory rights in the Administrative Proceeding underway at Cade (article 207, paragraph 2, I, of RICade).

If it becomes necessary to release or share confidential information, by order of a court or any other nontransferable legal obligation, then the leniency recipient will previously notify SG/Cade – or be informed by SG/Cade – of the need to disclose the information. Then access will be granted exclusively to the address of the court order and/or to the holder of the nontransferable legal prerogative, thus keeping the information restricted from the public. In specific situations, it is still possible for the leniency recipients to waive the confidentiality of their identity and/or the content of the Leniency Agreement and/or their documents and other attached materials, wholly or in part. It relies on what is agreed among the leniency recipient, Cade, and the State and/or Federal Public Prosecution Service, in the interest of the leniency recipients or the investigation. However, Cade will not require the leniency recipients to waive their guarantee of confidentiality if they wish to keep it.

In 2016, SG/Cade prepared a study on the international and Brazilian experience regarding access to documents required by employees under Leniency Agreements and TCCs. A benchmarking of seven countries was carried out about the general rule of access to such documents, as well as the peculiarities observed during the negotiation of the agreement and after the final decision of the case. Inspired by international experience, but based on national experience and legislation, a public consultation was conducted and, after that, Resolution n. 21/2018 was published, which officially regulated access to Leniency Agreement and TCC documents in Brazil[15].

Resolution n. 21/2018 establishes, as a rule, that the documents and information contained in Administrative Proceedings are publicly accessible. However, exceptions will be kept as restricted access during the administrative process, but the investigated parties may have access, so that the broad defense principle is guaranteed. There are also documents that, even after a final decision by Cade's plenary, may not be made available to third parties for consultation[16].

15 CADE. *Resolution n. 21/2018*: Available at: https://www.in.gov.br/materia/-/asset_publisher/Kujrw0TZC2Mb/content/id/41422475/do1-2018-09-19-resolucao-n-21-de-11-de-setembro-de-2018-41422421 >.

16 The regulatory proposal in Brazil was inspired by the categories of total protection ("black list"), temporary protection ("grey list") and no required protection ("white list"), established in "Comission Staff Working Document", a report from the European Commission to the European Parliament and the Council on the implementation of Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union. Available at: https://ec.europa.eu/competition/antitrust/actionsdamages/report_on_damages_directive_implementation.pdf.

The discussion about access to documents and information from Leniency Agreements is complex and, possibly due to the difficulties of operationally implementing this access, in 2019, Cade published Ordinance n. 869[17], which disciplined Cade's Resolution n. 21/2018. The Ordinance established the procedures for accessing documents and information considered restricted, within the scope of Administrative Proceedings carried out by Cade and which could support claims for indemnity for competitive damages. The big change was that it will be up to the Reporting Councilor, when the case is to be judged, to submit to the Court a proposal for the publication of documents, and that Cade will publish on its website the list of the cases judged with documents and information made available. Also, given the sensitivity of the issue in this context of public vs private enforcement, the Ordinance provided that the maintenance of confidentiality of the information will be subject to possible motion for clarification by interested parties.

III.5. Final declaration of compliance with the Leniency Agreement by Cade's Tribunal

The Leniency Agreement is considered to have been fulfilled and the duty of the leniency recipient to cooperate with Cade ceases after judgment of the Administrative Proceeding by Cade's Tribunal. This is the moment in which fulfillment of all obligations of the leniency recipient will be certified and the benefits of the Leniency Agreement will be conferred (article 87 of Law nº *12.529/2011 combined with article 208,* RiCade).

The analysis of the fulfillment or not of the undertaking's obligations is carried out in two main moments. The first, when the Administrative Proceeding is sent to the Administrative Tribunal and SG/Cade opines on whether, in its understanding, the obligations of the agreement were fulfilled or not fulfilled. The second, upon judgment of the case, as the Administrative Tribunal verifies whether, in fact, the conditions and clauses stipulated in the Leniency Agreement were or were not complied with and whether the undertakings will lose the benefits related to the fine and other applicable sanctions (art. 206, §1, IX, of RICade). Thus, the final declaration of compliance with the Leniency Agreement is a responsibility of the Administrative Tribunal, although the negotiation process for the agreement takes place entirely within the scope of the SG/Cade.

Once Cade's Administrative Tribunal declares the Leniency Agreement as fulfilled, the leniency recipients will benefit from: (i) administrative immunity under Law n. 12.529/2011, in cases in which the Leniency Agreement's proposal is submitted to SG/Cade 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 n. 12.529/2011, in cases in which the Leniency Agreement's proposal was submitted to SG/Cade after the authority became aware of the reported violation.

In recent survey (Craveiro, 2020), based on data up to August 2020 involving 31 processes arising from 34 leniency agreements already judged by Cade's Administrative Tribunal, all agreements signed were declared fulfilled, even when, in some cases, the elements brought to the investigation by the agreement have not been able to lead to the conviction/confession of individuals or companies. These data may represent a positive indication of the effectiveness of the Antitrust Leniency Program, as it would demonstrate that there was full and permanent cooperation of the leniency beneficiaries during the Administrative Proceeding, in addition to their termination of the practice.

17 CADE. Ordinance n. 869/2019. Available at: <https://sei.cade.gov.br/sei/publicacoes/controlador_publicacoes.php?acao=publicacao_visualizar&id_documento=736758&id_orgao_publicacao=0>.

IV. THE SUCCESS OF CADE'S LENIENCY PROGRAM ON FIGHTING CARTELS IN BRAZIL AND ITS SPILLOVERS ON OTHER LENIENCY PROGRAMS IN BRAZIL SUCH AS THE ANTICORRUPTION LENIENCY PROGRAM AND THE LENIENCY PROGRAM IN THE FINANCIAL MARKETS

From 2003 to 2021, 104 Antitrust Leniency Agreements were signed by Cade[18]. The Antitrust Leniency Program is considered one of the most efficient tools to detect, investigate and restrain anticompetitive conducts with potential harm to competition and social well-being (Athayde, 2019). Data reflects the success of Cade's Leniency Program to fight cartel as one of the most active jurisdictions among developing — and even developed — countries (Athayde & Fidelis, 2016). More than 2 decades after its creation, Cade's Leniency Program reached maturity and high efficiency. The instrument has established its bases, following the strong global trend of modernization and as a result of the efforts made to achieve high efficiency and cooperation between the administrative, civil and penal spheres[19].

In empirical research with 60 administrative proceedings initiated between 2015 and 2019 to investigate violations related to cartels, Chíxaro (2020) found that 36 of them resulted from the execution of Leniency Agreements (60%), while another 24 originated in other ways (complaints, ex officio calculations, etc.) – 40% of the amount (Chíxaro, 2020). The same research has proven that Antitrust Leniency Agreements create a favorable environment for the negotiation and execution of the Cease-and-Desist Agreements (TCCs), which are the second best agreements under Brazilian competition law (Athayde & Roriz, 2021). Among those 60 administrative proceedings, it was found that in 39, TCCs were signed. Within these 39, in 31 there was a previous leniency agreement (81.5%) and in only eight, there was no leniency agreement (18.5%). Based on these data, there are indications that: 1) TCCs are more present in processes originated by Leniency Agreements than by other means; and 2) among the lawsuits filed because of Leniency Agreements, there are more cases with TCCs entered into than cases without any TCC. Thus, it can be concluded that leniency agreements and antitrust TCCs are important tools of the policy to fight cartels not only when considered alone, but also when considered through the prism of their interrelation.

Nowadays, Cade has an active an effective Leniency Program, to which much of the level of anti-cartel enforcement in Brazil can be attributed, as stated by OECD (2019). The success of the Program is closely related to society's trust in the Authority, which is one of the main pillars of Cade's Leniency Program: transparency, predictability, and legal certainty. In this sense, in addition to the need for maximum transparency regarding instruments and procedures in the negotiation, the Authority must continually seek to preserve the golden rule, which means that the one who collaborates can never be in a worse situation than the one who did not.

Having all the previously presented, it is possible to draw some considerations about where the Antitrust Leniency Program stands in the Brazilian context and, finally, if it has had some positive spillovers on other fields in Brazilian jurisdiction.

The Anticorruption Leniency Agreement of the General Controller (CGU) still has only 13 agreements signed. The Public Prosecutors (MP) Leniency Agreement, in its turn, although more numerous in absolute numbers, has been greatly inspired by the Antitrust procedures and practices. The Financial Markets Leniency Agreements, finally, have not yet launched, even if provided by the law since 2017. Considering all that, in practical terms, The Antitrust Leniency Program in Brazil may be considered the pioneer, with positive impacts in other fields that later adopted such a tool in their systems. In legal

18 CADE. Estatísticas do Programa de Leniência do Cade. Available at: https://www.gov.br/cade/pt-br/assuntos/programa-de-leniencia/estatisticas/estatisticas-do-programa-de-leniencia-do-cade. Acesso em: 17 de agosto de 2021.

19 CADE. (2021). Programa de Leniência do Cade completa 21 anos e se consolida como importante instrumento no combate a cartéis. Available at: https://www.gov.br/cade/pt-br/assuntos/noticias/programa-de-leniencia-do-cade-completa-21-anos-e-se-consolida-como-importante-instrumento-no-combate-a-carteis

terms, the Antitrust Program has been basically copied by all other legislations in Brazil that provide Leniency Programs. This can be evidenced by the comparative table of the with an overview of all Leniency Agreements in Brazil, presented below.

Table 11 — OVERVIEW OF ALL LENIENCY AGREEMENTS IN BRAZIL

	Antitrust Leniency	**National Financial System (SFN) Leniency**	**Anticorruption Leniency**	**Public Prosecution (MP) Leniency**
Type of infraction	Violations against the economic order (coordinated conduct	Central Bank (BC): all infractions (articles 3 and 4 of Law n. 13.506/2017) Securities Commission (CVM): all infractions	Violations provided in the Anticorruption Law and the Administrative Misconduct Law	Crimes related to the Anticorruption Law and the Administrative Misconduct Law
Competent institution	Negotiated with SG/Cade Signd by SG/ Cade, with the intervention-consent of the Public Prosecutor's Office	Central Bank Securities Commission	Maximum authority of each agency or public entity. At the federal level: Federal General Controllership (CGU), Federal Attorney's Office (AGU), Public Prosecutor's Office (MP). Discussion on the Federal Court of Account's (TCU) competence for supervision and review.	Negotiation with the Public Prosecutor's Office (MPF) and the Police. Approved by the judge.
Legal bases	Articles 86 e 87 of Law n. 12.529/2011.	Article 30 and following of Law n. 13.506/2017	Articles 16 e 17 of Law n. 12.846/2013	- Article 129, I of the Federal Constitution (CF/88) - Articles 5 and 6 of Law 7.347/85 - Article 26, of the Palermo Convention - Article 37 of the Merida Convention - Articles 3, §2, and 3 of the Civil Procedure Code (CPC) - Articles 840 e 932, III, of the Civil Code (CC/02) - Articles 16 to 21 of Law n. 12.846/2013 - Law n. 13.410/2015 - Efficiency principle, article 37. *caput* of CF/88

	Antitrust Leniency	National Financial System (SFN) Leniency	Anticorruption Leniency	Public Prosecution Leniency
Infralegal bases	Articles 237 to 251 of RICade. Cade's Leniency Program Guide, 2020.	Central Bank: BC's Circular n. 3857/2017 (amended by Circular BC n. 3910/2018) and BC's Ordinance n. 103.362/2019 (which repealed BC Ordinance n. 99.323/2018). Securities Commission: CVM Instruction n. 607/2019 (amended by CVM Instruction n. 613/2019).	Articles 28 to 40 of Decree n. 8420/2015 CGU's Ordinance 909 CGU's Ordinance 910 TCU's Normative Instruction n. 74/2015 CGU/AGU's Interministerial Ordinance 2278/2016 CGU's "Step by Step Leniency", 2018. TCU's Normative Instruction n. 83/2018 (repeals TCU's Normative Instruction n. 74/2015) CGU/AGU's Normative Instruction n. 2/2018 CGU/AGU Joint Ordinance n. 4/2019 (repeals CGU/AGU's Joint Ordinance n. 2278/2016) Technical Cooperation Agreement STF/ CGU/AGU/MJ/TCU 2020	Technical Study n. 1/2017 of the 5th Coordination and Review Chamber (CCR)/MPF on Leniency Agreements and Awarded Collaboration. Technical Note n. 1/2017 of the 5th CCR MPF on Leniency Agreements and their effects. Guideline n. 7/2017 of the 5th CCR MPF on Leniency Agreements. Technical Note n. 02/2018 of the 5th CCR on the use of evidence arising from the execution of agreements within the scope of Operation Car Wash, shared with control bodies (mostly, the Federal Revenue, CGU, AGU, CADE and TCU). Technical Note n. 01/2020 of the 5th CCR on Terms of Adhesion or Subscription of individuals in Leniency Agreements entered into by the MPF, pursuant to Law n. 12.846 and Law n. 8.429, in the field of administrative misconduct. Technical Note n. 02/2020 of the 5th CCR on the Technical Cooperation Agreement signed by the AGU, CGU, TCU and MJSP, on 06.08.2020, with the participation of the STF, on matters of combating corruption in Brazil, especially in relation to Leniency Agreements, of Law n. 12.846/2013. Technical Note n. 04/2020 of the 5th CCR, referring to the analysis of critical points of the Substitute PL to PL n. 10.887/201.

	Antitrust Leniency	National Financial System (SFN) Leniency	Anticorruption Leniency	Public Prosecution Leniency
Possible beneficiaries	Legal entities and individuals	Legal entities and individuals	Only legal entities. But there are interpretations and agreements that allow individuals to join.	Only legal entities. But there are interpretations and agreements that allow individuals to join.
Administrative benefits	Full leniency: full administrative immunity. Partial leniency: reduction from 1/3 to 2/3 of the applicable penalty. Does not have administrative repercussions on other institutions.	Full leniency: full administrative immunity. Partial leniency: reduction from 1/3 to 2/3 of the applicable penalty. Partial Leniency (SFN specific): 1/3 fixed reduction of the applicable penalty. Does not have administrative repercussions on other institutions.	Partial leniency: Reduction of up to 2/3 of the fine. Exemption or attenuation of the prohibition of contracting with the Public Administration (unsuitability) – discussion regarding TCU's competence to apply penalties. Exemption from the obligation to publish the punishment. Exemption from the ban on receiving public incentives, subsidies and loans.	There are no automatic administrative benefits. Carrying out measures to establish negotiations for the conclusion of agreements having as object the same facts in other authorities. Issuance of a certificate on the extent of the cooperation carried out. Management undertaking to remove any registration restrictions.
Criminal benefits	Total criminal immunity or reduction from 1/3 to 2/3 of the applicable penalty (there is intervention-consent of the MP in the Antitrust Leniency Agreement).	There are no automatic criminal benefits. Possible interinstitutional cooperation between BC/ CVM and MP.	There are no automatic criminal benefits. Possible interinstitutional cooperation between CGU/AGU and MP.	No filing of criminal actions for low-guilty adherent individuals. No benefits for severely guilty individuals, who must negotiate Award-Winning Collaboration Agreements.
Civil benefits	There are no automatic civil benefits.	There are no automatic civil benefits.	There are no automatic civil benefits.	Failure to file civil or sanctioning actions (including administrative improbity actions). Suspension of actions already proposed or decision rendered with merely declaratory effects.

Source: Athayde (2021). Translated to english.

REFERENCES

Athayde, A. (2019). *Manual dos Acordos de Leniência no Brasil Teoria e Prática* (1era ed.). Fórum.

Athayde, A. (2021). *Manual dos Acordos de Leniência no Brasil Teoria e Prática* (2da ed.). Fórum.

Athayde, A & Fernande M. (2016). A glimpse into Brazil's experience in international cartel investigations: Legal framework, investigatory powers and recent developments in Leniency and Settlements Policy. *Concurrences Competition Law Review*, 3. pp. 1-8.

Athayde, A & Fidelis A (2016). Discovery, Leniência, TCC e persecução privada a cartéis: too much of a good thing?. *Revista do Ibrac, 22*(2).

Athayde, A. & Fidelis, A. (2016). *Nearly 16 years of the Leniency Program in Brazil: breakthroughs and challenges in cartel prosecution*. Competition Policy International (CPI). Available at: https://www.competitionpolicyinternational.com/16-years-of-the-leniency-program-in-brazil-breakthroughs-and-challenges-in-cartel-prosecution/

Athayde, A. & Roriz, S. (in press). Leniência Antitruste e Termos de Compromisso Antitruste na teoria e na prática: requisitos e fases da negociação.

Athayde, A. & Roriz, S. (2021, April 17). *Pipoca com guaraná: combinando acordos de leniência com os do tipo second best*. Consultor Jurídico. https://www.conjur.com.br/2021-abr-17/opiniao-combinando-acordos-leniencia-second-best

CADE. Requerimento Nº 08700.004992/2007-43. Reporting Counselor: Paulo Furquim de Azevedo. Judged in: December, 2008. Brazil.

CADE. Ordinance N. 869/2019. Brazil. Available at: https://sei.cade.gov.br/sei/publicacoes/controlador_publicacoes.php?acao=publicacao_visualizar&id_documento=736758&id_orgao_publicacao=0

CADE. Resolution N. 21/2018. Brazil. Available at: https://www.in.gov.br/materia/-/asset_publisher/Kujrw0TZC2Mb/content/id/41422475/do1-2018-09-19-resolucao-n-21-de-11-de-setembro-de-2018-41422421

CADE (2019). Regimento interno do CADE. Available at: https://cdn.cade.gov.br/Relatoriorios%20de%20gestao/2020/Cap.%201/Resolu%C3%A7%C3%A3o%2022%20de%2019%20de%20junho%20de%202019_Regiment%20Interno.pdf

CADE. Law n. 12.529/2011. Available at: http://www.planalto.gov.br/ccivil_03/_ato2011-2014/2011/lei/l12529.htm

CADE. (2020, march). Guidelines: CADE's Antitrust Leniency Program. Available at: https://cdn.cade.gov.br/Portal/assuntos/programa-de-leniencia/guidelines-cades-antitrust-leniency-program-2020.pdf

CADE. (2017, December). Administrative Inquiry n. 08700.010322/2012-23. Reporting Counselor: João Paulo de Resende.

CADE. (2017, December). Administrative Inquiry n. 08700.010319/2012-18. Reporting Counselor: Paulo Burnier da Silveira.

CADE. Estatísticas do Programa de Leniência do Cade. Available at: https://www.gov.br/cade/pt-br/assuntos/programa-de-leniencia/estatisticas/estatisticas-do-programa-de-leniencia-do-cade. Acesso em: 17 de agosto de 2021

Chíxaro, F. (2020). *Os Acordos depois do Acordo: Da comparação entre Termos de Cessação Conduta homologados no Cade em processo com e sem Acordos de Leniência, entre de 2015 a 2019* [Postgraduate Final Paper presented to the Examining Board of the Getúlio Vargas Foundation Law School].

Craveiro, P. (2020). *Uma régua na Leniência Antiturste: as taxas de sucesso e de declaração de cumprimento como medidas de efetividade do Programa de Leniência do Cade* [Conclusion Paper presented to the Examining Board of the Getúlio Vargas Foundation Law School. Brasilia].

International Competition Network. (2017). *Checklist for efficient and effective leniency programmes*. Available at: https://www.internationalcompetitionnetwork.org/portfolio/leniency-program-checklist/

OECD. (2019). OECD Peer Reviews of Competition Law and Policy: Brazil. www.oecd.org/daf/competition/oecd-peer-reviews-of-competition-law-and-policy-brazil-2019.htm

OECD. (2019). Peer reviews of competition law and policy: Brazil. www.oecd.org/daf/competition/oecd-peer-reviews-of-competition-law-andpolicy-brazil-2019.htm

OCDE. (September, 2001). *Using leniency to fight hard core cartels* [Policy Brief]. https://www.oecd.org/daf/ca/1890449.pdf

Rufino, V. (2016) Os fundamentos da Delação: análise do Programa de Leniência do Cade à luz da teoria dos jogos. [Dissertation at the master's program]. University of Brasilia. https://repositorio.unb.br/bitstream/10482/22288/1/2016_VictorSantosRufino.pdf.