



MINISTRY OF JUSTICE
SECRETARIAT OF ECONOMIC LAW

Brazilian Cartel Settlement Program

The Brazilian Antitrust System: Antitrust law and practice in Brazil is governed primarily by Law No. 8.884, of 1994, as amended in 2000 and 2007 (the “Antitrust Law”). With respect to anticompetitive practices, SDE is the chief investigative body, and at the end of its proceedings, it issues a non-binding opinion to CADE on whether the conduct under investigation shall be punished or not. CADE is the administrative tribunal, which makes the final rulings in connection with the investigations.

Legal Framework and Authority in Charge: The Brazilian Cartel Settlement Program was introduced in May 2007, through an amendment to the Antitrust Law. CADE is the antitrust agency with power to enter into settlements, and SDE may issue a non-binding opinion directed to CADE on whether to settle or not. In September 2007, CADE issued Resolution No. 46/2007, establishing the negotiation rules.

Negotiation rules: As the law now stands, defendants can propose to settle whether the case is being handled by SDE or CADE. In all cases, however, the whole negotiation process takes place at CADE. The general rules are: (i) you can only try to settle once (“one-shot game”), and (ii) the negotiation period is for 30 days, renewable for another 30 days. The negotiation process may be confidential at the discretion of CADE.

Admission of guilt: There are two possibilities: settlements with admission of guilt and without admission of guilt (*nolo contendere*). CADE’s Resolution No. 46/2007 provides that if the case was initiated using evidence obtained under a leniency agreement, it can only be settled with admission of guilt. In all the other cases, CADE will decide on a case-by-case basis whether to settle where the defendant is not prepared to admit guilt.

Settlement sum: The amount to be paid must be at least one per cent of the entire gross revenues of the company in the year before the initiation of the investigation. There is no maximum sum determined by the law and it is up to CADE to determine on a case-by-case basis what the appropriate sum is. Apart from the minimum sum to be paid provided by the law, CADE will also take into account the moment in time the company comes forward (the earlier in time, the greater chances to pay a reduced sum).

Additional Conditions: Apart from determining a settlement sum to be paid, additional conditions could be provided for, such as the adoption of a compliance program by the company.

Multiple Defendants: Under the terms of the law, CADE is allowed to settle with only one defendant (i.e., it is not necessary that all the defendants settle or settle at the same time). If that happens, the investigation will stop with respect to the defendant that settled and proceed with respect to the other defendants.

Compliance: CAD/CADE, an internal body of CADE, will monitor the compliance, informing CADE’s Reporting-Commissioner if the party is not fulfilling its obligations. In this case, the party will have to pay a fine and the antitrust proceedings will be reopened.

Criminal Settlement: Cartel is both an administrative infringement and a crime in Brazil, punishable with a penalty of imprisonment from two to five years, or imposition of a fine (Law No. 8.137/90). Federal and State-level public prosecutors are in charge of enforcing the criminal statute. Apart from in the case of leniency agreements, where officers and managers of the first company to come forward are completely protected from criminal liability, a settlement with CADE does not mean that the case will be criminally settled. The criminal settlement has to be negotiated on a case-by-case basis with the state-level and federal criminal prosecutors, and there is evidence in the sense that from now on managers and officers will increase their chances to settle the criminal investigation if they also settle the administrative investigation.

Mariana Tavares de Araújo
Secretary of Economic Law, SDE

Ana Paula Martinez
Director of Competition, SDE