Administrative Council for Economic Defense

Guidelines

CADE's Antitrust Leniency Program

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Guidelines: Cade's Antitrust Leniency Program

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FREQUENTLY ASKED QUESTIONS

LIST OF ABBREVIATIONS AND ACRONYMS

Cade - Administrative Council for Economic Defense
CGU - General Comptroller's Office (in its Portuguese acronym)
DOU - Federal Official Gazette (in its Portuguese acronym)
GEDEC - Special Group for Economic Offenses (in its Portuguese acronym)
Leniency Agreements - Cade's Leniency Agreements
Leniency Program - Cade's Leniency Program
MP - Public Prosecution Service (in its Portuguese acronym)
MPE - State Public Prosecution Service (in its Portuguese acronym)
MPF - Federal Public Prosecution Service (in its Portuguese acronym)
MPF/SP - Federal Public Prosecution Service of São Paulo (in its Portuguese acronym)
RiCade - Cade's Internal Statute
SDE/MJ - Secretariat of Economic Law of the Ministry of Justice (in its acronym in Portuguese)
SG-Cade - Cade's General Superintendence
TCC - Cease and Desist Agreement

INTRODUCTION

This FAQ on Cade's Leniency Program consolidates the best practices and procedures usually adopted during the negotiation of Leniency Agreements with Cade. Its objective is to provide an institutional framework for future negotiations and to serve as a reference for public-sector employees, attorneys, and society as a whole in proceedings involving this important activity in connection with the Brazilian competition law and policy for dismantling cartels, and prosecuting antitrust conspiracy.

It is important to note that this document is not binding and is not classified as a norm. The practices and procedures described in this FAQ may change at the discretion of SG-Cade, depending on the circumstances of the case at hand. Nevertheless, a large portion of the subject matter of this FAQ comes directly from Law nº 12.529/2011 and Cade's Internal Statute - RiCade (Cade Resolution nº 22/2019), both of which are indeed binding.

The structure of this FAQ is based on the main phases for negotiating and entering into a Leniency Agreement, according to articles 86 and 87 of Law nº 12.529/2011 and 196 to 210 of RiCade):

PART I. GENERAL ASPECTS OF THE ANTITRUST LENIENCY PROGRAM OF THE ADMINISTRATIVE COUNCIL FOR ECONOMIC DEFENSE (CADE)

1. What is the Antitrust Leniency Program of Cade?

Cade's Leniency Program is a set of initiatives aimed at detecting, investigating, and punishing offenses against the economic order; informing and permanently orienting companies and citizens in general regarding the rights and guarantees set forth in articles 86 and 87 of Law nº 12.529/2011 (the Brazilian Competition Law) and in articles 196 to 210 of RiCade; and incentivizing, orienting, and assisting leniency applicants to enter into Leniency Agreements.

The Leniency Program allows companies and/or individuals currently involved or that were involved in a cartel or other antitrust conspiracy to obtain administrative and criminal benefits through applying for a Leniency Agreement with Cade, and, therefore, by committing to cease the illegal conduct, report and confess its participation in the wrongdoing, and cooperate with the investigations by submitting information and documents relevant to the investigation.

In the administrative sphere, as long as applicants collaborate with the investigation and the result of such collaboration leads to the identification of others involved in the violation and to the obtention of information and documents evidencing the offense reported or under investigation, the leniency recipient 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 of the reported violation) (article 86, paragraph 4, of Law nº 12.529/2011 combined with article 208, I and II, RiCade). Regarding "prior knowledge" (see question 19).

In the criminal sphere, the celebration of the Leniency Agreement will suspend the limitation period and also grant protection from criminal conviction and prison terms with respect to the antitrust offenses 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 General Procurement Act (Law nº 8.666/1993) and in article 288 of the Criminal Code (criminal conspiracy). Once the Leniency Agreement has been fulfilled, the ability to sanction the above mentioned crimes is immediately extinguished (article 87 of Law nº 12.529/2011 combined with article 208, sole paragraph, RiCade) (see questions 18 to 20).

Regarding civil actions, Law nº 12.529/2011 does not require the leniency applicant the obligation to compensate consumers potentially harmed by the cartel as a condition sine qua non for entering into a Leniency Agreement. However, the law does not exempt the leniency recipient from being held liable for antitrust damages in a civil action filed against the leniency recipient and other participants in the antitrust violation.

2. To which violations does Cade's Leniency Agreement apply?

Cade's Leniency Agreement applies to violations set forth in article 36 of Law nº 12.529/2011, previously set forth in articles 20 and 21 of Law nº 8.884/1994. 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 nº 12.529/2011).

The Leniency Agreement applies to, among other things, antitrust conspiracies set forth in article 36, paragraph 3, part I, subparagraphs "a", "b", "c" and "d" and part II of Law nº 12.529/2011, namely: (I) to agree to, set, manipulate, or collude with a competitor, in any manner, on (a) the prices of goods or services offered individually; (b) the production or trade of a restricted or limited quantity of goods or provision of a restricted or limited number, volume, or frequency of services; (c) the division of parts or segments of a current or potential market for goods or services, by means of, among other things, the division of customers, suppliers, regions, or periods; and/or (d) prices, conditions, advantages, or refraining from participating in a public bidding; and (II) to promote, obtain or influence uniform or concerted commercial conduct among competitors (as in the context of associations and syndicates, for example).

Note that, according to the introductory paragraph of article 36 of Law nº 12.529/2011 and the Cade's case law, cartel participation is considered "infringement by object". This means that it is not necessary to demonstrate the effects of a cartel on the market. It is sufficient that the collusive conduct has the potential to cause an adverse effect, even if not achieved. In addition, an antitrust violation exists regardless of whether the companies involved are at fault.

3. Is participating in a cartel an administrative or a criminal offense?

Participation in a cartel is an illicit act both under administrative law (article 36, paragraph 3, I, of Law nº 12.529/2011) and under criminal law (article 4, II, of Law nº 8.137/1990).In addition, participants may be subjected to civil liability in private and/or public damages actions (article 47, Law nº 12.529/2011).

4. Who are the competent authorities to investigate and punish the participation in a cartel in the administrative and criminal spheres?

In the administrative sphere, Cade's General Superintendence has jurisdiction to investigate and initiate administrative proceedings regarding cartels and other antitrust conspiracies (article 13, V, of Law nº 12.529/2011), and the Plenary of Cade's Tribunal has jurisdiction to issue a final decision (article 9, III, of Law nº 12.529/2011).Through the Leniency Agreement companies and/or individuals apply for obtaining full immunity or a reduction of the applicable fine by Cade. Such benefits are granted definitively in the judgment of the administrative proceeding by the Plenary of Cade's Tribunal (article 86, paragraph 4, of Law nº 12.529/2011) (see questions 18 to 20).

In the criminal sphere, the State and/or MP are competent to bring a case to the Judiciary regarding cartel activity (article 16, Law nº 8.137/1990), and the final decision is issued by the Judiciary. In the criminal sphere, entering into a Leniency Agreement suspends the limitation period and prevents the criminal prosecution of the leniency recipient regarding the offenses set forth under the Economic Crimes Act (Law nº 8.137/1990), and other offenses directly related to cartel activity, such as those set forth in the General Procurement Act (Law nº 8.666/1993), and in the article 288 of the Criminal Code (criminal conspiracy). Once the Leniency Agreement is fulfilled, the ability to sanction the above crimes is automatically extinguished, according to article 87 of Law nº 12.529/2011,

5. Is it possible to enter into an Antitrust Leniency Agreement exclusively with the Public Prosecution Service and/or the Judiciary?

No. Law nº 12.529/2011 establishes that Cade's General Superintendence is the competent authority to celebrate Antitrust Leniency Agreements (see question 30). Thus, although parts can contact the Public Prosecution Service and/or the Judiciary to negotiate leniency agreements related in whole or in part to other offenses, companies and/or individuals must negotiate an Antitrust Leniency Agreement directly with Cade, with the participation of the State and/or Federal Public Prosecution Services as a consenting party (see questions 60 to 62).

Entering into a leniency agreement with other institutions (such as the Public Prosecution Service and the General Comptroller's Office), do not exclude Cade's competence to celebrate Antitrust Leniency Agreements pursuant to Law nº 12.529/2011.

6. What penalties apply to participation in a cartel?

Participation in a cartel is an offense under both administrative and criminal law (see questions 3 e 4).

In the administrative sphere, according to article 37, parts I to III, of Law nº 12.529/2011, the monetary penalties (fines) applicable to antitrust violations are the following:

I. Regarding companies, a fine of 0.1% to 20% of the gross revenues of the company, group, or conglomerate, earned in the last fiscal year before the initiation of the administrative proceeding, in the line of the business activity in which the violation occurred, which will never be lesser than the advantage obtained, when it is possible to estimate its value;

II. in the case of individuals or legal entities governed by public or private law, as well as associations, and syndicates that do not carry out business activity, if it is impossible to use the criterion of the value of gross revenues, a fine of BRL 50,000.00 to BRL 2,000,000,000.00; and

III. in the case of managers directly or indirectly responsible for the violation committed, if their fault or willful misconduct is proven, a fine of 1% to 20% of the one imposed on the company.

As set forth in article 38 of the same law, in addition to the fines, other penalties may be imposed separately or cumulatively in the administrative sphere, such as: (i) the requirement to publish the conviction decision in a newspaper of wide circulation; (ii) a prohibition on contracting with financial institutions and participating in biddings held by public bodies; (iii) a split-up of the company or a divestiture of certain assets; (iv) a recommendation for a compulsory license to be granted for an intellectual property right; (v) a prohibition on granting an arrangement for payment of tax in installments; (vi) a prohibition on engaging in commerce, and/or any other act or measure as necessary to eliminate the effects harmful to the economic order.

In the criminal sphere, according to article 4, part II, of Law nº 8.137/1990 (Economic Crimes Act), committing a cartel-related crime subjects the individuals involved to the penalties of imprisonment for two to five years and a fine. According to article 12 of the same law, such penalty may be increased by one-third to one-half if the crime causes serious harm to society, is committed by a public-sector employee in the exercise of his or her duties, or is related to goods or services essential to life or health.

7. Why apply for Cade's Leniency Agreement?

Entering into a Leniency Agreement with Cade provides significant benefits for the leniency recipients – companies and/or individuals (see questions 14 and 15) – in the administrative and criminal spheres (see questions 18 and 19), as Cade's Tribunal recognize the fulfillment of the obbligations set in the agreement. If no Leniency Agreement is signed, all companies and/or individuals that participate in the antitrust conspiracy may be convicted and fined in both the administrative and criminal spheres.

Those involved in such violations are subject to severe administrative sanctions (article 37 of Law nº 12.529/2011), and, in the case of companies, the antitrust violation exists regardless of fault. Administrative punishment for such antitrust violations is consolidated on Cade's case law, both under the current Law nº 12.529/2011 and the previous legislation (Law nº 8.884/1994). Cade's Tribunal has been firm in punishing agreements between competitors with the objective of or potential to produce the effects, even if not realized, of (I) limiting, falsifying, or otherwise hindering free competition or free enterprise; (II) dominating a relevant market for goods or services; or (III) arbitrarily increasing profits. In addition, those involved can also be punished criminally for the violation, since

participation in a cartel is also a crime set forth in article 4 of Law nº 8.137/1990 (see questions 3 to 6).

Moreover, the participants in the antitrust conspiracy must keep in mind that, even though no Leniency Agreement has been proposed, Cade may be aware of an illicit agreement among competitors through many other sources (for example, representations of clients or third parties, news and information in the press, cooperation with national regulatory authorities or foreign antitrust authorities on investigations underway in other jurisdictions, ex officio investigations, etc.), or, furthermore, by means of other administrative measures (for example, search and seizure, inspections, requests for information, and the use of intelligence procedures to detect cartels activity in biddings), which represent yet another incentive to entering into a Leniency Agreement with Cade.

8. Is it possible to apply for a Leniency Agreement regarding conducts occurring outside of Brazil?

Yes. As set forth in article 2, the introductory paragraph of the Brazilian Competition Law (Law nº 12.529/2011), Cade's Leniency Program comprises conduct committed wholly or in part within the Brazilian territory or even in another jurisdiction, as long as they produce or may produce effects in Brazil.

For entering into a Leniency Agreement regarding conducts which occurred outside of Brazil, the company and/or individual must demonstrate that the effects were felt or could have been felt in the Brazilian territory, thus establishing a connection between the anticompetitive conduct and such effects in Brazil.

9. How long has the Leniency Program existed in Brazil?

The benefit of leniency was introduced in Brazil by Law nº 10.149/2000, which amended the previous Competition Law (Law nº 8.884/1994, arts. 35-B and C), with the objective of strengthening the activity of combatting antitrust violations. Under Law nº 8.884/1994, the benefit of leniency was regulated by the Ministry of Justice's Ordinances nº 4/2006 (article 61) and nº 456/2010 (article 59).

Since 2003, the criminal prosecution of cartels has become a priority in Brazil, and Cade has been cooperating with the State and Federal Public Prosecution Services and with

the Federal Police to ensure that directors, managers, and employees of involved companies that do not sign Leniency Agreements are prosecuted for committing the crime of participation in a cartel, for which the prescribed penalty is two to five years of imprisonment and a fine (article 4, II, of Law nº 8.137/1990, Economic Crimes Act).

With the advent of the new Competition Law (Law nº 12.529/2011), on May 29, 2012, the current Cade's Leniency Program was introduced, with a specific chapter (Chapter VII, Title VI), whose rights and guarantees are set forth in its articles 86 and 87 and in articles 196 to 210 of the RiCade.

The first leniency applicant in Brazil presented itself before the former SDE/MJ - whose functions were similar to those currently carried out by Cade's General Superintendence – in 2003, after two search and seizure operations in that year, at which time the Secretariat had already earned a positive reputation in the business community regarding its ability to expose and investigate anticompetitive practices. Since then, Cade has perfected the institution of antitrust leniency in Brazil to make it more transparent, efficient, and secure.

Current data on the total number of Leniency Agreements signed from year to year with Cade can be accessed here.

10. Did Law nº 12.529/2011 promote any legislative changes in Cade's Leniency Program?

Yes. Law nº 12.529/2011, which instituted the current Cade's Leniency Program (Chapter VII, Title VI), promoted a few changes in the previous legislation (Law nº 8.884/1994), namely:

I. alteration of the competent authority: under Law nº 8.884/1994, it was the Federal Government, through the SDE/MJ, which was competent to enter into Leniency Agreements. Under Law nº 12.529/2011, it is now Cade, through its General Superintendence;

II. repealing the rule stating that the cartel leader could not propose a leniency agreement; and

III. specification of the benefits of the Leniency Agreement in the criminal sphere: Law nº 12.529/2011 provides that execution of a Leniency Agreement leads to suspension of the limitation period and prevents the criminal prosecution of the leniency recipient regarding the offenses set forth in the Economic Crimes Act (Law nº

8.137/1990) and other crimes directly related to cartel activity, such as those set forth in the General Procurement Act (Law nº 8.666/1993), and on article 288 of the Criminal Code (criminal conspiracy). Once the Leniency Agreement has been fulfilled, the ability to sanction the above crimes is automatically extinguished, according to article 87 of Law nº 12.529/2011.

11. Can a cartel leader apply for a Leniency Agreement?

Yes. Law nº 12.529/2011 eliminated the previous rule preventing a cartel leader from proposing a Leniency Agreement (see question 10). Thus, Cade's General Superintendence may enter into a Leniency Agreement with the cartel leader as long as the applicant meets the legal requirements (article 86 of Law nº 12.529/2011 combined with article 197 of the RiCade) (see question 12).

12. What are the requirements to apply for Cade's Leniency Agreement?

Articles 86 of Law nº 12.529/2011 and 197 of the RiCade list the requirements for entering into a Leniency Agreement in Brazil. According to those articles:

I. the company 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.

13. How should the leniency applicant make a confession of wrongdoing?

The confession of wrongdoing can be made orally or in writing. However, the Leniency Agreement is itself a written agreement that contains an express clause referring to the admission of the participation of the company and/or individual in the antitrust conspiracy reported. The confession clause has the following wording:
"*Each of the Signatories confess the participation in the Reported Violation as described in the 'History of Conduct'*." (see question 72).

14. Who can apply for a Leniency Agreement?

According to article 86 of Law nº 12.529/2011, both companies and individuals involved or that have been involved in the antitrust violation can propose a Leniency Agreement, as long as they meet the requirements set forth in articles 86 of Law nº 12.529/2011 and 197 of the RiCade (see question 11).

Negotiation of the Leniency Agreement with Cade's General Superintendence is normally conducted with the leniency applicant's legal representative. The leniency applicant should grant the attorney specific powers to negotiate and execute the Leniency Agreement with Cade and with the State and/or Federal Public Prosecution Service.

15. Does it make a difference if the leniency applicant is a company or an individual?

Yes. If the leniency applicant is a company, the benefits of the agreement can be extended to its current and former directors, managers, and employees, as well as to companies of the same economic group, *de facto* and *de iure*, involved in the violation, as long as they cooperate with the investigations and sign the instrument together with the company (article 86, paragraph 6, of Law nº 12.529/2011 combined with article 197, paragraph 1, RiCade).

The individuals and companies of the same economic group can enter into the agreement together with the applicant company or in an addendum to the original Leniency Agreement when authorized by Cade, according to its discretion (article 197, paragraph 2, RiCade). Companies and their directors, managers, and employees may be represented by the same or different legal representatives or attorneys.

However, if the leniency applicant is an individual and the agreement is signed without the participation of the legal entity, the benefits will not be extended to the company with which the individual is or was associated (article 86, paragraph 6, Law nº 12.529/2011 combined with article 197, paragraph 3, RiCade). The justification for this 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.

16. Is it possible to report on an alleged cartel even if the whistleblower has not participated in the offense to be reported?

Yes. If a whistleblower that did not participate in the violation becomes aware of the cartel or other antitrust conspiracy, he or she should notify Cade's General Superintendence as soon as possible. This notice may be in the form of a petition filed with Cade or through the link "Clique Denúncia", a channel on Cade's website for reporting violations. It is important for the notice to be substantiated and accompanied by evidentiary information and documents of the antitrust offense when possible, in order to assist the investigation of the SG-Cade. This information submission is not a Leniency Agreement proposal, since this type of agreement is only offered to cartel participants.

17. Who coordinates Cade's Leniency Program?

According to article 86 of Law nº 12.529/2011, the body responsible for negotiation and execution of Leniency Agreements is Cade's General Superintendence. Cade's Tribunal does not participate in the negotiation and/or execution of Leniency Agreements and is only responsible for declaring whether or not the leniency agreement has been fulfilled, at the time it issues a final decision on the corresponding administrative proceeding (article 86, paragraph 4, of Law nº 12.529/2011).

Although articles 86 and 87 of Law nº 12.529/2011 do not expressly require the participation of the State and/or Federal Public Prosecution Services for entering into a Leniency Agreement, Cade's consolidated experience shows that, in light of the criminal repercussions of a cartel, the Public Prosecution Service should be invited to co-sign, as it is the competent body to bring criminal charges and initiate a public criminal action. Hence, a member of the State and/or Federal Public Prosecution Services can participate in the celebration of the agreement as a consenting party, even in the international cartel cases,

in order to grant greater legal security for the leniency recipients and facilitate the criminal investigation of the cartel (see questions 60 to 62).

18. What benefits are granted to an applicant who signs and fulfills a Leniency Agreement?

In the administrative sphere, entering into a Leniency Agreement grants companies and/or individuals full immunity or a reduction of the applicable fine by Cade. Such benefits are definitively rendered in the judgment of the administrative proceeding by the Plenary of Cade's Tribunal (article 86, paragraph 4, of Law nº 12.529/2011).

According to article 86, paragraph 4, of Law nº 12.529/2011 combined with article 208 of the RiCade, once Cade's Tribunal declare that the Leniency Agreement as 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 (see question 38).

In the criminal sphere, entering into a Leniency Agreement leads to the suspension of the limitation periods and prevents the criminal prosecution of the leniency recipient with respect to the antitrust offenses set forth in the Economic Crimes Act (Law nº 8.137/1990), and other crimes directly related cartel activity, such as those set forth in the General Procurement Act (Law nº 8.666/1993), and on article 288 of the Criminal Code (criminal conspiracy). Once the Leniency Agreement has been fulfilled, the ability to sanction the above mentioned crimes is automatically extinguished (article 87 of Law nº 12.529/2011).

19. When are the benefits under a Leniency Agreement fully and partially granted?

Full immunity (total leniency) or the reduction by one to two-thirds of the applicable fine (partial leniency) (article 86, paragraph 4, of Law nº 12.529/2011), depends on the "prior knowledge" of Cade's General Superintendence concerning the reported violation (article 208, I and II, RiCade):

I. if the SG-Cade did not have prior knowledge of the violation, the company and/or individual will receive, upon declaration of fulfillment of the Leniency Agreement by the Plenary of Cade's Tribunal, the benefit of full immunity by the public administration regarding the reported violation;

II. if the SG-Cade already had prior knowledge of the conduct but did not have enough proof to ensure a conviction of the cartel participants, then the company and/or individuals may enter into a Leniency Agreement with partial benefits (Partial Leniency, see question 38) and will receive, upon declaration of fulfillment of the Leniency Agreement by the Plenary of Cade's Tribunal, the benefit of a reduction of one to two-thirds of the applicable penalty, depending on the effectiveness of the cooperation and the fulfillment of the Leniency Agreement by the leniency proponent.

Although under the Brazilian law there is no express concept of "prior knowledge" of the conduct by Cade's General Superintendence, prior knowledge is understood to be present only when, at the time of submission of the proposal of Leniency Agreement, there is an ongoing administrative proceeding (arts. 66 and 69, Law nº 12.529/2011) with reasonable evidence of anticompetitive practices that is the object of the proposed Leniency Agreement. In this regard, information submitted through the "Clique Denúncia" channel, news articles, or information on the existence of an investigation within another body of the public administration not yet investigated by Cade, among other situations, generally, do not qualify as "prior knowledge" by Cade's General Superintendence, unless this information has sufficient probative value to support opening an administrative proceeding.

20. When will the benefits under the Leniency Agreement be effectively granted?

In the administrative sphere, the benefits will be effectively granted upon declaration of the fulfillment of the Leniency Agreement by Cade's Tribunal, at the time Cade issues its final decision on the corresponding administrative proceeding (article 86, paragraph 4, I and II, of Law nº 12.529/2011). Cade's declaration of the fulfillment of the Leniency Agreement does not need to be confirmed by the Judiciary.

In the criminal sphere, entering into a Leniency Agreement suspends the limitation period and prevents the criminal prosecution with respect to the leniency recipient regarding, for example, the offenses listed on article 87 of Law nº 12.529/2011. In turn, the ability to

sanction is automatically extinguished when Cade declares the fulfillment of the Leniency Agreement.

21. To which crimes do the benefits granted to a Leniency Applicant?

The benefits of a Leniency Agreement covers the offenses directly related to the cartel activity. In the criminal sphere, entering into a Leniency Agreement suspends the limitation periods and prevents the criminal prosecution of the leniency recipient in connection with the offenses set forth in the Economic Crimes Act (Law nº 8.137/1990), and other crimes directly related to the cartel activity, such as those set forth in the General Procurement Act (Law nº 8.666/1993), and on article 288 of the Criminal Code (criminal conspiracy), according to article 87 of Law nº 12.529/2011. Therefore, article 87 brings a non-exhaustive list of offenses directly related to cartel activity. Hence, the ability to sanction the offenses mentioned above is extinguished automatically when Cade declares the fulfillment of the Leniency Agreement.

22. Do the benefits granted under a Leniency Agreement extend to other administrative offenses?

There is no law provision stating that the benefits granted under a Leniency Agreement result in the extinguishment of the ability to sanction or in the reduction of the administrative penalties for other administrative illicit acts other than those set forth on article 87, caput, of Law nº 12.529/2011, although this is a non-exhaustive list.

23. Can the second company inquire about a leniency application apply for any other type of benefit from Cade?

Yes. The companies and/or individuals investigated for an antitrust conspiracy that do not qualify to enter into a Leniency Agreement (see question 12) may, in principle, propose a Cease and Desist Agreement (TCC) with Cade (article 85 of Law nº 12.529/2011 combined with arts. 183 to 188, RiCade) (see question 24).

24. What are the differences between a Leniency Agreement and a Cease and Desist Agreement (TCC)?

The Leniency Agreement is available only to the first in to report the antitrust conspiracy to Cade (article 86, paragraph1, I of Law nº 12.529/2011) (see question 12) and may grant both administrative and criminal benefits (article 86, paragraph 4, combined with article 87 of Law nº 12.529/2011).

In turn, the TCC is accessible to all other persons investigated for anticompetitive conduct (article 85 of Law nº 12.529/2011) and generates benefits only in the administrative sphere, without automatic benefits in the criminal sphere. Specifically for cases of agreement, coordination, manipulation, or arrangement among competitors, such as the case of a cartel, the TCC has the following requirements:

I. payment of a monetary contribution to the Fund for the Defense of Diffuse Rights, according to articles 85, paragraph 1, III, of Law nº 12.529/2011 and 183, introductory paragraph, of the RiCade, which is established based on the amount of the expected fine, subject to a percentage reduction that will vary depending on when the TCC is proposed and the scope and utility of the collaboration of the committed party in the fact-finding, according to article 186, parts I, II, III, and article 187 of the RiCade, as follows:
    a. immediately after initiation of an administrative proceeding and before the proceeding is remitted to Cade's Tribunal, the monetary contribution will be calculated based on the expected fine, which will be subject to:
        i. a reduction of 30% to 50% for the first in;
        ii. a reduction of 25% to 40% for the second in;
        iii. a reduction of up to 25% for the remaining proponents of a TCC;
    b. after the case is remitted to Cade's Tribunal: the monetary contribution will be calculated based on the expected fine, subject to a reduction of up to 15% (these parameters may be changed if Leniency Plus has also been granted; see question 89)
II. the proponent must admit having participated in the investigated conduct, according to article 184 of the RiCade;
III. the proponent must collaborate in the fact-finding process, according to article 185 of the RiCade;
IV. the proponent must case its participation in the conduct, according to paragraph 1, of article 85 of Law nº 12.529/2011;

V. a fine will be set for total or partial nonfulfillment of the obligations undertaken.

Since the TCC does not generate automatic benefits in the criminal sphere, the Public 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 an cooperation agreements with the Public Prosecution Service and/or the Federal Police (see question 25), then Cade's General Superintendence can assist in the interaction with the Public Prosecution Service and/or with Federal Police. Hence, the negotiation and execution of any agreements will be up to the discretion of such authorities.

Aiming at facilitating the communication between the TCC's proponent and the Public Prosecution Service, Cade, on March 16, 2016, signed a Memorandum of Understanding with the GEDEC of the MPF/SP [link]. This document formalizes the possibility of institutional coordination in case the TCC's proponent wants to collaborate both within Cade's TCC and with MPF/SP's cooperation agreement. In parallel with Cade's TCC, there are two possible agreements in the criminal sphere: (i) Cooperation Agreement; in accordance with Law 12.850/2013 (article 4); and (ii) Confession qualified by Denunciation, set forth on article 16, of Law nº 8.137/1990.

Note that, even if no Leniency Agreement has been entered into with Cade, it is possible that only the negotiation of a TCC is available for companies and/or individuals, depending on whether or not the requirements for negotiation and execution of each of these types of agreement have been met (see question 12).

25. What does a "cooperation agreement" entail?

In Brazil, a "cooperation agreement" is provided in several special laws, such as Law nº 7.492/86 (on crimes against the Brazilian financial system, in article 25, paragraph 2), Law nº 8.072/90 (on heinous crimes, in article 8, sole paragraph), in Law nº 8.137/90 (tax crimes, economic crimes, and consumer-related crimes, article 16, sole paragraph), in Law nº 9.613/1998 (on crimes involving the laundering and concealment of property, rights, and assets, in its article 1, paragraph 5), in Law nº 9.807/1999 (on the organization and maintenance of special programs for the protection of threatened victims and witnesses, in article 14), in Law nº 11.343/2006 (on crimes set forth in the Anti-Drugs Act, article 41),

in the Criminal Code (article 159), and in Law nº 12.850/2013 (on crimes of criminal organization, in article 4).

The cooperation agreements, specifically within the scope of Law nº 12.850/2013 (regarding criminal conspiracy offenses), is an agreement in the criminal sphere that can be entered into with the individual informant who voluntarily collaborates with the investigation of the competent authority and with the criminal proceeding. In consequence, cooperation agreements could result in the benefit of judicial pardon or a reduction of up to two-thirds of the prison sentence or substitution of imprisonment with a rights restricting sentence. Also, it is a benefit that must be approved by a judge, upon request from the police chief, or from a member of the Public Prosecution Service, or the collaborator assisted by his attorney.

In this sense, the "cooperation agreement" should not be mistaken with the Antitrust Leniency Agreement, as they are different tools, with different characteristics and regulations.

26. What is the relationship between Cade's Leniency Agreement and the Leniency Agreement set forth in Law nº 12.846/2013 ("Clean Company Act"/"Anticorruption Act")?

The Leniency Agreement set forth in Law nº 12.846/2013 ("Clean Company Act"/" Anticorruption Act") benefits the companies responsible for acts that are injurious to Brazilian and foreign public administrations, as defined in article 5, and is entered into by the highest authority of each body or entity; in the sphere of the federal executive branch, the CGU is the competent body.

Only companies can apply for this type of leniency agreement, by fulfilling five conditions:

I. it must be the first one to express interest in cooperating in the investigation of a specific injurious act, when such circumstance is relevant;
II. it must have completely ceased its involvement in the offense as of the date of proposal of the agreement;
III. it must admit its participation in the administrative violation;
IV. it must fully and permanently cooperate with the investigations and the administrative proceeding and attend, at its own expense and whenever requested, in procedural acts, until their conclusion; and

V. it must provide evidentiary information, documents, and elements of the administrative violation.

Once the leniency agreement set forth in Law nº 12.846/2013 has been fulfilled, the company may have the following benefits:

I. exemption from the extraordinary publication of the administrative decision imposing the penalty;
II. exemption from the prohibition on receiving incentives, subsidies, subventions, donations, or loans from public-sector bodies or entities and public-sector or government-controlled financial institutions;
III. a reduction in the final amount of the applicable fine, subject to the set forth in article 23; or
IV. exemption or reduction of the administrative sanctions set forth in arts. 86 to 88 of Law nº 8.666, of 1993, or other rules governing biddings and contracts.

Note that if a company or an individual has participated in an illicit act concurrently involving the crimes of participation in a cartel and other illicit act, there is no pre-established legal rule regarding which body should be first approached by the applicant. If the applicant first approaches Cade's General Superintendence, then Cade may coordinate with the Public Prosecution Service, the CGU, and other investigative bodies, at the request of the antitrust leniency applicant. However, if the applicant first approaches the Public Prosecution Service, the CGU, and/or other bodies, then they may also seek out the SG-Cade to negotiate the Leniency Agreement, at the request of the proponent of the agreement.

Nevertheless, note that the negotiations of a leniency agreement set forth in Law nº 12.529/2011 and Law nº 12.846/2013 occur within the scope of different authorities and the negotiations are independent from each other. The negotiation of both leniency agreements therefore occur at the discretion of the competent authorities and do not depend on the agreements entered into with other authorities. Thus, even though Cade's General Superintendence can assist the leniency applicant in this interaction with the competent authority for investigation of other illicit acts, the negotiation and execution of any agreements will be at the discretion of the competent authorities.

27. Is there a Model Leniency Agreement?

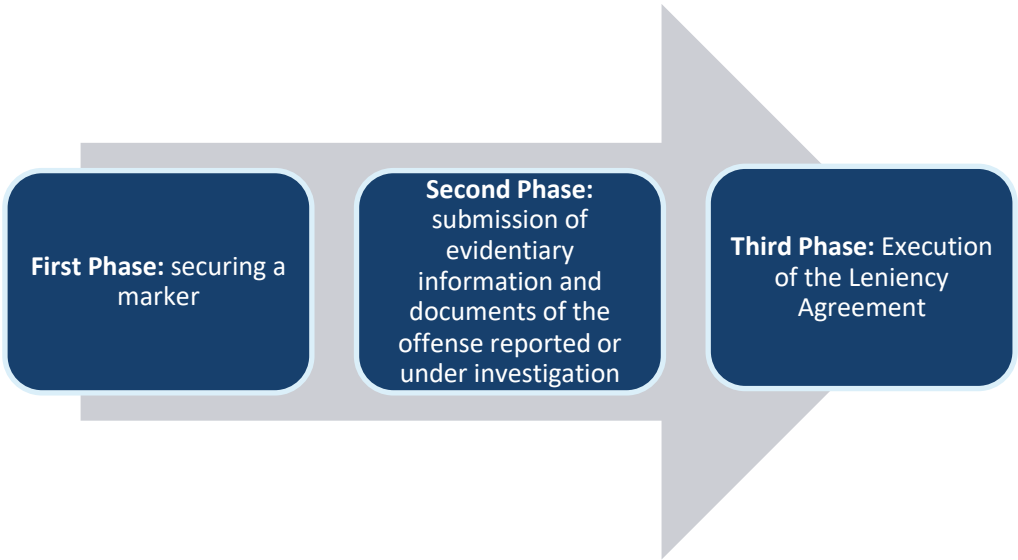
Yes. A standard model of the Leniency Agreement is available here. Note that, as a rule, the standard wording of Cade's Leniency Agreement should be used to expedite the negotiations and maintain equal treatment regarding agreements. Requests for amendments by the leniency applicant should be exceptional and duly grounded in light of the circumstances of the case at hand. The SG-Cade also reserves the right to make changes and updates to the standard model as the circumstances of the case so require.

PART II. PHASES OF NEGOTIATION OF CADE LENIENCY AGREEMENTS

28. How is a Leniency Agreement negotiated with Cade?

Generally, negotiation of a Leniency Agreement occurs in three phases, which are analyzed in detail throughout this Guide:

I. Phase of securing a marker;
II. Phase of submission of evidentiary information and documents of the offense reported or under investigation; and
III. Phase of execution of the Leniency Agreement.



PART II.1. FIRST PHASE: SECURING A MARKER

29. What is a marker request?

A request for a marker is the act whereby the leniency applicant contacts Cade's General Superintendence to communicate the interest in proposing a Leniency Agreement regarding a given antitrust conspiracy and thus be ensured that he is the first leniency applicant in relation to such conduct. Therefore, the applicant is in a race with its co-conspirators to contact the antitrust authority to report the violation, and become a candidate for the benefits of the Leniency Agreement – which are granted only to the first-in applicant that fulfills the requirements set forth by Law nº 12.529/2011.

30. To whom at Cade's General Superintendence should a marker be requested?

The request for a marker must be submitted to the General Superintendence's Chief of Staff, or, in his or her absence, to the Substitute General Superintendent at the telephone number +55 61 3221-8563 or e-mail: leniencia@cade.gov.br. It is also possible to submit the request for a marker in person (at the address SEPN 515, Conjunto D, Lote 4, Ed. Carlos Taurisano, Brasília/DF) and in writing (by submitting an application), according to articles 198, introductory paragraph, and 200 of the RiCade. It is suggested to expressly state that the call is meant to secure a marker to negotiate a Leniency Agreement.

The leniency applicant should not submit the marker request to any other Cade's employee, as such applications will not be considered valid. This measure aims mainly at ensuring the security of the Leniency Program.

31. What must be reported to Cade's General Superintendence in order to request a marker?

According to article 198, paragraph 1, of the RiCade, and regardless of whether the application is made orally or in writing, the leniency applicant must submit the following information, even if partially, regarding the reported violation:

I. "Who?": a complete identification of the leniency applicant, as well as the identity of the other known perpetrators of the reported violation. Therefore, in general, it is not possible to anonymously request a marker;

II. "What?": the market, products, and services affected by the reported violation;
III. "When?": the estimated duration of the reported violation, when possible;
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, according to article 2, introductory paragraph, of Law nº 12.529/2011.

Noteworthy, the amount of information necessary to obtain the request for a marker may vary from case to case, since there will be circumstances in which Cade's General Superintendence will need more or less information to know whether the marker is available for the violation reported or under investigation.

32. Must a request for a marker be accompanied by evidentiary documents of the reported violation?

Not necessarily. Cade's General Superintendence does not require that the request for a marker be accompanied by documents and/or evidence that show the existence of the reported violation, since those will need to be presented in the phase of submission of evidentiary information and documents of the offense reported or under investigation (see Part II.2). In this initial phase, for securing a marker, the leniency applicant must be the first to seek out and qualify before the SG-Cade (see question 31).

33. Why is it important to request a marker as soon as possible?

Time is essential in making a successful leniency application. Cade's General Superintendence enters into only one Leniency Agreement per antitrust conspiracy so that the violators - whether they are companies or individuals - are in a race to be the first ones to apply for the benefits of the Leniency Program of Cade. Even if the leniency applicant does not have immediate access to all the information necessary for entering into a Leniency Agreement, it is recommended that the interested party contact the SG-Cade as soon as possible (see question 29), since another participant in the same violation could apply at any time, preventing other participants to secure a marker by only a matter of minutes.

34. How does Cade's General Superintendence verify the availability of a marker?

After the receipt of a marker request, Cade's General Superintendence will internally verify whether a marker is available regarding the reported conduct, by examining:

I. whether there has been a prior request for a marker by another company or individual related to the same conduct;

II. whether there is a negotiation of a Leniency Agreement underway with another company or individual about the same conduct;

III. whether it has prior knowledge of the conduct; if it does, the SG-Cade will verify whether it has sufficient evidence to ensure the conviction of the company or individual involved in the violation or whether it is possible to negotiate Partial Leniency (see question 38); and

IV. whether a Leniency Agreement has been executed with another company or individual, with or without initiation of an investigation or administrative proceeding.

35. How long does it take for Cade's General Superintendence to answer whether or not a marker is available to negotiate a Leniency Agreement?

Cade's General Superintendence will verify the availability of a marker for negotiation of a Leniency Agreement within 5 (five) business days (article 198, paragraph 2, RiCade), but the reply is generally provided on the same day or on the day after the application is made.

36. What happens if the marker is available?

The first applicant to appear before Cade's General Superintendence to report a violation will obtain a declaration ("Marker Declaration") that attests that such applicant appeared on that date to submit information regarding anticompetitive practices performed by a given company and/or individual in the market, in the reported geographical area and period. Furthermore, the declaration certifies that the leniency applicant meets the requirements to negotiate a Leniency Agreement and indicates, if applicable, whether an investigation is already underway (see question 19). On the date the declaration is issued, it is scheduled a new meeting so that the first Leniency Agreement proposal can be submitted to the SG-Cade by the leniency applicant (article 198, paragraph 3, RiCade). To access the Model Marker Declaration, click here. It is worth noting that merely securing a marker does not grant the benefits arising from the Leniency Agreement to the leniency applicant.

37. What happens if the marker is not available?

If the marker is not available, the General Superintendent, the General-Superintendence's Chief of Staff or a case handler specifically designated for that purpose will inform such unavailability to the leniency applicant, certifying that the applicant, if he/she is interested, can be placed on the waiting line for eventually applying for a leniency agreement on the same reported violation (article 199, RiCade).

In this case, the declaration issued by SG-Cade will contain the complete qualification of the leniency applicant, the other participants known of the offense, the products/services affected, the geographical area affected, and, if possible, the estimated duration of the reported violation, as well as the date and time that the applicant contacted the SG-Cade. The declaration will not contain any information regarding the identity of other eventual leniency applicants or regarding the chronological order of the marker request of the applicant relative to other previous or subsequent applicants (article 199, paragraph 1, RiCade). Therefore, the "waiting line" is organized by SG-Cade in order of arrival (second, third, and fourth to arrive, for example), although the leniency applicants that have not secured a marker do not know their exact position in line.

Being in a "waiting line" can be important for at least two reasons. First, because the next leniency applicant in line (second, third, fourth, etc., in chronological order) will be invited to negotiate a new Leniency Agreement in case the negotiation of the Leniency Agreement underway is rejected or withdraw (article 198, paragraph 3 c/c article 199, paragraph 2, c/c article 204, RiCade).

Second, being in the waiting line is important because if the negotiation of the Leniency Agreement underway is accepted and the agreement is signed, the leniency applicants that are still in line will have their marker requests automatically converted into applications for a TCC (see questions 23 and 24) (article 199, §4º do RiCade). In this case, the proponents will be called, also in the order of the marker requests for leniency, to express their interest in negotiating a TCC and obtaining the resulting benefits, such as reduction of the monetary contribution owed, according to article 85 of Law nº 12.529/2011 and articles 183 to 188 of the RiCade. If the leniency applicant express interest in negotiating a TCC, then the request will be forwarded to the Office of the General Coordinator of the SG-Cade responsible for the case even before an administrative proceeding is initiated.

All information provided by the proponents on the waiting line will be considered confidential (article 199, paragraph 3, c/c article 205, RiCade).

38. What happens if Cade's General Superintendence is already aware of the offense reported in the request for a marker?

If there is already an administrative proceeding open with reasonable indications of anticompetitive practices (see question 18), but the evidence is insufficient to ensure the conviction of the company and/or the individual when the Leniency Agreement is proposed, then a marker may also be granted, but only for a partial leniency.

39. Can a marker be amended?

It is possible for the Marker Declaration to be amended. It is important that the information stated in the Marker Declaration be as complete as possible (see question 29). However, if new information and documents are discovered during the internal investigations conducted by the leniency applicant, then it will be possible to amend the Marker Declaration to include such newly discovered information and thus expand its scope, according to the circumstances of the case. For example, the estimated period of the conduct or the geographic area affected can be changed, as can other information on the reported violation. The Marker Declaration can be amended even to include conduct that has not been reported previously, as long as there is no Leniency Agreement celebrated or being negotiated on the reported violation, and as long as the conduct is part of the same anticompetitive activity reported.

The scope of the Marker Declaration can be expanded only if the requirements set forth in articles 86 of Law nº 12.529/2011 and 197 of the RiCade are met (see question 12) and if the leniency applicant has not acted in bad faith or attempted to conceal or disguise the subsequently reported information. If there is new information – understood as information or documents not known or not available at the start of the negotiations – on the conduct already reported in the Leniency Agreement under negotiation (see question 52) or in a Leniency Agreement already executed (see question 81), then the Leniency Agreement should be supplemented.

If the newly discovered information characterizes a new and different anticompetitive conduct, then the leniency applicant should submit a new application for a marker to Cade's General Superintendence, which will be evaluated separately (see question 52).

40. Can the leniency applicant withdraw its leniency application?

Yes. The leniency applicant can withdraw its leniency application at any time before it is signed (article 205, part I, RiCade) (see questions 41, 55 and 56).

41. What happens if the leniency applicant withdraws its leniency application?

If the applicant withdraws its leniency application – as in the case of rejection of the leniency application by Cade's General Superintendence (see questions 55 and 56) –, all documents submitted to Cade will be returned to the leniency applicant, all information submitted will be kept confidential. Cade will not be permitted to share or use such information for any purpose, including for initiating investigations (article 86, paragraph 9, of Law nº 12.529/2011), except if they are voluntarily submitted to support an eventual TCC.

In other words, Cade cannot open an investigation based on the information submitted by a leniency applicant that in the context of a Leniency Agreement was rejected or withdrawn. However, the General-Superintendence is able to open an investigation regarding facts reported on the proposed leniency agreement when the new investigation arises from independent evidence (article 205, paragraph 4, RiCade).

In addition, withdrawal or rejection of a proposal does not lead to acknowledgment of any illegality or a confession of wrongdoing (article 86, paragraph 10, of Law nº 12.529/2011).

If there are other leniency applicants in the waiting line, then SG-Cade will contact the next in line, so that a new negotiation can be initiated (see question 37).

42. Does securing a marker guarantee that a Leniency Agreement will be signed?

Securing a marker does not guarantee entering into a Leniency Agreement, because it depends on the fulfillment of all legal requirements (see question 12) and the conclusion of all phases of negotiation of the Leniency Agreement in Cade.

43. Who has access to the terms of the marker?

Access to the Marker Declaration and the information and documents submitted in connection with the negotiation of the Leniency Agreement – all of a confidential nature – is restricted to the General Superintendent, the Substitute General Superintendent, the General Superintendence's Chief of Staff, and his or the civil servants responsible for conducting the negotiation of the Leniency Agreement. As a rule, no other Cade's employee has access to the leniency documents and information received during the negotiation with SG-Cade.

44. How long does the marker request remain in effect?

In the first Marker Declaration, Cade's General Superintendence will indicate a deadline for the leniency applicant to submit the Leniency Agreement proposal – usually 30 days for national cartels and 45 days for international cartels with effects in the Brazilian market. Deadline extensions will be defined case by case, according to the interim deadlines defined by SG-Cade (article 198, paragraph 3, c/c article 204, RiCade).

45. What are Cade's confidentiality procedures at Phase II.1 (marker request)?

The confidentiality of the Leniency Agreement proposal and the whole negotiation proceeding is both a guarantee afforded to the leniency applicant by Cade's General Superintendence (article 86, paragraph 9, of Law nº 12.529/2011 combined with article 200, paragraphs 1 and 2, RiCade) and a duty of the leniency applicant, under penalty of hindering the progress of the investigations.

The SG-Cade follows a set of procedures to ensure confidentiality during the marker request phase, such as:

I. access to the information on the marker request is restricted to the General Superintendent, the Substitute General Superintendent, the General Superintendence's Chief of Staff, and his or her advisors responsible for conducting the negotiation of the Leniency Agreement;
II. the information annotated in the internal controls of the General Superintendence's Chief of Staff for analysis of the marker request is accessed only by the employees of the Office of SG's Chief of Staff;
III. any documents submitted for the marker request are kept in a vault room, which is accessed only by the advisors of the General Superintendence's Chief of Staff;

IV. submission and safekeeping of the documents and/or evidence for analysis by the SG-Cade may be coordinated on a case-by-case basis between the leniency applicant and the SG-Cade; and

V. communication with the leniency applicant is made primarily orally.

PART II.2. SECOND PHASE: SUBMISSION OF EVIDENTIARY INFORMATION AND DOCUMENTS OF THE OFFENSE REPORTED OR UNDER INVESTIGATION

46. What is the submission of evidentiary information and documents of the offense reported or under investigation?

The submission of information and documents evidencing the offense reported or under investigation represents the first Leniency Agreement proposal, which may be performed orally or in writing (article 200, RiCade). This information and these documents are submitted after securing a marker (see question 29 and 36), and the leniency applicant must state (articles 201, 202, and 203, RiCade):

I. the leniency applicant's complete identification;

II. details of the alleged violation or under investigation;

III. the identification of the other co-conspirators of the violation reported or under investigation;

IV. the products or services affected;

V. the geographic area affected;

VI. the estimated duration of the violation reported or under investigation;

VII. a description of the information and the documents that will be submitted upon execution of the Leniency Agreement;

VIII. information on other proposals of Leniency Agreements concerning the same practice submitted in other jurisdictions, as long as there is no prohibition on doing so by the foreign authority;

IX. information on other proposals of Leniency Agreements concerning the same practice, submitted in other jurisdictions, as long as there is no prohibition on doing so by the foreign authority;

X. that the leniency applicant has been advised to seek legal counsel;

XI. that the leniency applicant is aware that failure to comply with the orders of Cade's General Superintendence will lead to the rejection of the Leniency Agreement proposal.

Hence, after securing the marker and submitting the initial proposal of the Leniency Agreement, the negotiation phase itself begins. During this period of negotiation, the leniency applicant must provide detailed information and documents concerning the reported violation (see questions 47 and 48), as detailed in the following section.

47. What kind of information must be provided by the leniency applicant?

As a rule, the applicant must provide at least the following information:

I. a summary description of the violation reported or under investigation;
II. identification of the leniency applicants – companies and/or individuals, as well as a detailed description of the participation of each of them;
III. identification of the other participants of the violation reported or under investigation – companies and/or individuals, as well as a detailed description of the participation of each of them, also indicating, if possible, the hierarchy among such persons and changes in representation over the years;
IV. identification of the competitors and clients in the affected market;
V. duration of the violation reported or under investigation;
VI. detailed description of the reported violation or under investigation – explanation of the objective of the anticompetitive conduct (for example, fixing of prices and/or commercial conditions, allocation of clients, and/or exchange of commercially sensitive information); the dynamics of the conduct (for example, explanation of the anticompetitive conduct by client affected, by bidding, by product, depending on how the agreements with the competitors took place); the dates and places of the meetings; the frequency and method of the communications; the organization of the cartel (for example, explaining the documents that served as a basis and/or supported the agreements made among competitors); monitoring and/or punishment mechanisms implemented by the cartel, etc.;
VII. description of the effects in the Brazilian territory, if the conduct is international – explanation of the direct or indirect effects of the violation in Brazil;
VIII. description of the market affected, with an explanation of the product or service involved in the reported violation; and
IX. an indication of the existing evidentiary documents of the reported violation.

The structure and amount of information and documents required by Cade's General Superintendence may change in a given case in order to describe the reported violation as clearly as possible.

In the initial negotiation phase, the leniency applicant must submit the information as completely as possible to SG-Cade, even if the leniency applicant does not immediately have all the information needed to perfect the Leniency Agreement proposal. For the Leniency Agreement proposal to be accepted by the SG-Cade, the information submitted by the leniency applicant must be considered sufficient. The leniency applicant must submit all the information he/she is aware of and to act in good faith and not concealing or disguising information or submitting false or misleading information.

The leniency applicant only has the duty to report other criminal or administrative violations apart from the anticompetitive conduct if such information is necessary for the SG-Cade to understand the alleged reported violation. However, it should be noted that the benefits of the Leniency Agreement will only apply to the conduct duly reported to the SG-Cade and that is the object of the Leniency Agreement (see questions 18 to 20).

48. Which documents the leniency applicant must provide?

The leniency applicant must submit all documents that it has and considers suitable for evidencing the alleged conduct. The types of evidence most commonly received by Cade's General Superintendence to evidence the antitrust conspiracy reported or under investigation are documents demonstrating the following:

I. exchange of bilateral e-mails among competitors;
II. exchange of e-mails between individuals of the same company, describing the illegal arrangements between competitors;
III. exchange of mail among competitors;
IV. exchange of written communication between individuals of the same company, describing the illegal arrangements between competitors;
V. exchange of electronic messages by text and/or voice (SMS, WhatsApp, Skype, etc.);
VI. agendas, handwritten annotations, notebooks;
VII. recordings;
VIII. Excel tables and spreadsheets;

IX. proof of meetings (minutes, Outlook appointments, reservation of meeting rooms, hotel reservations, credit card bills, travel expenses statements, itinerary electronic record, etc.);
X. telephone bills;
XI. competitors' business cards;
XII. invitations to tender and award notices;
XIII. registers of instant message software communication; etc.

Furthermore, SG-Cade may request, according to its discretion, interviews with the individual leniency applicants to obtain more information and details concerning the documents submitted and the facts reported to Cade (see question 51).

Failure to submit the minimum amount of documents needed to prove the alleged conduct may lead to rejection of the Leniency Agreement proposal by the SG-Cade, and this assessment is made on a case-by-case basis (see question 55).

49. What precautions should be taken by the leniency applicant when collecting electronic documents and hard copies?

It is important that the leniency applicant take technical precautions when obtaining the evidence. As a rule, the applicant must register the chain of custody of the electronic documents and the hard copies to be submitted to Cade, i.e., the chronological history of the evidence, and provide specific information on those responsible for the collection.

In addition, for electronic documents, the leniency applicant, in general, must be able to describe the method of extracting the evidence, i.e.: a) identifying the devices (CPU, e-mail server, notebooks, and flash drives) from which the evidence was obtained and who were the owners/custodians/users of the equipment and/or the extracted files; b) identifying the procedures adopted and the equipment/software used to extract the evidence. Describe, for example, if a forensic image was made of the HD, detailing which type of image (AD1, E01, DD); if a write blocker was used, detailing which model; what hash was obtained from the image (MD5, SHA1); and the date and place of collection; c) identify the types of files extracted and the compatible software to open them, including the versions (for example, e-mail files, Lotus Notes, Outlook, database files); d) state other data relevant to the case. Furthermore, the leniency applicant, in general, should be able to describe the method of analysis and expert examination of the electronic evidence and explain which software was used and who performed the analysis.

In the case of e-mails, it should be submitted to Cade metadata on the header of each email, such as: From, To, Cc, Bcc, Subject, Date, Delivery Date, Received, Return-Path, Envelope-to, Message-ID, Mime-version, Content-type, etc.

It is noteworthy that the leniency applicant must preserve, whenever possible, the hard disks or the original equipment (from which the evidence was extracted) and/or its authenticated forensic image, preserved without alterations; and extract hash numbers from the original documents, since they may be requested by Cade's General Superintendence during the investigations. It is possible to submit to Cade the original hard disks or equipment, whenever feasible.

As a rule, when the documents submitted are not the originals, the applicants must provide proof of the existence of the original document or, alternatively, the justification for its absence.

The SG-Cade will evaluate on a case-by-case basis the precautions taken to ensure the authenticity of the documents. It is noteworthy that an eventual impossibility of following some of the proceedings mentioned above does not prevents SG-Cade from using the documents submitted.

50. How should the information and documents provided by the leniency applicant be presented to Cade's General Superintendence?

Communication between Cade's General Superintendence and the leniency applicants and/or their attorneys is primarily oral (in person or by telephone). If it is necessary to exchange e-mails between the SG-Cade and the attorneys, there is no mention of the name of the company and/or the individuals and market that are the objects of the negotiation of the Leniency Agreement, in order to maintain the confidentiality of the negotiation. More details about confidentiality procedures adopted in the phase of submission of information and documents can be found in question 57.

In addition, the submission of evidentiary information and documents of the offense reported or under investigation is made through flash drives, hard copies, or by other means at the discretion of the leniency applicant and the SG-Cade, and may even be encrypted. Any document submitted is kept in vault rooms, which are accessed only by the General-Superintendence's Chief of Staff or its civil servants, and the submission and

safekeeping of the documents and/or evidence for analysis by the SG-Cade may be arranged on a case-by-case basis between the leniency applicants and the SG-Cade.

51. If, in the course of the negotiation, the leniency applicant, in its internal investigation, finds evidence that the antitrust activity was broader than initially reported, can the negotiation be expanded to include the newly discovered conduct?

It is important that the information stated in the Marker Declaration be as complete as possible (see questions 31 and 39). However, if new information and/or documents are found during the internal investigations conducted by the leniency applicant, then it will be possible to expand the scope of the negotiation to include such information. For example, the period of the conduct or the geographic area affected can be amended, as can any other information on the reported violation.

However, the scope of the negotiation can be expanded only if the requirements contained in articles 86 of Law nº 12.529/2011 and 197 of the RiCade are met (see question 12) and if the leniency applicant has not acted in bad faith or attempted to conceal or disguise the subsequently reported information. If there is new information – understood as information or documents not known or not available at the start of the negotiations – on the conduct already reported in an executed Leniency Agreement (see question 81), then the Leniency Agreement should be supplemented.

If the newly discovered information characterizes a new and different anticompetitive conduct, then the leniency applicant should submit to Cade's General Superintendence a new marker request, which will be evaluated separately (see question 29).

52. What is a History of Conduct?

The History of Conduct is a document drawn up by Cade's General Superintendence that contains a detailed description of the anticompetitive conduct, according to the understanding of the SG-Cade, based on the information and the documents submitted by the leniency applicant (see questions 46 and 47). This is a document prepared and signed by the SG-Cade, and it is not signed by the leniency applicant or by the applicant's attorneys.

53. What is the time limit for negotiating a Leniency Agreement?

As the information and documents are submitted by the leniency applicant, the negotiation period can be extended by means of "Meeting Terms" (article 201, III and IV, RiCade). Therefore, the negotiation of a Leniency Agreement ends when the interim deadlines defined by SG/Cade are concluded (article 204, introductory paragraph, RiCade). In general, other proponents in the waiting line will only be contacted by SG/Cade after the negotiation with the first-in applicant is concluded (article 199, paragraphs 2, 3 and 4, RiCade).

54. Can a leniency application be rejected by Cade?

Yes. A leniency application can be rejected by Cade for several reasons, including the following:

I. failure to submit the Leniency Agreement proposal until the deadline term of the negotiation (see question 44 and 53);
II. failure to cooperate throughout the negotiation, either by not supplying the information and documents requested by Cade's General Superintendence or by otherwise obstructing the investigations ;
III. insufficiency of the evidentiary information and/or documents of the alleged conduct reported or under investigation;
IV. failure to demonstrate the impact on the Brazilian territory of conduct that took place abroad.

At the discretion of the SG-Cade, prior notice may be given to the leniency applicant of the intent to reject the marker request, giving the leniency applicant one last opportunity to submit the requested information and documents on the case.

55. If a Leniency Agreement proposal is withdrawn or rejected, what guarantees do leniency applicants have?

According to articles 86, paragraph 10, and 205, RiCade, in the event of rejection of the proposal by Cade's General Superintendent– or withdrawal by the leniency applicant (see questions 39 and 41) –, the leniency application will not be subject to disclosure, all documents will be returned, and the information and documents submitted by the leniency applicant during the negotiation may not be used for any purposes by the authorities that

had access to them. However, it is still possible for an investigation to be launched based on independent evidence that SG-Cade learned by other means, according to article 205, paragraph 4, RiCade.

If the Leniency Agreement proposal is rejected by the SG-Cade, it is possible for the leniency applicant to obtain a formal document entitled “Term of Rejection”, in which the SG-Cade will declare that the information and documents submitted by the leniency applicant were not able to prove the violation reported or under investigation, or that the applicant did not meet some of the requirements provided on article 86, paragraph 1, Law nº 12.529/2011. To access the model “Term of Rejection”, click here.

Moreover, in the event of rejection of the leniency application by the SG-Cade – or if the leniency applicant withdraws its application (see questions 40 and 41) –, if there are other leniency applicants in the waiting line, then the SG-Cade’s Chief of Staff will contact the next applicant in line, so that a new negotiation can be initiated (see question 37).

56. When is the negotiation of a Leniency Agreement finalized by Cade’s General Superintendence and the document signed?

The negotiation of the Leniency Agreement may be extended through a "Meeting Agreement" (article 201, III and IV, RiCade).

Once all the requested information and documents have been submitted, the SG-Cade’s Chief of Staff will forward the Leniency Agreement proposal to the Substitute General Superintendent for analysis. The Substitute General Superintendent may suggest 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 Cade’s General Superintendence and the case will move on to the phase of execution of the Leniency Agreement (see Part II.3).

57. What are Cade's confidentiality procedures in the phase of submission of evidentiary information and documents of the offense reported or under investigation (Phase II.2)?

The confidentiality of the Leniency Agreement proposal and the whole negotiation proceeding is both a guarantee afforded to the leniency applicant by Cade’s General

Superintendence (article 86, paragraph 9, of Law nº 12.529/2011 combined with article 200, paragraphs 1 and 2, of the RiCade) and a duty of the leniency applicant, under penalty of hindering the progress of the investigations.

The SG-Cade follows a set of procedures to ensure confidentiality during the phase of submission of information and documents, such as:

I. access to the information on the negotiation is restricted to the General Superintendent, the Substitute General Superintendent, the General Superintendence's Chief of Staff, and its advisors responsible for conducting the negotiation of the Leniency Agreement;
II. the information submitted to the Chief of Staff of the SG-Cade is accessed only by the employees of that office;
III. any documents submitted to the SG-Cade for analysis during the negotiation are kept in a vault room, which is accessed only by employees of the Chief of Staff of the SG-Cade;
IV. submission and safekeeping of the documents and/or evidence for analysis by the SG-Cade may be coordinated on a case-by-case basis between the leniency applicants and the SG-Cade;
V. communication with the leniency applicants is made primarily orally. If it is necessary to exchange emails between the SG-Cade and the attorneys, there is no mention of the name of the company and/or the individuals and/or market that are the objects of the negotiation of the Leniency Agreement, so as to maintain the confidentiality of the negotiation;
VI. in the History of Conduct prepared by the SG-Cade (see question 52) there is no direct mention of the name of the company and/or the individuals as leniency recipients of the Leniency Agreement – they are identified as participants of the conduct, along with the other companies, and the individuals are identified by acronyms;
VII. the company and/or the individuals that are leniency recipients are identified separately from the History of Conduct; and
VIII. the employees of the Chief of Staff´s Office of the SG-Cade keep up-to-date reports on internal custody that record each step of the persons who have access to the information and documents da negotiation of the Leniency Agreement.

58. Can individuals be interviewed by Cade's General Superintendence?

Yes. Cade's General Superintendence may request, according to criteria of convenience and opportunity, interviews with the leniency applicant individual to obtain more information and details concerning the documents submitted (see question 59).

59. What are the procedures to interview leniency applicants?

When Cade's General Superintendence finds convenient and opportune, the interviews conducted within the negotiation of the Leniency Agreement must be arranged by the employees of the Office of SG-Cade's Chief of Staff, according to articles 86 and 87 of Law 12.529/2011.

After scheduling the interview, the lawyers who will accompany the applicant must be designated, being recommended the presence of, at maximum, three attorneys, and strongly advised the intervention of only one attorney during the interview. The attorneys must be designated by proof of power of attorney with expressed bestowal of power to the designated attorney(s).

The interview will begin at the exact scheduled time, without settled ending time. It is recommended that the applicant and attorneys should buy occasional flight tickets to the last flight available on the day of the interview so that there will be no time restriction. Before the interview, it is necessary that all the mobiles are turned off and also that, during the interview, the attorneys do not interrupt the interviewer. In case they want to make additional consideration or questions, it is suggested that they do only at the end of the interview, so the collaborative nature of the interview will not be undermined.

Finally, the collaboration of the interviewee with the General Superintendence must be full and unrestrained, according to article 86, paragraph 1, part IV, of Law 12.529/2011. It includes the collaboration over all the anticompetitive misconducts that the interviewee has taken part in and has already demonstrated interest in collaborating with the General Superintendence, may the provided collaboration be with the Office of the SG-Cade or with Office of the General Coordinator of SG-Cade. On the assumption that the interviewee refuses to collaborate in the cases where he has secured a marker, the General Superintendence may understand it as a violation to the obligation of full and permanent collaboration of the applicant (see article 86, paragraph 1, part IV and article 85, paragraph 1 of Law 12.529/2011) and call off the negotiation with the interviewee. Noteworthy, the collaboration is voluntary, so that it will not be required on the cases in which the

interviewee has not shown expressed interest in collaborating with the General Superintendence.

PART II.3. THIRD PHASE: EXECUTION OF THE LENIENCY AGREEMENT

60. What is necessary for the execution of the Leniency Agreement?

After the conclusion of the phase of submission of information and documents on the conduct reported or under investigation (see Parte II.2 and question 57), the procedures for execution of the Leniency Agreement are initiated by both the leniency applicant and the SG-Cade.

For example, the leniency applicant must obtain certified copies of documents, sworn translations, and consular authentication of foreign documents and take technical precautions when obtaining electronic evidence (see question 49). All 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 (see questions 64 and 71).

In this phase, the SG-Cade also initiates contact with the offices of the Public Prosecution Service for submission of the Leniency Agreement (see questions 61 and 62).

61. How does the State and/or Federal Public Prosecution Services participate in the Leniency Agreement?

Although arts. 86 and 87 of Law nº 12.529/2011 do not expressly require the participation of the Prosecution Service for execution of a Leniency Agreement, Cade's consolidated experience shows that, as the exclusive holder of the right to bring criminal charges and initiate a public criminal action, the Prosecution Service should be permitted to participate, in light of the criminal repercussions of the leniency. Hence, the State and/or Federal Prosecution Services can participate in the agreement as an interested agent, to confer greater legal security for the leniency recipients and facilitate the criminal investigation of the cartel (see questions 17 and 62).

62. How and when are the State and/or Federal Public Prosecution Services contacted?

Aiming to safeguard the secrecy of the agreement, as set forth in article 86, paragraph 9, of Law nº 12.529/2011, as well as rationalize the negotiaton procedures, in principle, only after the conclusion of the phase of submission of information and documents on the conduct reported or under investigation (see Part II.2 and question 57), the SG-Cade initiates contact with the offices of the State and/or Federal Public Prosecution Services for submission of the case.

If relevant to the case, and in light of specific circumstances, the SG-Cade, the leniency applicant, and the State and/or Federal Public Prosecution Services may, by mutual agreement, choose to initiate contact with the Public Prosecution Service in an initial stage of the negotiation of the Leniency Agreement.

Dealings with the offices of the Public Prosecution Service generally have three phases:

I. determination of which office of the Public Prosecution Service will handle the case (see question 63), whether a State and/or Federal office;
II. notification of the offices of the Public Prosecution Service to schedule a meeting; in the notice, the SG-Cade states that it received information on the practice of the antitrust violations set forth in articles 36, paragraph 3, I, of Law nº 12.529/2011, that could be classified as crimes under article 4 of Law nº 8.137/90 and that the informer has expressed an interest in participating in the Leniency Program. The SG-Cade does not forward the information and the documents that are the object of the Leniency Agreement proposal, due to its confidential character. With this notice, the case is distributed internally within the competent State and/or Federal office of the Public Prosecution Service for subsequent scheduling of a meeting with the Federal and/or State prosecutor; and
III. a meeting is held with the offices of the Public Prosecution Service to present the case and determine the strategy for integrating the actions between the two entities.

As a third party to the agreement, the Public Prosecution Service may put forth questions, request changes, and request additions to the Leniency Agreement. However, such alteration requests by the Public Prosecution Service are generally intermediated by the SG-Cade, in light of the legal competence of the SG-Cade to enter into Leniency Agreements (article 86 of Law nº 12.529/2011).

Since Law nº 12.529/2011 designates the SG-Cade as the competent authority to enter into Leniency Agreements, the Public Prosecution Service does not have access to the information and documents negotiated with the proponent of a Leniency Agreement during the phase of submission of documents and information regarding the conduct.

After a meeting is held with the offices of the Public Prosecution Service and any adjustments proposed by the Federal and/or State prosecutor are made, the parties will validate the terms of the Leniency Agreement and date will be set for its signing (see question 64).

It should be noted that the parties may first approach the Public Prosecution Service and then seek out the SG-Cade to negotiate the Leniency Agreement regarding participation in the cartel, which is both a crime and an administrative offense (see questions 3 to 5). Negotiation of the Leniency Agreement, however, remains subject to the availability of the marker (see question 34) and fulfillment of the legal requirements (see question 12).

63. How is it determined which office of the Public Prosecution Service will act in a given Leniency Agreement?

This definition derives from the attributions established by law and jurisprudence for criminal violations of the economic order. It is often an offense that affects the market in a wide aspect and therefore it attracts the competence of the Federal Presecution's Office (even more evident when federal resources are involved). In cases involving local interests, however, an intervention by the State Public Ministry is possible. In any event, the definition of the consenting Public Prosecutor requires collaboration with the proponent and expression of interest by the respective prosecution's office.

64. Where is the Leniency Agreement signed?

The Leniency Agreement can be signed at Cade's headquarters in Brasília, in the city in which the State and/or Federal Public Prosecution Service that will act as interested third party in the case is located (see question 62) or in some other place agreed upon among the parties.

The leniency applicant, accompanied or represented by his attorney and in possession of the representation documents (see question 59), must appear on the date and place

previously designated for the signature of the Leniency Agreement, at which time Cade's representative(s) and the member of the intervening Public Prosecution Service's member will also attend.

65. Can a Leniency Agreement be entered into in bilingual form?

Yes. The Leniency Agreement can be signed in bilingual form (Portuguese and English), even if the reported cartel is not international. In the event of doubt, the Portuguese version will prevail over the English version. A public standard model of the Leniency Agreement is available here.

66. When must the leniency applicant hand over the hard copies of the evidentiary documents of the reported violation?

The definitive submission to the SG/Cade and the Public Prosecution Service of the documents evidencing the reported conduct shall only be made upon the signature of the Leniency Agreement. The applicant is also requested to provide digitalized copies of the documents with traceability marks whose pattern is provided by SG/Cade. For documents originally registered in electronic media, the preservation of the media is required or, when there is an impediment, provision of electronic copies certified as identical to the originals by technical expertise. In the event of cancellation or rejection of the Leniency Agreement proposal, the SG-Cade ensures the confidentiality of the information and documents submitted (see questions 40 and 41, 55 and 56).

67. Which representation documents must be submitted by companies and individuals when signing the Leniency Agreement?

For the execution of the Leniency Agreement, the companies and/or individuals must submit the following documents:

I. a certified copy of the corporate documents that demonstrate the company's fulfillment of the legal and contractual requirements (for example, bylaws or articles of incorporation) and a certified copy of the identity card and natural person Brazilian taxpayer card of the company's legal representatives;
II. a certified copy of the individuals' ID and passport; and
III. proof of power of attorney document with notarized signatures granting specific powers for proposing, negotiating, confessing and signing the Leniency Agreement

with Cade and the State and/or Federal Public Prosecution Service (for a Model Power of Attorney, click here)

68. If the individuals decide not to sign the Leniency Agreement together with the company, will this hinder the execution of the agreement with Cade?

No. If the leniency applicant is a company, the benefits of the agreement can be extended to its current or former directors, managers, and employees and to companies of the same economic group, de facto or de jure, involved in the violation. To that end, they must cooperate with the investigations and sign the agreement together with the company (article 86, paragraph 6, of Law nº 12.529/2011 combined with article 197, paragraph 1, RiCade;see question 15).

The individuals and companies of the same economic group can enter into the agreement together with the company or in an addendum to the original Leniency Agreement when authorized by Cade, according to its discretion (article 197, paragraph 2, RiCade). Companies and their directors, managers, and employees may be represented by the same or different attorneys.

If, however, the current and former directors, managers, and employees decide not to sign the Leniency Agreement, this will not prevent the execution of the agreement with the company. In this case, the benefits of the agreement (see question 18) do not extend to the individuals who do not sign it. Thus, it is highly recommended that the company explain to its current and former employees that they will obtain the benefits of the Leniency Agreement only if they sign the agreement with the company and cooperate with the investigations.

69. What does an Addendum to the Leniency Agreement mean?

An addendum to the Leniency Agreement means signing of an Addendum to the Leniency Agreement to include individuals to the original Leniency Agreement. If the leniency applicant is a company (see question 15), the benefits of the agreement can be extended to its current or former directors, managers, and employees and to companies of the same economic group, de facto or de jure, involved in the violation, as long as they cooperate with the investigations and sign the agreement together with the company (article 86, paragraph 6, of Law nº 12.529/2011 combined with article 197, paragraph 1, RiCade).

The individuals and companies of the same economic group can execute the agreement together with the company or by an Addendum to the original Leniency Agreement, when authorized by Cade, according to its discretion (article 197, paragraph 2, RiCade). If the individuals are given the opportunity but decide not to sign the Leniency Agreement together with the company (see question 15 and 68), signing an Addendum to the original Leniency Agreement becomes less probable.

It should be noted that an Addendum to the Leniency Agreement will be possible only upon the fulfillment of the requirements for execution of a Leniency Agreement (see question 12). Those requirements consists in having participated in the conduct, confessing the participation in the wrongdoing, and collaborating with the investigations, and as long as the SG-Cade does not have sufficient evidence to ensure a conviction. A Model of Adherence to the Leniency Agreement can be accessed here– "Annex I to the Model Leniency Agreement."

If the leniency recipient is an individual, then the benefits will not be extended to the company (article 197, paragraph 3, RiCade), which will not be able to sign an Addendum to the Leniency Agreement signed by the individual (see question 15).

70. What can be done if a leniency applicant does not communicate in Portuguese?

It is recommended that an attorney or an agent represent individuals who do not communicate in Portuguese (see question 71). The leniency applicant may hire, at its own expense, a translator for the entire process of negotiation of the Leniency Agreement. On an exceptional basis, if an individual is not represented by a Brazilian attorney, Cade's General Superintendence may evaluate the situation in the case at hand.

71. Must individuals located outside of Brazil personally attend to sign the Leniency Agreement?

Personally attending to sign Cade's Leniency Agreement depends on the case at hand. As a rule, individuals outside of Brazil may be represented by a Brazilian attorney or agent (see question 70*)*.

72. Must the leniency recipients be represented by an attorney or by an agent?

The company and/or individuals are encouraged to be accompanied by an attorney or agent with a document of power of attorney with notarized signatures granting specific powers for negotiating and signing the Leniency Agreement with Cade and the State and/or Federal Public Prosecution Service (article 203, II, RiCade).

73. What terms and conditions are set forth in the Leniency Agreement?

Once the legal conditions for entering into a Leniency Agreement have been met, the clauses listed in parts I to VIII of article 206, RiCade, must be stated in the agreement, namely:

I. complete identification of the companies and individuals that will sign the Leniency Agreement and complete identification of the legal representative (including the name, corporate name, identity document, passport number, individual or corporate taxpayer number (CPF or CNPJ), complete address, telephone, fax, and email);
II. identification of the legal representative with powers to receive notices during the administrative proceeding;
III. fax and e-mail address for receiving notices during the course of the administrative proceeding;
IV. statement of facts related to the reported violation, identification of the actors, the products or services affected, the geographic area affected, and the duration of the violation reported or under investigation, according to the information and documents submitted by the leniency recipients – which information is normally presented in the document entitled History of Conduct, prepared by Cade's General Superintendence (see question 52);
V. confession by the leniency recipient, company and/or individuals, of having participated in the reported violation;
VI. declaration by the leniency recipient, company and/or individual, that its involvement in the reported violation has ceased;
VII. a list of all documents and information provided by the company and/or by the individual leniency recipient, for the purpose of evidencing the violation reported or under investigation;
VIII. obligations of the leniency recipient:
    - a submission to the SG-Cade and to any other authorities intervening in the Leniency Agreement of all the information, documents, or other materials in their possession, custody, or control, capable of evidencing the violation reported or under investigation;

- submission to the SG-Cade and to any other authorities intervening in the Leniency Agreement of all new information, documents, or other materials of which they become aware during the course of the investigations;
- submission of all the information, documents, or other materials related to the reported violation in their possession, custody, or control, whenever requested by the SG-Cade and by any other authorities intervening in the Leniency Agreement in the course of the investigations;
- they must fully and permanently cooperate with the investigations and the administrative proceeding in connection with the reported violation, to be conducted by the SG-Cade and any other authorities intervening in the Leniency Agreement;
- they must appear, at their own expense, at all procedural acts, until a final decision is rendered by Cade's Tribunal on the reported violation;
- notification to the SG-Cade and to any other authorities intervening in the Leniency Agreement of any change in the data stated in the Leniency Agreement, including the personal identifications; and
- to act with honesty, loyalty, and good faith during the fulfillment of these obligations;

IX. a statement to the effect that nonfulfillment by the leniency recipient of the obligations set forth in the Leniency Agreement will result in loss of immunity, in addition to fines and other penalties;

X. a statement by SG-Cade that the leniency recipient was the first to be qualified regarding the violation reported or under investigation, as the case may be;

XI. a declaration by the SG-Cade that it did not have sufficient evidence to ensure the conviction of the leniency recipient for the reported violation when the Leniency Agreement was proposed;

XII. declaration of the SG-Cade as to whether or not it had prior knowledge of the reported violation, at the time the Leniency Agreement was proposed; and

XIII. other obligations that, in light of the circumstances of the case at hand, are considered necessary.

74. Is there a Model Leniency Agreement?

Yes. A Model Leniency Agreement is available here. Note that, as a rule, the standard wording of the Leniency Agreement should be used to expedite the negotiations and

maintain equal treatment regarding agreements. Requests for amendments by the leniency applicant should be exceptional and duly grounded in light of circumstances of the case at hand. The SG-Cade also reserves the right to make changes and update the standard model when specific circumstances of the case at hand so require.

75. What are Cade's confidentiality procedures in the Leniency Agreement execution phase (Phase II.3)?

The confidentiality of the Leniency Agreement proposal and the whole negotiation proceeding is both a guarantee afforded to the leniency applicant by Cade's General Superintendence (article 86, paragraph 9, of Law nº 12.529/2011 combined with article 200, paragraphs 1 and 2, RiCade) and a duty of the leniency applicant, under penalty of hindering the progress of the investigations.

The SG-Cade follows a set of procedures to ensure confidentiality during the phase of execution of the Leniency Agreement, such as:

I. when notifying the offices of the MP to schedule a meeting, the SG-Cade states that it received information on the practice of the antitrust violations set forth in articles 36, paragraph 3, I, of Law nº 12.529/2011, that could be classified as crimes under article 4 of Law nº 8.137/90 and that the informer has expressed an interest in participating in the Leniency Program. The SG-Cade does not forward the information and the documents that are the object of the Leniency Agreement proposal, due to its confidential character. With this notice, the case is distributed internally within the competent State or Federal office of the Public Prosecution Service for subsequent scheduling of a meeting with the State and/or Federal prosecutor (see question 61);

II. upon submission of the Leniency Agreement proposal to the representative of the Public Prosecution Service, an "Instrument of Receipt" is signed attesting that the State and/or Federal prosecutor is aware of the confidentiality of the information to which he or she has had access to (article 86, paragraphs 6 c/c with 9, or Law nº 12.529/2011);

III. in the interaction of the SG-Cade with external bodies, traceable versions of documents are provided;

IV. if it is necessary to apply for a search and seizure order, there is no direct mention to the name of the company as a leniency recipient in the motion submitted by PFE/Cade. The company is identified as a participant in the conduct, like the other companies, and the individuals are identified by initials; the company and the

individual leniency recipient are identified in a document separate from the History of Conduct, prepared by SG-Cade (see question 52); and

PART III. AFTER THE EXECUTION OF THE LENIENCY AGREEMENT

76. What happens after the Leniency Agreement is signed?

After signing the Leniency Agreement, Cade may initiate an investigation or administrative proceeding to investigate the violation reported in the Leniency Agreement and carry out other investigative measures, such as searches and seizures and/or inspections, requests for information, and intelligence procedures, to detect cartels in biddings (see question 78 e 79).

In this scenario, throughout the entire process, the leniency recipients must fully and permanently cooperate with the investigations and the administrative proceeding, and appear, at their own expense, whenever requested, in all procedural acts, until their conclusion (article 86 of Law nº 12.529/2011 and 198 c/c with article 206, I to VIII, RiCade).

77. What happens if the terms and conditions stipulated in the Leniency Agreement are not fulfilled?

When the analysis of the General-Superintendence is concluded, the SG-Cade verifies whether the leniency recipient met all the legal requirements set forth in the Leniency Agreement and refers the administrative proceeding to Cade's Tribunal with a non-binding opinion on the case. The final decision issued by Cade's Tribunal analyses if the terms and conditions stipulated in the Leniency Agreement (see question 72) are fulfilled. If not, the leniency recipient responsible for the noncompliance will lose his respective benefits, and be submitted to the fines and other applicable penalties (article 206, paragraph 1, IX, RiCade). This will happen, for example, if the leniency recipient ceases to cooperate with Cade or submits false information. In general, it is not considered a breach of the Leniency Agreement if Cade's Tribunal does not condemn all the companies and/or individuals identified as co-authors of the reported violation by the leniency recipient.

Furthermore, if one or more leniency applicant – company or individual – does not cooperate with the investigations it does not invalidate the Leniency Agreement with respect to the other leniency applicants who did collaborate.

Until today, none of the Leniency Agreements celebrated with SG-Cade was declared breached by Cade's Tribunal. Cade's Reporting Commissioner, with the approval of Cade's Tribunal, is the one responsible for verifying whether there has been a breach of the Leniency Agreement, at the time he/she issues a final decision on the administrative proceeding derived from the Leniency Agreement.

78. When a preliminary investigation or administrative proceeding is launched, what kind of information provided on the Leniency Agreement will be made public?

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. As a rule, the identity of the leniency recipients will be treated as confidential and not publicly released until the final judgment by Cade 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, 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 the SG-Cade – or be informed by the SG-Cade – of the need to disclose the information. Then access will be granted exclusively to the addressee 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 if so 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.

Cade's General Superintendence follows a set of procedures aiming at ensuring confidentiality after the execution of the Leniency Agreement and when opening a preliminary investigation or an administrative proceeding (as in question 85).

79. When a search and seizure warrant or other court measure is carried out, what kind of information provided on the Leniency Agreement will be made public?

The Leniency Agreement and the information contained in its documents may support a request to the courts for a search and seizure warrant, as well as other court measures, by Cade's General Superintendence and/or the competent criminal authorities, according to Law nº 12.529/11. When a request is submitted to a court, the SG-Cade and/or the competent criminal authorities will seek to protect the confidential information and documents submitted by the leniency recipients and will request the courts to safeguard their confidentiality within the scope of the lawsuit.

The SG-Cade follows a set of procedures to ensure confidentiality also after signing a Leniency Agreement (see question 85).

80. Can the leniency recipient provide the information and/or documents negotiated in connection with the Leniency Agreement to third parties, other government agencies, or foreign authorities?

No. The confidentiality protection of the Leniency Agreement is also a duty of the leniency recipient, unless otherwise expressly agreed upon with Cade's General Superintendence. The leniency recipient has the obligation to cooperate and cannot compromise the secrecy of the investigations (article 206, paragraph 1, VIII, "d", and article 207, paragraph 2, II, RiCade, combined with article 86, paragraph 9 of Law nº 12.529/2011).

Those represented in the administrative proceeding initiated in connection with the Leniency Agreement are also prohibited from disclosing information and/or documents to third parties, other governmental entities, or foreign authorities. The 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, RiCade).

81. What should the leniency recipient do if, after signing the Leniency Agreement, new information or documents on the reported violation are discovered?

Even after signing the Leniency Agreement, the leniency recipient has the duty to report to Cade's General Superintendence any new information and documents referring to the reported violation (article 206, paragraph 1, VIII, "d", RiCade).

Supplementation of the information and submission of new documents constitutes the continuous obligation of cooperation with the progress of the investigations. It will not give cause to allegations of breaching of the obligations of the leniency recipient unless the leniency recipient has tried to conceal the information subsequently reported – understood as information or documents unknown or not available at the beginning of the negotiations. There may be noncompliance with the obligation to cooperate if the leniency recipient conceals documents that were already available at the time of the leniency application or submits inconsistent information on the same fact.

If the newly discovered information characterizes a separate conspiracy, then the applicant of the Leniency Agreement should submit to SG-Cade a new marker request, which will be evaluated separately (see question 29).

82. When does Cade declare the fulfillment of the Leniency Agreement and when does the leniency recipient's duty to cooperate cease?

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. 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). However, if the administrative proceeding is split into individual parts, the leniency recipients must continue to cooperate with the investigations.

The leniency recipient's obligation to collaborate does not encompass eventual private or public actions for damages following Cade's final decision on the administrative proceeding, except if the leniency recipients and Cade agree otherwise in the case at hand. The leniency recipient must report to Cade any lawsuits in Brazil or abroad concerning any aspects of the violation reported in the Leniency Agreement, as well as eventual judicial and extrajudicial agreements that are of his knowledge.

83. Can the leniency recipient be held liable in a civil action for damages?

Yes. Those harmed by the anticompetitive conduct can file a lawsuit to defend their individual or individual homogenous rights to obtain an order to cease antitrust violations, and to receive damages, regardless of the existence of a preliminary investigation or an ongoing administrative proceeding, which will not be stayed because of the filing of an action for damages (article 47 of Law nº 12.529/2011).

Law nº 12.529/2011 does not obligate the leniency recipient to compensate consumers potentially harmed by the cartel as a condition *sine qua non* for entering into a Leniency Agreement. However, the law does not exempt the leniency recipient of being held liable for antitrust damages in a civil action filed against the leniency recipient and other participants in the antitrust violation.

If a court requires the leniency applicant to disclose leniency material in a civil action for damages, PFE/Cade can intervene to ensure the maintenance of the confidentiality of the information and documents provided by the leniency applicant while Cade's investigation is ongoing. After Cade's Tribunal issues its final decision, PFE/Cade can also intervene in the context of civil actions for damages to ensure that access to the leniency material is reasonable, proportional, and that the plaintiff has a legitimate interest in the discovery. Generally, all the information able to support a plaintiff's claim is contained in the Reporting Commissioner's vote.

84. Does the confidentiality of the information and documents submitted during the negotiation of the Leniency Agreement remain in effect after Cade's Tribunal issues a final decision?

Cade's General Superintendence follows its set of procedures even after the Plenary of Cade's Tribunal issues its final decision on the administrative proceeding. The final decision

on the administrative proceeding makes the identity of the leniency recipient public, at which time essential information for understanding and solving the case may also be disclosed by the release of the Reporting Commissioner's public vote. Generally, Cade's final decision is detailed and includes information and images of the evidence used to support the reported violation against all the defendants, whether leniency recipients, TCC's proponents or not. Even after the final decision is released, Cade will use its best efforts to maintain the confidentiality of the documents and information voluntarily submitted by the leniency recipient that is/are considered business secrecy.

Hence, with respect to interested third parties (for example, clients and consumers potentially harmed by the reported violation), as a general rule, Cade does not grant access to the information and documents voluntarily provided in connection with the Leniency Agreement beyond those that are already contained in the Reporting Commissioner's vote. However, Cade has the duty to submit information, at any time and including leniency material, in case there is a national court order requesting so. In this case, access to information and documents disclosed should only be granted to the plaintiffs that asked for discovery, should only be used in the context of the civil action in which the discovery was requested, and should not be disclosed to third parties (including abroad). PFE/Cade can intervene in the judicial proceeding to ensure the protection of the leniency material and Cade's Leniency Program as a whole (see question 83).

85. What are Cade's confidentiality procedures after the signature of the Leniency Agreement?

As a rule, the contents of the Leniency Agreement and all its related documents are restricted and will not be disclosed to the public neither during the initiation of a preliminary investigation, during an administrative proceeding nor in the case of a search and seizure warrant (see questions 75 and 78).

Cade's General Superintendence follows a set of procedures aiming at ensuring confidentiality after signing the Leniency Agreement and upon initiation of the preliminary investigation or administrative proceeding, such as:

I. the possibility of not publishing the information that the case originated from a Leniency Agreement;
II. the order for initiation of the administrative proceeding, when published in the DOU", as a rule, does not contain the names of the individuals and the attorneys in the case, but only the names of the legal entities involved, in alphabetic order;

III. the confidential information and documents related to the Leniency Agreement remain in restricted files in the electronic system of Cade, and there is only one separate public record;

IV. the information related to the Leniency Agreement is labeled and/or highlighted as being of restricted access in the Technical Notes; and

V. in interaction with external bodies, traceable versions of documents are provided.

Furthermore, if it is necessary to apply for a search and seizure order, other confidentiality measures are adopted, such as: (i) a request for the maximum level of confidentiality available in the Brazilian court system; (ii) a personal request by Cade's Chief-Attorney Office (PFE/Cade) to the assigning judge and the judge assigned to the case and a specific alert as to the confidentiality of the Leniency Agreement; (iii) there is no direct mention of the name of the company and/or the individuals as leniency recipients; the person is identified as a participant in the conduct, like the other companies, and the individuals are identified by acronyms; (iv) the leniency recipients individuals are identified in a document separate from the History of Conduct, prepared by the SG-Cade (see question 52); and (v) proactive action by the PFE/Cade at the courts, in the event of appeals, after implementation of the search and seizure measure.

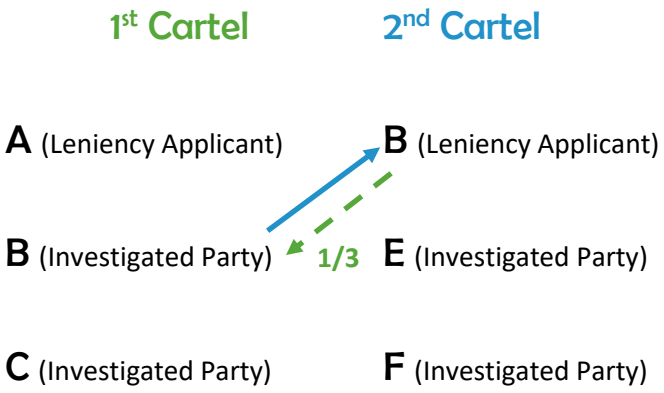
PART IV. LENIENCY PLUS

86. What is Leniency Plus?

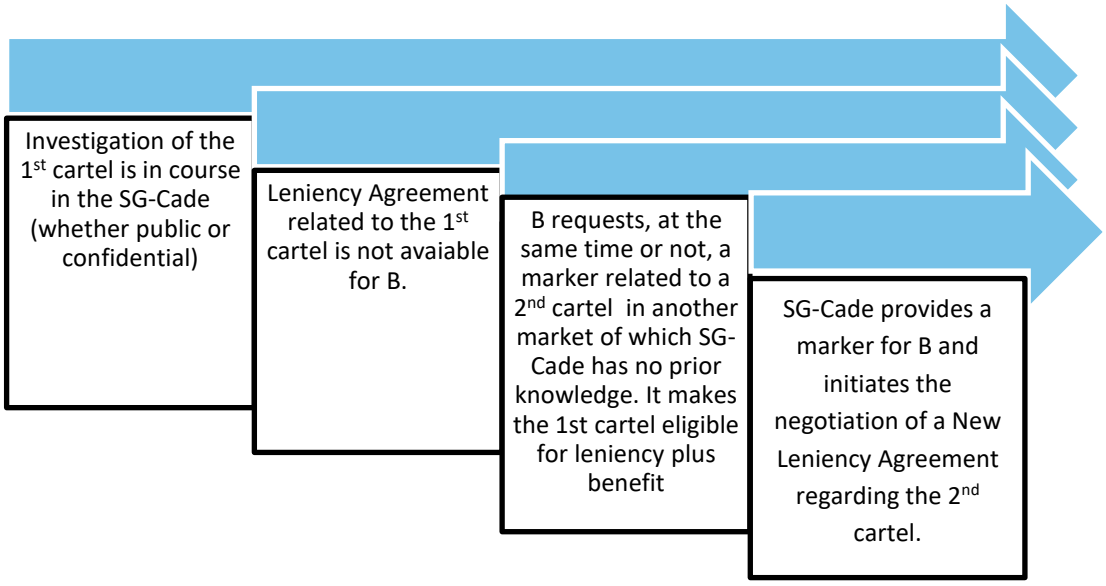
A Leniency Plus consists of the reduction by one to two-thirds of the applicable penalty for a company and/or individual that does not qualify for a Leniency Agreement in connection with the conduct in which it has participated (Original Leniency Agreement), but provides information on another conduct which Cade's General Superintendence had no prior knowledge of (article 86, paragraph 7, and paragraph 8, Law nº 12.529/2011 c/c article 209, RiCade) (New Leniency Agreement).

If, for example, a company and/or individual, already investigated for a cartel in a first market (first cartel), which does not qualify for the negotiation of Leniency Agreement (see question 37). If this company and/or individual is interested in collaborating with the investigation in the first market, it may do so through a TCC (see question 23). In addition, this company and/or individual may report to SG-Cade another cartel in another market

(second cartel) of which SG / Cade has no prior knowledge. In this case, in addition to obtaining the full benefits of the Leniency Agreement with respect to the second cartel, that company and-or individual may obtain a reduction of one-third of the penalty applicable to the first cartel, as represented below:



In chronological terms, the timeline that must be covered by the company and/or individual willing to benefit from leniency plus is as follows:



The leniency plus benefit is consistent with Cade's higher objective of combatting illegality, specifically cartels, given that the collaboration by the company and/or the individuals allows information and documents regarding different and still undiscovered anticompetitive conducts to be obtained.

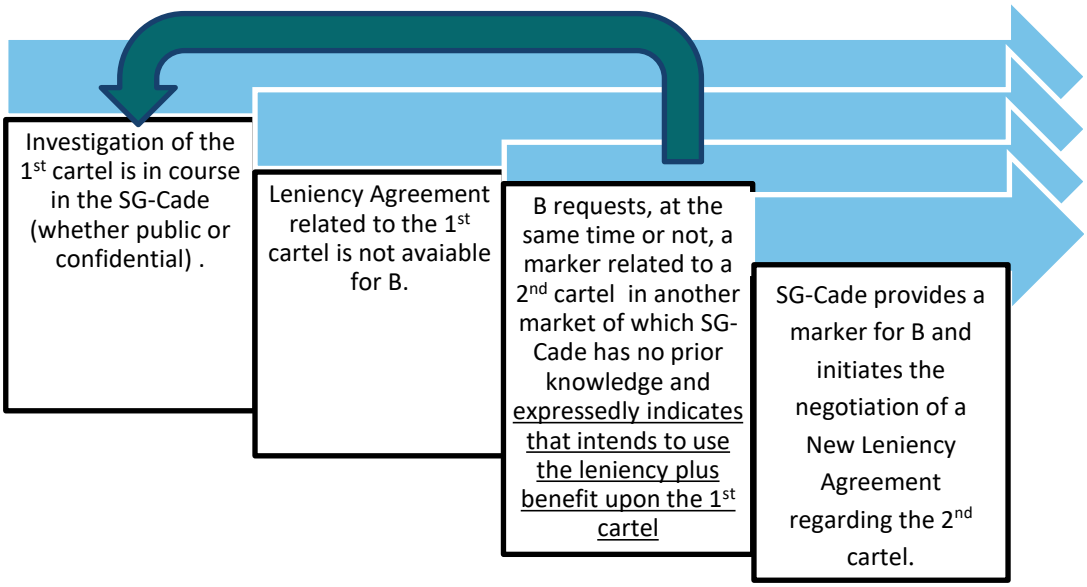
Hence, with regard to the new violation reported (second cartel), once the legal requirements have been met (see question 12), the leniency recipient will receive all the benefits of the Leniency Agreement (article 86, paragraph 1, and article 86, paragraph 4, I and II, of Law nº 12.529/2011). In regard to the violation already under investigation by the SG-Cade (first cartel), the leniency recipient may benefit from a reduction of one-third of the applicable fine (leniency plus).

87. How does the marker request relates to Leniency Plus?

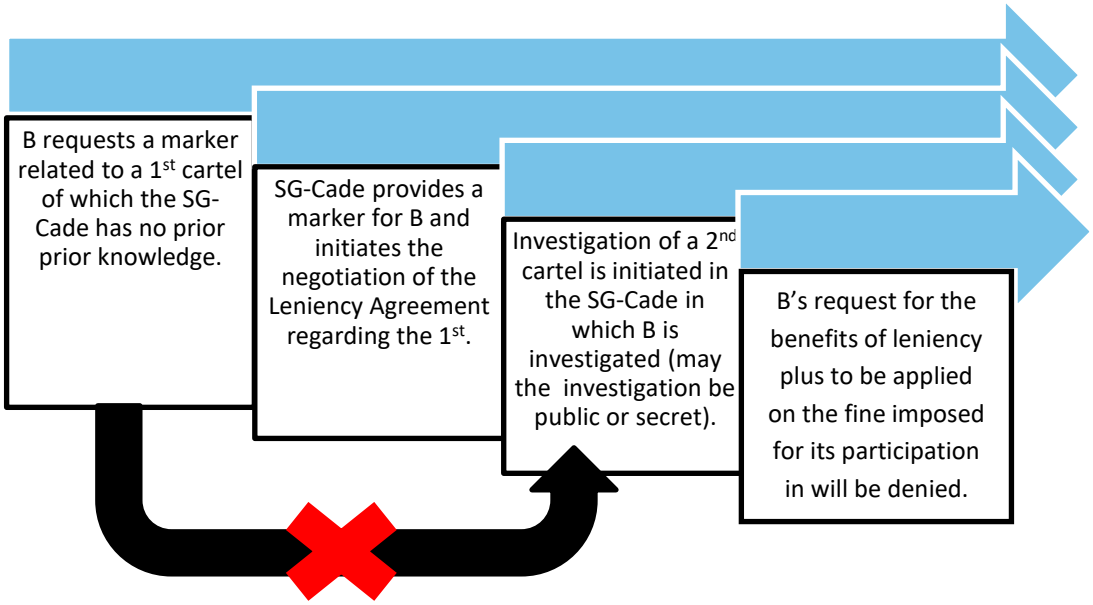
The request for a marker that generates Leniency Plus benefit is mostly made in the same manner as indicated above (Part II.1). If available, the applicant will then receive a marker declaration.

The specificity of this request is that the applicant must expressly indicate on which applicable penalty they intend to use the benefit. Unavailability can refer both to administrative proceedings in which it is already investigated by SG-Cade and to waiting lines in which it may appear (see question 37).

Once again, in chronological terms, the timeline that must be covered by the company and/or individual that intends to request a marker that incurs leniency plus benefit is as follows:



This means that if the company and/or individual has previously entered into a Leniency Agreement in one market and is subsequently investigated in another administrative proceeding in another market, the leniency plus benefit will not be applicable retroactively, since it will not bring any new information to Cade, allowing it to enter into a TCC. Also in chronological terms, the timeline that will not give the company and/or individual the benefit of leniency plus is as follows:



Thus, the company and/or individual, when requesting leniency plus benefit, should, therefore, endeavor to make SG-Cade aware of all anticompetitive behaviors in which it has participated, changing its behavior in competitive terms, under penalty of having this situation considered under the terms of art. 39 c/c art. 45, II of Law nº 12.529 /2011.

In addition, it should be noted that, pursuant to art. 86, paragraph 7 of Law nº 12.529/2011, in order to obtain the benefit of leniency plus, it is necessary that the marker request for the second be submitted to SG-Cade prior to the submission of the administrative proceeding that investigates the first cartel for judgment by the Cade's Tribunal.

88. Is it possible to obtain Leniency Plus if the leniency applicant has previously signed a Leniency Agreement in another market with the SG-Cade?

nº Leniency Plus is a benefit granted to a company or individual that does not qualify, in the course of the investigation or administrative proceeding underway, to enter into a Leniency Agreement, and therefore provides information on another cartel about which Cade's General Superintendence had no prior knowledge (article 209 of the RiCade combined with article 86, paragraph 9, of Law nº 12.529/2011) (see question 19).

Accordingly, if the company and/or individual previously entered into a Leniency Agreement in one market and is later represented in other administrative proceedings in another market, the benefit of Leniency Plus will not be retroactively applied to such person, since he/she will not bring any new information to Cade. In this case, the company will only be eligible to apply for a TCC (see II.2 and questions 36 and 87).

Thus, when a company and/or individuals request a Leniency Plus to Cade, they should use their best efforts to submit to SG-Cade information on all anticompetitive conducts in which they had participated, and enhance c*ompliance* and improve their competitive behavior in the market. Otherwise, the penalties foreseen in article 39 c/c article 45, of Law nº 12.529/2011 may apply.

89. Is it possible to obtain discounts related to both the Cease and Desist Agreement (TCC) and Leniency Plus?

Yes. Under the terms of article 209, paragraph 3 of RiCade, the company and/or individual that celebrates a TCC regarding a certain anticompetitive conduct already under investigation (first cartel) can benefit from the combination of leniency plus and

TCC benefits, if, until the referral of the proceeding for judgment, qualify to enter into a leniency agreement related to another infringement, of which Cade has no prior knowledge (second cartel).

Both discounts are applied subsequently (first leniency plus and then TCC discount) and not cumulative (not simply adding both discounts). The cumulative application could bring excessive benefit to the company and/or individual who has practiced cartel in various markets, with possible reduction of deterrence effect and possible disincentive to the prompt submission of new Leniency Agreement proposals. Subsequent application has interpretation that is derived from the legislation itself, and maintains the consistency between the maximum value of leniency plus and TCC discounts compared to the partial leniency hypothesis (see question 19).

Thus, in the same example given in question 86, if the company investigated for participating in the cartel (first cartel) in the first market wishes to enter into a TCC in the administrative proceeding arising from the investigation of the first cartel and also to report to SG-Cade another anticompetitive infringement in which it has participated (second cartel) in a second market, of which Cade has no prior knowledge, it may, in relation to the first cartel, receive the benefit of leniency plus (reduction of 1/3 of the applicable penalty) and thus subsequently, but without accumulation, receive the discount for the celebration of the TCC.

Since TCC negotiation provides discount ranges (see TCC Guide), the subsequent application of leniency plus with TCC may result in the following total discount parameters on the expected fine:

- In case it's the first proponent of a TCC with Leniency Plus: from 53.33% to 66.67%;
- In case it's the second proponent of a TCC with Leniency Plus: from 50% to 60%; and
- for all other proponents of a TCC with Leniency Plus: up to 50%.

In addition, it is recalled that no requirement may provide a percentual reduction higher than that established in TCCs with leniency plus already entered into in the same administrative proceeding, given the subsidiary application of the TCC rules (art. 209, §4 of RiCade).

90. Is the Leniency Plus discount bounded to the celebration of a Cease and Desist Agreement?

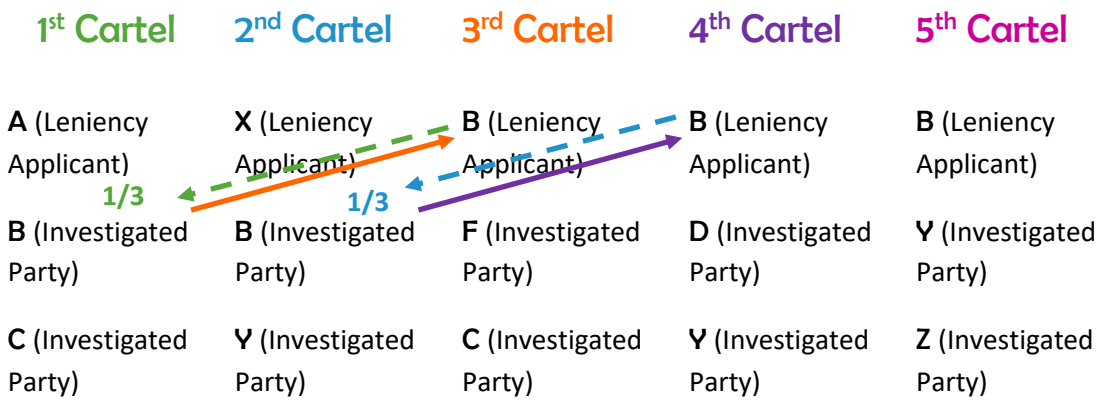
No. The reduction of one third concerning the leniency plus is applicable to the expected fine from administrative proceeding in which the one who applied for leniency is investigated for the first alleged cartel (article 209, paragraph 1 of RiCade). Hence, it is not necessary to negotiate a TCC within the first administrative proceeding to apply for the leniency plus discount, after all the latter is not conditioned by the existence of a TCC. However, if the applicant to the new Leniency Agreement also applies for a TCC, he may receive both benefits.

91. Is it possible to obtain discounts in two Leniency Plus arrangements within a single administrative proceeding?

No. The benefit of leniency plus is applied only once to each existing investigation. The relation is one to one, that is, with each New Leniency Agreement, the leniency plus benefit will be applied in only one of already existing investigations.

If, for example, the company and/or individual is already investigated by cartel in a first market (first cartel), in which he/she does not qualify for the Leniency Agreement negotiation, and reports to SG-Cade another cartel in another market (second cartel), of which SG-Cade has no prior knowledge, in addition to obtaining all the benefits of the Leniency Agreement with respect to the second cartel, may obtain a reduction of one third of the penalty applicable in the first cartel.

In another example, if this company and/or individual is investigated by a cartel in two markets (first and second cartel), and does not qualify for the Leniency Agreement negotiation in any of them, it may report to SG-Cade another two or more cartels, of which SG-Cade has no prior knowledge. This will result in a reduction of one-third of the penalty applicable in the first and second cartels, after the declaration of the fulfillment of the obligations set forth in the new Leniency Agreements concerning the 3rd and 4th cartels. Any 5th cartel reported to SG-Cade will not be able to grant leniency plus discounts, but will continue to preserve all benefits of the 5th New Leniency Agreement. Visually, one has the following:



Furthermore, If the applicant is negotiating more than one New Leniency Agreement with the SG-Cade, as a rule, the first New Leniency Agreement, considering the moment of the market request, shall be used for the obtentions of the leniency plus benefit.

92. If I have been able to celebrate a new Leniency Agreement, but it is still being negotiated, can I use it to get the benefit of Leniency Plus on a TCC?

Yes, provided that the General Superintendence, in its analysis of convenience and opportunity,
identify the strong likelihood of success of the proposed New Leniency Agreement, the granting of "conditional leniency plus" is possible. It is a benefit that can be applied under a suspensive condition, that is, if the New Leniency Agreement in negotiation is not concluded or non-compliance is declared by the Cade's Court, the anticipated discount granted at a TCC should be collected as complemental monetary contribution to the Fund for the Defense of Diffuse Rights (article 209, paragraphs 2 and 3 of RiCade). Also, specifically in the event of a declaration of non-compliance, the Signatories will also forfeit the benefits of the New Leniency (article 206, paragraph 1, part IX of RiCade).

93. If the applicant who qualifies for Leniency Plus is negotiating more than one New Leniency Agreement and is investigated in more than one case, how will the benefits be granted?

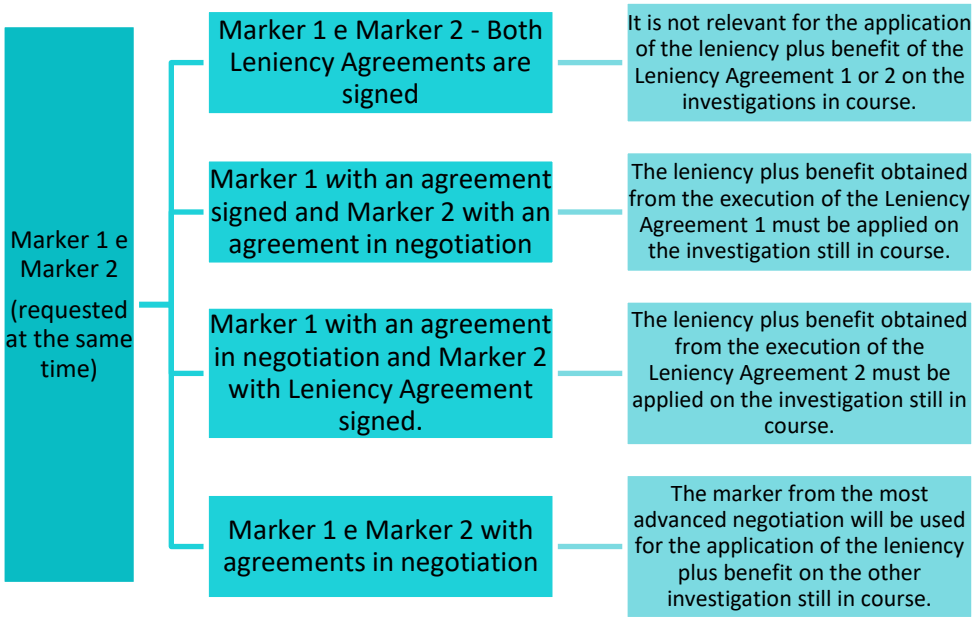
In this case, SG-Cade will use the following criteria, observing the principles of efficiency and celerity, depending on the case, in order to evaluate which the previous investigation will the leniency plus benefit be granted:

- the chronological order of marker (see question 88), if applicable;

- the New Leniency Agreement which has already been celebrated, if applicable; and
- if there is no New Leniency Agreement signed, but there is more than one simultaneous negotiation of New Leniency Agreements, there will be two possibilities, depending on whether the *marker* request happens at the same time.

A. When marker requests are made at the same time ("Same time marker Requests"), the most advanced in the negotiation will prevail at the applicant's discretion. The criterion of the chronological order of marker requests is not applicable then, remaining the analysis of the leniency plus benefit in expected fine following the subsequent criteria: has the New Leniency Agreement already been signed? If not, which negotiation is more advanced? Thus, the four scenarios shown in Table 1 below are possible:

Table 1. Markers Requested on the same date



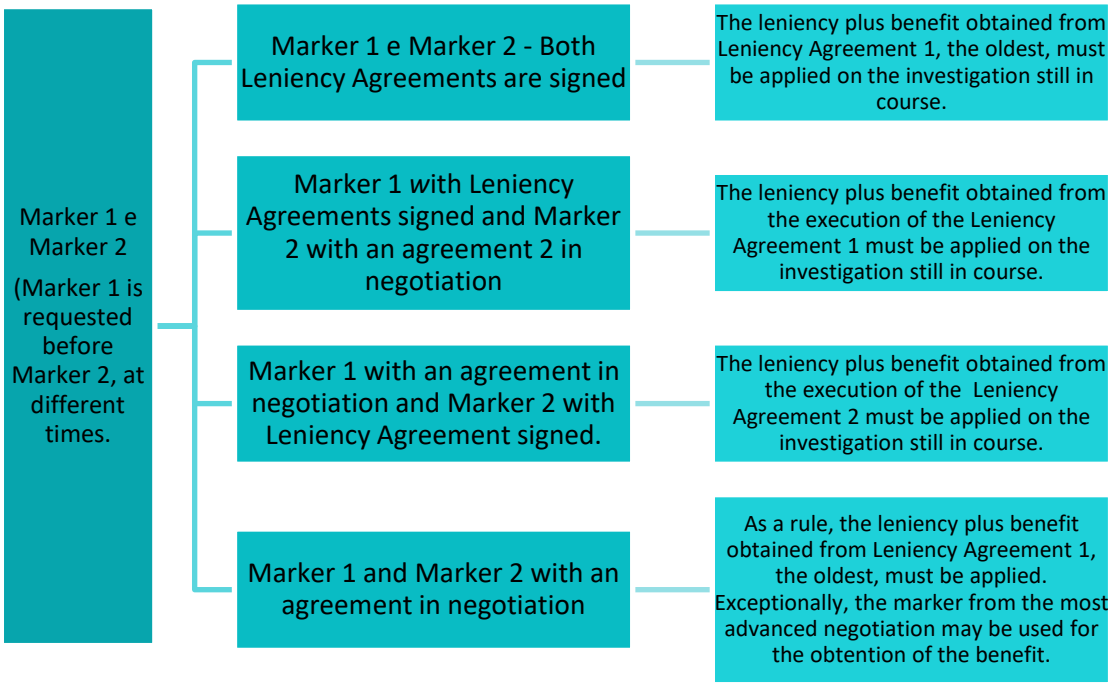
These four scenarios can be summarized as follows:

1. If the New Leniency Agreements are already signed, anyone can be chosen to be granted with leniency plus, once the marker requests happened at the same time and the New Leniency Agreements are signed;
2. If only one New Leniency Agreement is already signed, the applicant must necessarily use it to claim for a leniency plus; and

3. If there is still no New Leniency Agreement celebrated, the applicant must necessarily use the most advanced in negotiation the claim for the leniency plus. The evaluation of which is the most advanced in negotiation is at discretion of SG-Cade.

B. When marker requests happen on distinct time ("distinct time marker requests"), as a rule, the New Leniency Agreement, related to the first marker, must be used for leniency plus. Three criteria should be analyzed for eventual leniency plus benefit: what is the chronological order of the marker requests? Has the New Leniency Agreement already been signed? If not, which trade is more advanced? Thus, the four scenarios shown in Table 2 below are possible:

Table 2. Markers Requested on different date



For marker requests in different time (different time marker requests), the four scenarios above can be summarized as follows:

1. If the New Leniency Agreements are already signed, the leniency plus claim will be bounded to the first marker requested by the proponent. In this case, the chronological criterion of the marker request prevails;
2. If only one New Leniency Agreement is already signed and there is another under negotiation, the applicant must necessarily use it to claim for leniency plus;
3. If no New Leniency Agreement has been celebrated yet, the claim for leniency plus will be bounded to the first marker requested by the applicant. Exceptionally, SG-Cade may assess whether it is convenient and opportune that the benefit of the

marker of the most advanced investigation should be granted to the applicant, regardless of chronological criterion. In this case, the principles of efficiency and celerity will be taken in consideration. The assessment of which negotiation is most advanced is at the discretion of SG-Cade.

94. May the Partial Leniency be used in order to obtain the Leniency Plus benefit?

No. Partial leniency is a situation in which SG-Cade has prior knowledge of the reported infringement, but has no sufficient evidence to ensure the conviction of the company or individual when the marker is requested. As observed in article 86, paragraph 7, of Law n. 12.529/2011 combined with article 209, of RiCade, the New Leniency Agreement must refer to a new infringement of which SG-Cade has no prior knowledge. In this sense, a partial leniency is not enough to obtain the benefit of leniency plus, since SG-Cade already has prior knowledge of the anticompetitive conduct (article 86, paragraph 1, part III and paragraph 4, part 2 of Law 12.529/2011 combined with article 196, part 3 and 6 and article 208, part 2 of RiCade.

95. When does the leniency applicant receive the discount pursuant to Leniency Plus?

Under the terms of article 209, Paragraph 1 of RiCade, the reduction of one third of the penalty applicable to the investigation of the first cartel will, as a rule, be granted upon the judgment of the administrative proceeding in relation to the second cartel, object of the New Leniency Agreement reported by the company and / or individual. On this occasion, the Cade's Tribunal will assess fulfillment of the obligations of the signatories of the New Leniency Agreement (second cartel) and, if it declares compliance, the leniency plus benefit will be granted on the first cartel market.

If, however, the judgment of the administrative proceeding relating to the first cartel is prior to the judgment of the administrative proceeding in relation to the second cartel, object of the New Leniency Agreement reported by the company and / or individual, article 209, paragraph 2 of RiCade foresees an alternative. The judgment of the first cartel may then contain provisions that, if the fulfillment of the obligations established in the New Leniency Agreement is not verified in the administrative proceeding of the second cartel, the discount granted in advance shall be collected as a complementary monetary contribution to the Fund for the Defense of Diffuse Rights (article 209, paragraph 2 of RiCade).

In turn, there is also a chance that the signatory to the New Leniency Agreement will also be the applicant for a TCC and obtain the benefits of leniency plus in that application (see question 90).

PART V. LENIENCY AGREEMENTS FOR INTERNATIONAL CARTELS

In this part, the procedures of Leniency Agreements for international cartels will be approached, regarding the three phases of the Leniency Agreement negotiation (see Part II), which contemplate the marker request, the submission of pieces of evidence of the offense reported or under investigation and the execution of the Leniency Agreement.

96. About international cartels cases, is there any peculiarity regarding the marker request?

No. In respect of the marker request phase, the applicant may come to SG-Cade to formalize an oral or written request regarding a particular violation to be reported or under investigation, under article 198 of RiCade (see Part II.1).

97. Is it possible for the applicants and Cade's General Superintendence to adopt an oral procedure during the submission of information and documents phase, proving the reported or investigated infringement?

Yes. During the second phase of the negotiation, applicants may submit information and documents proving the reported or under investigation infringement in two ways: oral or written. These possibilities (written or oral) will be set out in the Marker Declaration to be granted by SG / Cade (see question 36).

In the oral form, the applicants may give oral statements to SG-Cade, providing detailed information and documents regarding the reported practice (see question 46), which will support the preparation of the document entitled History of Conduct, to be signed only by the General Superintendence (see question 52).

In turn, in written form, the legal representatives of the applicants may come to Cade to report the facts related to the infringement, pursuant to the information and documents provided by the applicants. The due date for the completion of this presentation must be agreed in advance between the legal representatives and SG-Cade, on a case-by-case basis, to reserve the notebook and the room at Cade's facilities.

In order to safeguard the confidentiality of the negotiation, any questions and / or comments that SG / Cade has during the preparation of the History of Conduct will be communicated orally or written to the applicants and/or their legal representatives, depending on the requested option. If requested, SG-Cade may forward its comments in a document apart that does not identify the companies and/or individuals, not even the market affected by the reported practice (see question 50).

Finally, it should be emphasized that the History of Conduct is a document prepared internally by the employees of the Office of the SG's Chief of Staff, which follows the confidentiality procedures of the proposal and the entire process of the Leniency Agreement negotiation (see question 57).

98. Does Cade share information on a Leniency Agreement with authorities of other countries?

No. Cade does not share information from a Leniency Agreement with antitrust authorities of other countries, except if the leniency applicants and/or recipients expressly allow the sharing of the provided information with the authorities of other jurisdictions (waiver). The waiver can involve both formal aspects (procedural waiver) and material aspects of the investigation (full waiver).

In the context of international cartels, in situations in which the Leniency Agreement proposal is made in multiple jurisdictions, the waiver can fulfill the interests of the leniency applicant, since such procedure aims at avoiding the duplication of information to be generated by them and to fulfill the interests of the antitrust authorities, thus allowing for expedited investigations and international coordination of procedures.

This sharing of information, however, must be previously agreed upon by both the leniency recipient and Cade's General Superintendence. In addition, the SG-Cade does not disclose information or documents in connection with a Leniency Agreement at the request of a foreign judge or authority, which do not have competent jurisdiction in Brazil.

Same as Question 79.

99. In the interest of maintaining the secrecy of negotiations and / or investigations in other countries, may Cade coordinate the timing of the publicizing of its investigation with foreign authorities?

Yes. In order to preserve investigations in other jurisdictions and / or not harm any negotiations of agreements by the signatory in other countries, cooperation between Cade and foreign antitrust authorities is desirable, opportune and usual, so as to negotiate the timing of the publicizing of the Agreement, or even the moment of the opening of the administrative proceeding, what makes the investigation public. Thus, confidentiality may be applied to the proceedings, documents, objects or information and procedural acts, as long as in the interest of the investigations, at the discretion of Cade's General Superintendence (article 50 combined with article 140, paragraph 1 of RiCade).

In turn, the opening of the administrative proceeding by SG-Cade will guarantee to the defendants the contradictory rights, giving them full access to the documents used to form the conviction of Cade (sole paragraph of article 50 combined with article 207, paragraph 2 of the RiCade). The order determining its establishment shall include the indications of the defendants, the imputation of the infringement to each defendant, indicating the facts to be ascertained, that is, the market affected by the unlawful conduct, the period of conduct and the dynamics of the cartel (article 186 of the RiCade).

As a rule, following the Leniency Agreement, the content of the Agreement and all related documents will remain restricted and will not be disclosed to the public, even after any inquiry or administrative proceeding have been opened by Cade, except for a judicial branch order or express authorization of the signatories. The identity of the signatories will, as a rule, be treated as restricted access to the public until the judgment of the Administrative Proceedings by the Cade (Article 207 of RiCade) (see question 76).

100. May defendants disclose information and / or documents of the Leniency Agreement to foreign authorities?

No. The defendants in the Administrative Process opened due to the Leniency Agreement can not disclose or share, in whole or in part, information an /or documents to third parties, even if they are other governmental agencies or foreign authorities, without Cade's authorization (Article 207 , Paragraph 2, item II of RiCade). Access to such information shall be used strictly for the purpose of exercising the right to due process in the administrative process before Cade (article 207, paragraph 2, item I of RiCade).