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Antitrust Leniency

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Administrative Council for Economic Defense

CADE's Antitrust Leniency Programme Guidelines

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CADE's Antitrust Leniency Programme

Antitrust Analysis Unit 10

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TERMINOLOGY AND ABBREVIATIONS

LA - Leniency Agreement

CADE - Administrative Council for Economic Defense

CGAA – Antitrust Analysis Unit

CGU – Office of the Comptroller General of Brazil

CH – Leniency Agreement History of Conduct

LDC – Brazilian Competition Law

MP – Prosecution Services

MPE – State Prosecution Services

MPF – Federal Prosecution Services

PFECADÉ – Office of the Attorney General at CADE

RICADE – Statutes of CADE

SDE/MJ – Secretariat for Economic Monitoring of the Ministry of Justice

SG – Office of the Superintendent General at CADE

TCC – Cease and Desist Agreement

INTRODUCTION

CADE's Antitrust Leniency Programme Guidelines consolidate the best practices and procedures adopted by the agency to negotiate leniency agreements. They aim to register institutional memory and be a reference for future negotiations, guiding lawyers, civil servants, and society in the procedures for this important activity for the Brazilian competition policy enforcement, the fight against cartels, and anticompetitive practices.

This document is neither binding nor a rule. Practices and procedures hereby described may be amended as the Office of the Superintendent General at CADE (SG) sees convenient and opportune, depending on the specific circumstances in the case at hand. Nonetheless, a considerable part of these guidelines result directly from the Law 12529/2011 and the Statutes of CADE (RICADE), which have a binding nature.

The Leniency Agreement's main phases for negotiation and signature, as per the provisions of the articles 86 and 87 of Law 12529/2011, and articles 196 through 210 of the Statutes of CADE, are the basis for the structure of these guidelines:

- (1) General Aspects of CADE's Antitrust Leniency Programme (items 01 a 06)
- (2) Leniency Agreement Phases (items 17 a 37)
 - (2.1) Preliminary phase (optional) (items 18 a 19)
 - (2.2) First Phase: marker request (items 20 a 25)
 - (2.3) Second Phase: submission of information and documents proving the violation reported (items 26 a 31)
 - (2.4) Third Phase: execution of the Leniency Agreement (items 32 a 37)
- (3) Upon signing the Leniency Agreement (items 38 a 45)
- (4) Leniency Plus (items 46 a 53)
- (5) Leniency Agreement for international cartels (items 54 a 58)

PART 1. GENERAL ASPECTS OF CADE'S ANTITRUST LENIENCY PROGRAMME

1. CADE's Antitrust Leniency Programme: General Information

CADE's Antitrust Leniency Programme is a set of initiatives to detect antitrust violations; informing and providing ongoing guidance to companies and the general public on the rights and interests provided for in Articles 86 and 87 of Law 12529/2011 (Brazilian Competition Law) and Articles 197 through 211 of the Statutes of CADE; and encouraging, guiding, and assisting applicants for leniency agreements.

The Programme grants companies and/or individuals, that are currently or previously involved in a cartel or other antitrust practice, benefits within the administrative and criminal fields by signing a leniency agreement, committing themselves to cease the illegal practice, report and admit their participation, as well as cooperating by submitting information and documents relevant to the investigation.

In the administrative field—as long as applicants cooperate with the investigation, and the cooperation leads to the identification of other parties involved, as well as to the compilation of documents and information that prove the alleged violation—the signatory will benefit from the termination of CADE's punitive action—provided the Office of the Superintendent General has no prior knowledge of the violation reported – or reduction of one to two thirds of the applicable administrative penalties—provided the Office of the Superintendent General has prior knowledge of the violation reported—(Article 86, Paragraph 4, of Law 12529/2011 in conjunction with Article 209, Items 1 and 2 of the Statutes of CADE). Regarding "prior knowledge" see Item 6 below.

In the criminal field, the signature of the Leniency Agreement lifts the statute of limitations and prevents the filing of a complaint against the beneficiary regarding antitrust violations referred to in the Economic Crimes Law (Law 8137/1990) and other violations related to cartels described in the General Procurement Act (Law

14133/2021) and Article 288 of the Criminal Code (criminal conspiracy). In case of compliance, CADE automatically extinguishes the penalties for the violations aforementioned (Article 87 of Law 12529/2011 and Article 209, Head Provision of the Statutes of CADE).

Law 12529/2011 does not impose to the signatory the obligation to compensate possible harmed consumers as a condition to sign the leniency agreement. The law also does not exempt the beneficiary from answering for competitive harm caused in any public civil action and/or private action against the beneficiary and other co-conspirators. However, according to Law 14470/2022, which altered the Paragraphs 2 and 3 of Article 47 of Law 12529/2011, the signatory of the leniency agreement: (1) will only be liable for the damages actually caused to those harmed, and will not be liable in double for the damages caused in relation to the offences confessed to CADE; and (2) will not be jointly and severally liable for the damages caused by the other co-conspirators of the antitrust violation.

2. The Leniency Programme in Brazil

Law 10149/2000 introduced the benefits of leniency in Brazil, changing the previous Competition Law (Law 8884/1994, Articles 35-B and C) to strengthen the fight against anticompetitive practices. When Law 8884/1994 entered into force, the leniency agreements were carried out by the Ordinance no. 4/2006 (Article 61) and by the Ordinance no 456/2010 (Article 59).

Since 2003, the criminal prosecution of cartels became a priority in Brazil, CADE has cooperated with the prosecution authorities to ensure that managers, officers, and employees of companies involved in violations who did not sign Leniency Agreements are prosecuted for cartel practice subject to fines, and to penalties of 2 to 5 years of imprisonment (Article 4, Item 2 of Law 8137/1990, Economic Crimes Law).

On 29 May 2012, when the new Competition Law (Law 12529/2011) entered into force, CADE launched the current Leniency Programme based on Chapter VII, Title VI, in which rights and interests are provided in the articles 86 and 87, as well as in the Articles 197 through 211 of the Statutes of CADE (RICADE).

The former Secretariat of Economic Law of the Ministry of Justice (SDE/MJ), with function similar to CADE's, executed the first antitrust leniency agreement in Brazil in 2003. In the same year, after two search and seizure warrant operations, the Secretariat had already obtained positive reputation before the business community on its ability to reveal and investigate anticompetitive practices. Since then, CADE has improved the antitrust leniency in Brazil to make it more transparent, efficient, and secure.

The updated data on the total number of Leniency Agreements signed year by year with CADE are available [here](#).

3. Violations to which CADE's Leniency Agreement apply

CADE's leniency agreement applies to the violations provided in Article 36 of Law 12529/2011, previously established by Articles 20 and 21 of Law 8884/1994.

The agreement also applies to anticompetitive practices described in Article 36, Paragraph 3, Item 1, Sub-items "a", "b", "c", and "d", and Item 2 of Law 12529/2011: (1) agreeing, combining, manipulating, or colluding with competitors, by any means, (a) the prices of goods or services individually offered; (b) the production or sales of a restricted or limited amount of goods, or the 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 others, the distribution of customers, suppliers, regions, or periods; and/or (d) prices, conditions, privileges, or abstention in public procurement; and (2) promote, obtain, or influence the adoption of agreements or concerted practices amongst competitors (as in the context of associations and syndicates, for example).

In general, leniency agreements are signed regarding cartels—that is, when competitors collude and make agreements with the objective or potential of (1) limiting, distorting, or harming free competition or free enterprise in any way; (2) dominating the relevant market of goods or services; (3) increasing profits arbitrarily; and (4) abusing a dominant position (Article 36, Head Provision, Paragraphs 1 through 4 of Law 12529/2011).

It should be noted that cartels constitute “infringement by object” according to both CADE's jurisprudence and the head provision of Article 36 of Law 12529/2011. This means that it is not necessary for the cartel to have actual effects in the market; it is sufficient that the anticompetitive practices have potential harmful effects, even if not achieved. In addition, an antitrust violation may exist even if the companies involved are not deemed guilty.

According to the authority's case law¹ and CADE's Resolution no 20/1999, collective anticompetitive conducts may also occur tacitly, regardless an explicit agreement among the economic agents. Moreover, according to the case, a single meeting or communication of illicit agreement among competitors may be enough to constitute a cartel.²

¹ Access Administrative Proceeding no. 08700.003699/2017-31 (orthoses and prostheses national market and special medical supplies in the segment of implantable cardiac pacemaker), distributed to the former commissioner Luis Braido (Document SEI no. 1304377), Paragraph 60, decided on 22 May 2024: “(...) CADE's Resolution no. 20/1999 establishes that cartels are “explicit or tacit agreements among competitors in the same market, involving a significant share of the relevant market regarding prices, production and supply quotas, and territorial exclusivity, with the attempt to be closer to monopoly levels by increasing prices and profits jointly.” Thus, concerted practices may also occur tacitly regardless explicit agreements among the economic agents.”

²For example, access Administrative Proceeding no. 08012.006130/2006-22 (cartel in the market of building maintenance services) distributed to the former Commissioner Paulo Burnier, Paragraph 50, Document SEI no. 0375331, decided on 16 August 2017.

The Leniency Agreement is applicable for anticompetitive conducts other than classic cartels, such as: (1) the softcore cartels, whose degree of institutionalisation is lower; (2) the exchange of competitively sensitive information as independent conducts, when there is no agreement between economic agents; and (3) the influence for the adoption of concerted practices amongst competitors.

Among the many practical examples of antitrust violations that can be subject to a leniency agreement are: (1) agreements that defraud the competition in the procurement; (2) agreements to fix, keep, reduce or control wages or other wage-related factors; (3) no-poach or wage-fixing agreements; (4) seller cartels; (5) the exchange of competitively sensitive information involving wages and other benefits; (6) the exchange of competitively sensitive information involving customers, prices, quantities, profit margin, or other variables that reduce uncertainties and/or allow the coordination among competitors; (7) the exchange of competitively sensitive information within technical cooperation agreements, and research and development, etc.

4. Cartels are both administrative and criminal violations

The cartel practice is a violation both under administrative (Article 36, Paragraph 3, Item 1 of Law 12529/2011) and criminal law (Article 4, Item 2 of Law 8137/1990), and it subjects the wrongdoer to the payment of compensation in the civil field through civil and/or private damage lawsuits (Article 47 of Law 12529/2011).

A cartel that can defraud competition in procurements, as it also results in losses to the treasury, may be subject to investigation and penalties provided by other legislations such as Law 12846/2013 (Anticorruption Law) which protects the public administration; Law 8443/1992 (The Brazilian Court of Accounts Law) aimed at controlling and protecting government accounts; and Law 14133/2021 (Government Procurement Law), and the Brazilian Criminal Code (Article 337-F), which protects the fairness of procurement processes carried out by the Brazilian Government.

5. Requirements to apply for an Antitrust Leniency Agreement

Article 86 of Law 12529/2011 and Article 198 of the Statutes of CADE, specify the requirements for the signature of a Leniency Agreement in Brazil. It is necessary that:

- I. the company is the first to be qualified related to the violation reported or under investigation;
- II. the company and/or the individual cease the participation in the violation reported or under investigation;
- III. the Office of the Superintendent General does not have enough evidence to secure the conviction of the company and/or individual at the moment of the application;
- IV. the company and/or individual admit the participation in the conduct;
- V. the company and/or individual fully and permanently cooperates with the investigation and the administrative proceeding, attending, at their expenses and whenever requested, all procedures, until the final decision on the case is rendered; and
- VI. the cooperation results in the identification of other parties involved and in the gathering of documents and information that proves the violation reported or under investigation.

It is worth mentioning that the cessation of the conduct provided in Article 86, Item 2 of Law 12529/2011, must safeguard the applicant of the Leniency Agreement, preventing any disclosure of evidence after the decision to cooperate willingly with the authority. Hence, after the Leniency Agreement has been proposed, any supervening facts relevant to the conduct under review must be reported to CADE.

a. Applicant's confession of wrongdoing

The confession statement may be either oral or written. However, the leniency agreement is, by itself, a written document, which contains an explicit clause on the confession of the company and/or individual's participation in the reported anticompetitive conduct. The confession clause is registered as follows:

"Confession of Participation in the Reported Conduct

7. Each signatory admits the participation in the violation as described in the 'History of Conduct'."

b. Cartel leader may apply for a Leniency Agreement

Law 12529/2011 lifted the restriction for cartel leaders to apply for leniency agreements. Thus, the Office of the Superintendent General is able to sign a leniency agreement with cartel leaders, provided the applicant fulfil all legal requirements (Article 86 of Law 12529/2011 in conjunction with Article 197 of the Statutes of CADE).

c. Leniency Agreement applicants

According to Article 86 of Law 12529/2011, the companies and the individuals currently or previously involved in the antitrust violation can apply for the leniency agreement, provided they fulfil the requirements described in Article 86 of Law 12529/2011 and Article 198 of the Statutes of CADE.

Associations per se are entitled to apply for leniency agreements when independently involved in the violation, not only through its members. Usually, the conduct attributed to associations is the enforcement of the adoption of concerted practices which, despite not referred to as crimes (such as cartel as provided for in Article 4 of Law 8137/1990), may subject both firms and individuals to heavy administrative penalties. The associations that apply for the Leniency Agreement are subject to the same requirements provided for in Items 1, 2, 3 and 4 of Paragraph 1 of the Article 86 of Law 12529/2011. The benefits of a leniency agreement between an association and the Office of the Superintendent General at CADE may be extended to their managers, officers, and employees (de facto or de jure), but not to companies and individuals that are members of the association.

Individuals participating in the violation, even those who are not involved in the management of the companies at all (that is, who either do not hold any decision-making power or hold limited decision-making power) are entitled to apply for leniency agreements with the SG. The benefits the agreement between an individual who is not in charge of the management and CADE, without the participation of the legal person, are not automatically received by the company in which the employee is or was linked to.

The negotiation of a leniency agreement is usually made by the applicant's legal representative and the SG. Therefore, the applicant must grant their attorney special powers over the negotiation and signature of the agreement with CADE and the Prosecution Services.

d. Companies and individuals' proposals for Leniency Agreements

In case the applicant is a company, the benefits of the leniency agreement may be extended to the companies of the same group, de facto or de jure, provided they sign the respective document jointly, and cooperate with the investigations (Article 86 Paragraph 6 of Law 12529/2011 in conjunction with Article 198, Paragraph 1 of the Statutes of CADE). Once the applicant signed the leniency agreement, it is not necessary that both individuals and legal persons of the same economic group do it. However, they are not exempted from the obligation to cooperate and are subject of being excluded either by the Office of the Superintendent General or the Tribunal of CADE in case of non-compliance.

Individuals and companies of the same economic group can sign the agreement with the applying company or after in a separate document, when allowed by CADE and at its opportunity and convenience criteria (Article 198, Paragraph 2 of the Statutes of CADE). The companies and its managers, officers, and employees can have the same legal representatives or be represented by different attorneys. The SG may grant immunity to other companies of the same economic group of the applicant (and respective employees) regardless the confession of participation in

the reported conduct, as long as the applicant and respective employees have already done that.

However, if the proponent of the leniency agreement is an individual and the agreement is entered into without the participation of the legal person, its benefits will not extend to the company to which the employee is or was linked (Article 86, Paragraph 6 of Law 12529/2011 and Article 198, Paragraph 3 of the Statutes of CADE). The non-extension of the benefits is a factor that aims at increasing the cartel or any other anticompetitive practice's instability, incentivising all the participants, companies or individuals, to report the violations as soon as possible.

6. Benefits of the Leniency Agreement

A leniency agreement signed with CADE provides the applicants, companies and/or individuals, with significant benefits in the administrative and criminal fields, as soon as they comply with the obligations set in the document.

The individuals involved in such practices are subject to severe administrative penalties (Article 37 of Law 12529/2011) and, for companies, an antitrust violation can exist whether they are deemed guilty or not. The decision against the defendant of such conducts is consolidated in CADE's case law by both the enforcement of the current Law 12529/2011 and the previous regulation (Law 8884/1994). The Tribunal of CADE has been clear on its decisions about the agreements among competitors with the objective or potential of (i) limiting, distorting, or harming free competition or free enterprise in any way; (ii) dominating the relevant market of goods or services; (iii) increasing profits arbitrarily. In addition, the individuals involved may also be punished criminally for the violation, providing that the cartel is a crime referred to in Article 4 of Law 8137/1990.

Furthermore, the participants in the anticompetitive conduct must have in mind that—even if there is no request for a leniency agreement—CADE can become aware of illegal agreements between competitors through several other sources (for

example, complaints by customers or third parties, news and media disclosure, cooperation with sector regulators in Brazil, cooperation among antitrust authorities from other jurisdictions, ex officio investigations, among others) or, also, through several administrative measures (such as, search and seizure warrants, inspections, information request, and intelligence procedures for detecting bid rigging) which enforce the proposals of leniency agreements with the authority.

a. Benefits granted to applicants in compliance with the Leniency Agreement

In the administrative field, the signature of the leniency agreement makes it possible for either companies or individuals to receive benefits from total immunity to the reduction of the administrative penalties; benefits granted definitively when the Tribunal of CADE renders the judgement on the reported illegal practices (Article 86, Paragraph 4 of Law 12529/2011).

As per the provisions of Article 86, Paragraph 4, of Law 12529/2011 in conjunction with the Article 209 of the Statutes of CADE, once the Tribunal issues the statement of compliance, the signatories benefit from:

- I. the cancellation of administrative penalties in relation to Law 12529/2011, provided the leniency agreement application be presented to the Office of the Superintendent General at CADE (SG) when the authority has no previous knowledge of the reported violation; or
- II. the reduction of one to two thirds of the penalties applicable, according to Law 12529/2011, provided the leniency agreement application be presented to the SG before the authority has no prior knowledge of the reported violation.

In the criminal field, the signature of the leniency agreement lifts the statute of limitations and impedes the filing of a complaint against the beneficiary of the agreement regarding the violations described by the Economic Crimes Law (Law

8137/1990) and other cartel violations referred to in the General Procurement Act (Law 14133/2021) and Article 288 of the Criminal Code (criminal conspiracy). In case of compliance, CADE automatically extinguishes the penalties for the violations aforementioned (Article 87 of Law 12529/2011 87 of Law 12529/2011).

In case of partial leniency regarding cartels to defraud the competitive nature of the procurement, the Tribunal of CADE can consider sanctions related to same case eventually applied by other government bodies in the fine calculation.

b. Total immunity or reduction of penalties

Either the total immunity from administrative punitive action—total leniency—or the reduction of one to two thirds of the applicable penalties—partial leniency (Article 86, Paragraph 4 of Law 12529/2011)—are granted, depending on the "prior knowledge" of the reported violation by the Office of the Superintendent General at CADE (SG) (Article 209, Items 1 and 2 of the Statutes of CADE):

- i. if the SG had no prior knowledge of the violation, in case of compliance, the Tribunal will grant the company and/or individual the total immunity from the penalties applicable to the reported violation;
- ii. if the SG already had knowledge of the practices, but not enough evidence to secure conviction of the participants, the company and/or individual will be able to sign a leniency agreement with partial benefits (Partial Leniency). In case of compliance, receive by the Tribunal the benefit of the reduction of one to two thirds of the penalties applicable, depending on the effectiveness of the cooperation provided and good-faith of the wrongdoer in complying with the leniency agreement.

Although the concept of previous knowledge does not exist in the Brazilian legislation, the SG understands that it takes place when, during the presentation of the leniency agreement application, there is an open administrative procedure (Articles 66 and 69 of Law 12529/2011) with reasonable circumstantial evidence to

investigate the anticompetitive practice subject to the application. Moreover, the complaints made through the [Clique Denúncia platform](#), news reports, or information on the existence of investigations not evaluated by CADE in another government body, among others, as a rule, do not characterize previous knowledge by the SG, except if there is enough proof to launch an administrative procedure.

In case of partial leniency, the gross sales of the company in the year before the proceedings were initiated, in the field of activity and the market affected by the cartel, must be considered (Article 37, Item 1 of Law 12529/2011). Alternative calculations may be applied according to the particularities of the case, and CADE's case law (See [Guide for Cartel Penalties](#)). The gross sales of reference will be updated in the SELIC rate until the month before the marker granting. Preferably, the Office of the Superintendent General at CADE (SG) will establish the basis of calculation during the partial leniency process of negotiation. The calculation expected in case of partial leniency will represent the parameter in relation to the other respondents and committing parties of the Cease and Desist Agreement during the administrative proceeding, so as to grant the consistency of the best practices and procedures adopted by CADE.

In case of partial leniency, the maximum tax rate adopted must correspond to the lower tax rate applied to the committing parties, if applicable (Article 86, Paragraph 5 of Law 12529/2011). This tax rate is the standard, which will vary depending on particular penalties, and on the occurrence of aggravating and mitigating factors. Finally, the tax relief is applied to one to two-thirds of the applicable penalties (Article 86, Paragraph 4 of Law 12529/2011 in conjunction with Article 209, Item 2 of the Statutes of CADE). The maximum tax rate relief must be applied to the partial leniency applicant that: (1) fully cooperates with the investigations and the administrative proceeding, (2) submits significant information, documents, and evidence in relation to the ones that the SG had before, and (3) submits the leniency agreement proposal before the launching of the administrative proceeding to investigate the same facts presented by the

applicant. The benefit granted to the signatory of the partial leniency agreement must be higher than the maximum tax relief granted to a committing party in the course of a cease and desist agreement in the same proceeding.

7. Granting Leniency Agreement's benefits

a. The moment of benefits granting

In the administrative field, the benefits are effectively granted when the statement of compliance with the leniency agreement is issued by the Tribunal of CADE in the hearing of the administrative proceeding (Article 86, Paragraph 4, Items 1 and 2 of Law 12529/2011). The statement of compliance with the leniency agreement issued by the Tribunal is exempt from judicial ratification.

In the criminal field, the signature of the leniency agreement lifts the statute of limitations and prevents the filing of complaint against the signatory on, for example the crimes described by Article 87 of Law 12529/2011. Total immunity, on the other hand, is granted automatically when the Tribunal issues the statement of compliance.

b. Extension of criminal liability

The leniency agreement benefits the wrongdoer of crimes directly related to cartels. In the criminal field, the signature of the leniency agreement lifts the statute of limitations and prevents the filing of a complaint against the beneficiary of the leniency agreement regarding the antitrust violations described by the Economic Crimes Law (Law 8137/1990) and other cartel violations referred to in the General Procurement Act (Law 14133/2021) and in the Article 288 of the Criminal Code (criminal conspiracy) provided for in the Article 87 of the head provision of Law 12529/2011. Thus, this is an illustrative list of crimes directly related to cartels. In turn, in case of compliance, the penalties are automatically ceased.

The benefits of the antitrust leniency agreement are not automatically extended to the crime provided for in Anticorruption Law (Article 5, Item 4 of Law 12846/2013) i.e., “defrauding bid riggings or the agreement resulting from it”.

c. Administrative proceeding

There is no legal provision for the extension of total immunity or reduction of administrative penalties for the violations other than the ones described in Article 87, head provision of Law 12529/2011, although it is only an illustrative list.

8. Authorities that investigate and punish cartels in the administrative and criminal fields

In the administrative field, the Office of the Superintendent General has the jurisdiction to investigate and launch administrative proceedings on cartels and other anticompetitive conducts (Article 13, Item 5 of Law 12529/2011) while the Tribunal of CADE renders the sentence for acquittal or conviction (Article 9, Item 3 of Law 12529/2011). The signature of the leniency agreement makes it possible for the companies and/or individuals to receive benefits from total immunity to the reduction of the administrative penalties, benefits granted definitively when the Tribunal renders the decision on the Administrative Proceeding (Article 86, Paragraph 4 of Law 12529/2011).

There are other competent authorities besides CADE, in the administrative field, to investigate cartels to restrict the competition in public procurements, such as the State and local Comptroller General Offices and Courts of Accounts, as well as prosecution bodies (Prosecution Services’ Offices and police authorities).

In the criminal field, the Prosecution Services has the jurisdiction to investigate and file a complaint to the Judicial branch against the cartel (Article 16 of Law 8137/1990, and a criminal court renders the final decision. The signature of the leniency agreement also lifts the statute of limitations and prevents the filing of complaints against the beneficiary regarding the crimes described in the Economic

Crimes Law (Law 8137/1990) and other crimes directly related to cartel practices, such as the ones described in the General Procurement Act (Law 14133/2021) and in the Article 288 of the Criminal Code (criminal conspiracy). In case of compliance, the penalties for the violations provided above are automatically ceased, under the terms of Article 87 of Law 12529/2011.

9. Infeasibility of signature of Antitrust Leniency Agreement with the Prosecution Services and/or the Judiciary

Law 12529/2011 provides that the jurisdiction responsible for the signature of the Antitrust Leniency Agreements is the Office of the Superintendent General. Therefore, even if there is direct contact with the Prosecution Services or the Judiciary to negotiate the leniency agreements concerning other illegal practices, it is necessary to negotiate the antitrust leniency agreement with CADE, which will feature the Prosecution Services as a consenting party.

As per Law 12529/2011, the signature of a leniency agreement with other agencies (Prosecution Services or the Office of the Comptroller General of Brazil, for example) does not exclude the authority of Office of the Superintendent General jurisdiction over the execution of antitrust leniency agreements provided for in Law 12529/2011.

CADE aims to sign technical cooperation agreements in order to enforce the institutional activity aligned with other government bodies, to increase the legal certainty to the applicants of antitrust leniency agreements.

10. Penalties imposed to cartels and other antitrust violations

Cartel is both an administrative and criminal violation.

In the administrative field, as per the Article 37, Items 1 through 3 of Law 12529/2011, the financial penalties (fines) applicable to antitrust violations are the following:

I. for companies, a fine of 0.1% to 20% over the gross sales of the company, group, or conglomerate, in the last fiscal year before the launching of the administrative proceeding, in the field of business activity in which the violation occurred, which will never be less than the advantage obtained when possible the estimation thereof;

II. for individuals or legal persons under private or public law, as well as any association of persons or legal entities, which do not perform a business activity; if it is not possible to use the gross sales criteria, the fine will be between BRL 50 thousand and BRL 2 million;

III. for officers who are directly or indirectly responsible for the violation, when negligence or wilful misconduct is proven, a fine of 1% to 20% of that applied to the company is imposed.

As provided for in Article 38 of the same Law, in addition to fines, other sanctions may be applied separately or cumulatively, for instance: (1) publication of the decision in a widely read newspaper; (2) prohibition of contracting with official financial institutions and of participating in government procurements; (3) business division and divestiture of assets; (4) recommendation for a compulsory license over the intellectual property rights; (5) the violator be denied instalment payment of federal taxes; (6) the prohibition of carrying on trade and any other act or measure required to eliminate anticompetitive effects. The signatory of the leniency agreement is not deterred from either contracting with financial institutions or taking part in government procurements after that.

In the criminal field, as per the provisions of Article 4, Item 2 of Law 8137/1990 (Economic Crimes Law), cartels subject the individuals involved to fines, as well as two to five years of imprisonment. According to Article 12 of the same Law, the penalty may be increased by one third to one half if the crime is considered to cause serious harm to society, is committed by a civil servant in the exercise of his or her duties, or is related to essential goods or healthcare and life services.

11. Leniency Agreements may include anticompetitive conducts practiced abroad

According to Article 2, head provision of the Competition Law, the CADE's Leniency Programme applies to the violations fully or partly practiced in the Brazilian territory, as long as they produce or may produce effects in Brazil.

In relation to anticompetitive conducts abroad, the leniency agreement can only be signed if the applicant, either the company and/or individual, provides evidence that the effects were produced or could be produced in the Brazilian territory, establishing a connection between the anticompetitive conduct and its effects in the country.

12. The Leniency Agreement is not a complaint

In case a nonparticipant third party is aware of the cartel or other anticompetitive conduct, a complaint can be made to the Office of the Superintendent General at CADE (SG). The complaint may either be a filed petition at the authority or in CADE's website, using the tool [Clique Denúncia](#). It is essential to make a reasoned complaint, followed by information and documents to prove the existence of an alleged violation, to assist the investigation of the SG. We highlight that the complaint is not a leniency agreement proposal, since this agreement only applies to the participants of the anticompetitive conducts.

13. Coordination of the Leniency Programme at CADE

Under the provisions of Article 86 of Law 12529/2011, the Office of the Superintendent General at CADE is responsible for the negotiation and signature of the leniency agreement. The Tribunal of CADE is not part of the negotiation and/or the signature of the leniency agreement, as it is responsible for the final decision on the compliance with the agreement of the corresponding administrative proceeding (Article 86, Paragraph 4 of Law 12529/2011).

Even though the Articles 86 and 87 of Law 12529/2011 require no participation of the Federal Prosecution Services to sign the leniency agreement, the consolidated experience of CADE considers that the participation of the Federal Prosecution Services, the sole holder of the public criminal prosecution and jurisdiction, is fundamental to ensure the integrity of the leniency agreement, considering the criminal effects resulting from it. Thus, the Prosecution Services (either Federal or State) may participate in the signature of the agreement as a consenting party, even in international cartel cases, to provide more legal certainty to the signatories of the leniency agreement, in addition to facilitating the criminal investigation of the violation based on the other parties involved.

14. Differences between types of collaboration

a. Differences between the Leniency Agreement and the Cease and Desist Agreement signed with CADE

The companies and/or individuals investigated for anticompetitive practices among competitors that are not entitled to sign a leniency agreement, at first may propose the signature of a cease and desist agreement with CADE (Article 85 of Law 12529/2011 in conjunction with Articles 179 to 196 of the Statutes of CADE).

The leniency agreement is an instrument granted only to the first wrongdoer that reports an anticompetitive conduct among competitors to CADE (Article 86, Paragraph 1 of Law 12529/2011), whose benefits are both administrative and criminal (Article 86, Paragraph 4 in conjunction with Article 87 of Law 12529/2011).

On the other hand, the Cease and Desist Agreement is accessible to all the other investigated parties in the anticompetitive conduct (Article 85 of Law 12529/2011), resulting in benefits in the administrative field, without provision of automatic benefits in the criminal field. Thus, the Cease and Desist Agreement has the following requirements:

I. As per the provisions of Article 85, Paragraph 1, Item 3 of Law 12529/2011 and Article 184 of the Statutes of CADE, financial contributions to the Fund for De Facto Joint Rights are to be established, based on the amount of the expected fine. It is subject to a percentage reduction that varies according to the extent and usefulness of the signatory's collaboration with the investigation and the time at which the Agreement was signed, see Articles 187, Items 1, 2, and 3, and Article 188 of Statutes of CADE, on the following conditions:

a. immediately after the administrative procedure is launched and before the case is submitted to the Tribunal of CADE, the financial contribution is calculated based on the expected fine, which will impose:

- i. reduction of 30% to 50% to the first applicant of the Cease and Desist Agreement;
- ii. reduction of 25% to 40% to the second applicant of the Cease and Desist Agreement;
- iii. reduction of up to 25% to the other applicants of the Cease and Desist Agreement;

b. After the records are submitted to the Tribunal of CADE: the financial contribution will be calculated based on the expected fine, which will impose a reduction of up to 15% (these parameters may be changed if there is Leniency Plus).

- II. the applicant must admit their participation in the conduct, as established in Article 185 of the Statutes of CADE;
- III. the applicant must contribute to investigations and enquiries, under the terms of Article 186 of the Statutes of CADE;
- IV. the applicant must not practice the conduct under investigation, as per the provisions of Article 85, Paragraph 1, of Law 12529/2011;
- V. a fine must be set in to be paid in case of total or partial non-compliance with the agreed commitments.

Since the Cease and Desist Agreement do not grant automatic benefits to the criminal field, the Prosecution Services are not a consenting party in the agreement and may press criminal charges against the signatories. Nevertheless, whenever the party that is interested in signing a Cease and Desist Agreement with CADE also wishes to negotiate a plea agreement or a non-prosecution agreement with the prosecution services, the Office of the Superintendent General at CADE can assist the communication. The negotiation and the signature of potential agreements occur at the discretion of the competent authorities.

It should be mentioned that, even if there is no leniency agreement signed with CADE, only the Cease and Desist Agreement may be available to the company and/or the individuals, depending on how they fulfil the requirements to negotiate and sign each type of agreement.

b. Differences of the plea agreements

The “plea agreements” in Brazil are part of different special laws from the Brazilian legal system, such as in Law 7492/1986 (on crimes against the Brazilian Financial System, in Article 25, Paragraph 2), in Law 8072/1990 (on heinous crimes, in Article 8, Sole Paragraph), in Law 8137/1990 (on economic crimes, tax crimes, and crimes against consumers, in Article 26, Sole Paragraph), in Law 9613/1998 (on money laundering crimes, and concealment of assets, rights, and values, in Article 1, Paragraph 5), in Law 9807/1999 (on organisation and maintenance of special programmes of victim and witness protection, in Article 14), in Law 11343/2006 (on crimes of the law on drugs, Article 41), in the Brazilian Criminal Code (in Article 159) and in Law 12850/2013 (on crimes of organized crime, in Article 4).

The Plea Agreement is executed in the criminal field, within the scope of Law 12850/2013 (on organized crime), which can be signed with the whistle-blowers that cooperate willingly with the investigation carried out by the competent authority and the criminal lawsuit. The possible benefits are pardon, reduction of up to two thirds of the imprisonment penalty, or substitution for alternative punishment. In

addition, the judge must authorise the document through a request made by a Chief of Police, a member of the Prosecution Services, or a cooperating defendant assisted by the defence.

Thus, the plea agreement must not be confused with the leniency agreement, since it is a different document with different rules and characteristics.

c. Differences of the Leniency Agreement provided for in Law 12846/2013 (Anticorruption Law)

The Leniency Agreement provided for in Law 12846/2013 (Anticorruption Law) benefits the wrongdoer of crimes directly related to cartel practices against the Brazilian and international governments, as defined by Article 5. The highest authority of each body or entity signs the agreement, which is the Office of the Comptroller General of Brazil (CGU) in the Federal Executive Branch.

This type of agreement can only be signed with a legal person, which must fulfil five criteria:

- I. be the first to express interest in cooperating with the investigation of a specific cartel practice, whenever this circumstance is relevant;
- II. have fully ceased their involvement in the cartel from the proposed date of the agreement;
- III. admit participating in the reported or investigated violation;
- IV. cooperate fully and permanently with the investigations and administrative proceedings and attend all proceedings, at their expenses and whenever requested, until CADE announces its final decision on the reported violation;
- V. provide information, documents, and evidence that prove the administrative violation.

Once the Tribunal issues the statement of compliance with the leniency agreement, as per the provisions of Law 12846/2013, the company will be able to receive the following benefits:

- I. exemption from the extraordinary publication of the punitive administrative decision;
- II. exemption from the prohibition to receive incentives, subsidies, grants, gifts, or loans from public bodies or entities and from financial institutions that are public or controlled by the government;
- III. reduction of the final amount of the applicable fine, according to Article 23;
- IV. exemption or mitigation of the administrative sanctions provided in Article 337-F of Law 14133/2021, or other regulations for agreements and procurements.

Considering the hypothetical situation where the company or individual participated in a violation involving cartels and other illegal practices, there is no predefined legal rule on which body should be contacted first. If the applicant contacts CADE first, the Office of the Superintendent General at CADE may carry out the coordination with the Prosecution Services, the Office of the Comptroller General, and/or other investigative bodies, upon the applicant's request for the leniency agreement. If the applicant contacts the Prosecution Services, the Office of the Comptroller General, and/or other investigative bodies, they may also contact the SG to negotiate the leniency agreement, upon the applicant's request.

When the leniency agreement involves a cartel to defraud the competitive nature of procurements, the SG, under the terms of the [technical cooperation agreement CGU/CADE no. 52/2023](#), will seek representatives of the Office of the Comptroller General and the Office of the Attorney General to assist the applicant of the leniency agreement to sign other possible leniency agreements, such as the leniency agreement under the Anticorruption Law. Depending on the case at hand, the CADE will assess them upon previous consent of the applicant of the leniency agreement:

(1) using information, documents, and evidence produced for the negotiation and execution of leniency agreements with representatives of the Office of the Comptroller General and the Office of the Attorney General, among other competent authorities, aiming to minimise the efforts of the applicant of the leniency agreement; and (2) sharing investigative measures and several information with the representatives from the Office of the Comptroller General and the Office of the Attorney General, among other competent authorities, to optimise the investigative efforts of the government.

d. Differences of the non-prosecution agreements

The non-prosecution agreement is provided for in Article 28-A of the Brazilian Criminal Code and aims to avoid the traditional proceeding for non-violent or non-serious crimes, whose minimum sentence is under 4 years. The non-prosecution agreement was introduced in Law 13964/2019 and requires that the investigated parties admit the crime practice and compromise to comply with the conditions established by the Prosecution Services to repair the damage caused. The agreement is signed by a representative of the Prosecution Services, the investigated parties, and their attorney, then it is submitted for approval.

Thus, the non-prosecution agreement provided for in the Brazilian Criminal Code and the leniency agreement occur in the scope of different authorities, and the negotiations may be carried out independently. Both the negotiation and the signature of the leniency agreements are carried out at the discretion of the competent authorities and do not depend on the signature or other agreements with other authorities. Therefore, although the Office of the Superintendent General can help the applicants communicate with the Prosecution Services to investigate other illegal practices, the negotiation and the signatures of possible agreements are at the discretion of the competent authorities.

15. Changes in the Leniency Programme after Law 12529/2011

Law 12529/2011, which launched the current Leniency Programme (Chapter 7, Title 6), brought a few changes in comparison with the previous legislation (Law 8884/1994), such as:

I. change of the competent authority: according to Law 8884/1994, the Brazilian federal government acted through mediation of the Secretariat of Economic Law (SDE/MJ), which used to sign the leniency agreement. However, since Law 12529/2011, through mediation of the Office of the Superintendent General, CADE is responsible for the negotiation and signature of leniency agreements;

II. cartel leaders can now apply for the agreement;

III. specification of the agreement's benefits in the criminal field: according to Law 12529/2011, the signature of the leniency agreement lifts the statute of limitations and impedes the filing of complaint against the leniency signatory regarding violations described in the Economic Crimes Law (Law 8137/1990), other crimes directly related to the practice of cartels, and the ones described in the General Procurement Act (Law 14133/2021) and Article 288 of the Criminal Code (criminal conspiracy). In case of compliance, the penalties for the violations provided above are automatically ceased, as per Article 87 of Law 12529/2011.

16. Layout of the Leniency Agreement

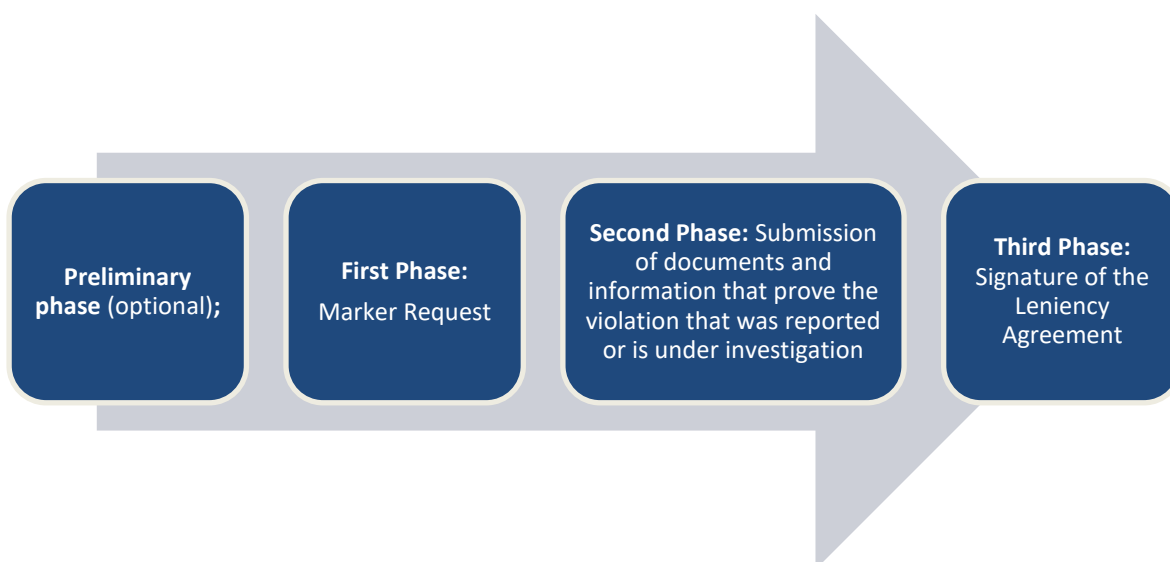
Access the leniency agreement layout [here](#). As a rule, to optimise the negotiations and ensure equal treatment of the agreements, the standard wording of CADE's Leniency Agreement must be used. The Office of the Superintendent General also reserves the right to make changes and updates to the template, according to the facts of the case.

PART 2 CADE'S LENIENCY AGREEMENT NEGOTIATION PHASES

17. CADE's Leniency Agreement negotiation phases

In sum, the negotiation of a leniency agreement is carried out in 4 phases:

- I. Preliminary phase (optional);
- II. Marker request phase;
- III. Phase of submission of documents and information that prove the reported or investigated violation;
- IV. Phase of signature of the leniency agreement.



PART 2.1. PRELIMINARY PHASE (OPTIONAL);

18. Request of information on a specific conduct to find out if it can be object of the Leniency Agreement

For any queries regarding a conduct being the object of a leniency agreement, or not, potential applicants and/or legal representatives may contact the Office of the Superintendent General at CADE to discuss the practice in abstract terms, with no

obligation of informing the sector, the involved parties, or other data that could identify the anticompetitive violation. In this case, the marker cannot be granted, but the information provided is confidential.

19. Hypothetical marker request

A hypothetical marker request is an informal proposal where the anonymous applicant provides information on the sector, geographic scope, and estimated duration of the conduct, as well as a detailed list of evidence to be disclosed in a future date, committing to provide full evidence if the Office of the Superintendent General at CADE informs that the body of evidence in the list is enough for a leniency request. In this case, the marker cannot be granted, but the information provided will remain confidential. Hypothetically, if the body of evidence is not enough to achieve the requirements for a leniency agreement, the Office of the Superintendent General may issue a declaration (*Carta Conforto*) similar to the rejection notice, if it is in the interest of the applicants. Nevertheless, the SG may open an investigation to examine the facts related to the reported violation when the investigation results from individual evidence, circumstantial or not, (Article 206, Paragraph 4 of the Statutes of CADE).

PART 2.2. FIRST PHASE: MARKER REQUEST

20. Marker request

The marker request occurs when the applicant of the leniency agreement contacts the Office of the Superintendent General at CADE to express interest to propose a leniency agreement regarding a certain anticompetitive conduct and ensure they are the first applicant related to this conduct. Thus, there is a type of race among the members of the anticompetitive conduct to contact the antitrust authority, report the violation, and apply for the benefits of the leniency agreement, which are granted only to the first applicant to be qualified with the Office of the Superintendent General, under the terms of Law 12529/2011.

a. How to ask for a marker

The applicants must offer a proposal of Leniency Agreement accessing the *Clique Leniência* platform to fill in the questionnaire in a simple, practical, and safe manner.

They can also make a marker request to the Coordinator-General of Antitrust Analysis 10, or, in case of his absence, to the Assistant Superintendent at the Office of the Superintendent-General, contacting the phone number +55 (61) 3221-8563. The caller should clearly show interest in requesting a marker to negotiate a new proposal of leniency agreement.

It is also possible to request the marker in person (address: SEPN 515, Conjunto D, Lote 4, Ed. Carlos Taurisano, Brasília/DF), in written form (filling an application), or by email leniencia@cade.gov.br, expressing interest in the marker request, according to articles 199, Head Provision, and 201 of the Statutes of CADE.

Please note that the applicant is not supposed to make the marker request to civil servants in office at CADE, since these requests are invalid. This measure aims to ensure the safety of the Leniency Programme and preserve the confidentiality of the information.

b. Information required for the marker request

Regardless of making an oral or written marker request, the applicant must present the following information, even if partially, on the reported violation, according to Article 199, Paragraph 1, of the Statutes of CADE:

- I. “Who?” Applicants of the leniency agreement must duly identify themselves and name all other known parties involved in the violation reported;
- II. “What?” Appoint the affected products or services;
- III. “When?” Identify the estimated duration of the reported violation, whenever possible;

IV. “Where?” Indicate the affected geographical area. In case of an international anticompetitive conduct, they should inform that the conduct is likely to have an effect in Brazil, under the terms of Article 2, head provision of Law 12529/2011.

It should be mentioned that the amount of information needed to ensure the marker request may vary according to each case, since the Office of the Superintendent General at CADE might need more or less information to state that the market is available or not for the violation that was reported or is under investigation.

c. Documentary evidence on the reported violation

The Office of the Superintendent General at CADE (SG) does not require that the marker request is followed by documents and/or evidence certifying the existence of a reported violation, since they must be presented during the submission of documents and information phase that prove the reported violation. During this phase, the applicant must be the first to appear before the SG to have the marker request granted.

d. Best moment to apply for a marker request

The time is an essential element for a successful marker request. The Office of the Superintendent General signs only one leniency agreement per violation among competitors, either companies or individuals, which are in a race to be the first ones to request the benefits of CADE’s Leniency Programme. In case the applicant has not provided the information necessary to sign the proposal of a leniency agreement, they should contact the SG as soon as possible, otherwise another participant of the same violation may apply for a marker request, making it unavailable, even if there is a short time difference between the proposals.

21. Marker availability

After receiving a marker request, the Office of the Superintendent General will check its availability within the agency, considering the following aspects:

- I. if there was a previous marker request from other company or individual related to the same violation;
- II. if there is a negotiation in progress of a leniency agreement with other company or individual related to the same violation;
- III. if the SG had prior knowledge of the reported violation, it should check if there is enough evidence to ensure the conviction of the company or individual involved in the violation or if there could be a partial leniency agreement;
- IV. if there is a leniency agreement signed with another company or individual, with or without the launching of administrative enquiries or administrative proceedings.

a. Time limit for reply on the marker request availability

The Office of the Superintendent General at CADE checks the availability of the marker for the negotiation of the leniency agreement within five working days (Article 199, Paragraph 2 of the Statutes of CADE). However, in general, the reply is given on the same day or on the following day of the request.

b. In case the first place in the queue is available

The first to appear before the Office of the Superintendent General at CADE will receive a certificate of attendance on that date to confirm they provided information on the anticompetitive practices from a certain company or individual in the reported market, geographical area, or period (marker). The certificate proves that the applicant has the necessary requirements to negotiate a leniency agreement and if there is an ongoing investigation. The SG schedules a date for the applicant to submit a proposal of leniency agreement (Article 199, Paragraph 3 of the Statutes

of CADE). It is important to remember that a simple marker will not provide any benefits of a leniency agreement signature to the applicant.

c. In case the first place in the queue is not available

In case an applicant is not the first to appear before the Office of the Superintendent General or if, for another reason, it is no longer possible to apply for a leniency agreement related to the reported violation, the Superintendent General, the Coordinator General of the Antitrust Analysis Unit 10, the Assistant Superintendent, or another civil servant expressly assigned to this role is to inform the applicant of such impossibility, and may certify the applicant is on the waiting queue for a possible leniency agreement related to the same reported violation (Article 200, Head Provision of the Statutes of CADE).

In this scenario, the certificate must include the applicant's identification, the identification of all other known parties involved in the violation to be reported, the affected products or services, the affected geographical area and, whenever possible, the estimated duration of the reported violation, in addition to the time and date in which the applicant appeared before the SG. The certificate must not include any information on the identity of other applicants or their order in the waiting queue compared to other applicants (Article 200, Paragraph 1 of the Statutes of CADE). Thus, CADE maintains the "waiting queue" in order of arrival (for instance, 2nd, 3rd, and 4th places). However, the other applicants are unaware of the exact position they are in the waiting queue.

There are two reasons why being in the "waiting queue" is considered important. The first reason is that the next applicant in the queue (2nd, 3rd, 4th, etc., in a chronological order) will be invited to negotiate a new leniency agreement in case the negotiation of the current leniency agreement is dismissed, either if the applicants of the marker requests to withdraw their proposals, or if they fail to comply with the legal requests or the time limit established in Paragraph 3 of Article 199 and Article 205 of the Statutes of CADE (Article 200, Paragraph 2 of the same regulation).

Second, it is important to be in the “waiting queue” because if there is an ongoing negotiation of the leniency agreement and it is eventually signed, the applicants that are still in the “waiting queue” will have their marker requests automatically converted to negotiation requests of the cease and desist agreements (Article 200, Paragraph 4 of the Statutes of CADE). In this case, the applicants will be called according to the order of the marker requests for the negotiation of leniency agreements, to express interest in the negotiation of a Cease and Desist Agreement, receiving the benefits from the signature of this agreement, such as the reduction of the financial contribution, as provided for in Article 85 of Law 12529/2011 and Articles 183 to 188 of the Statutes of CADE. Therefore, if the applicant expresses interest in the negotiation of a Cease and Desist Agreement, the request is to be forwarded to the Coordinator General of the Office of the Superintendent General that is responsible for the case before the launching of the administrative proceeding.

The information provided by the applicants in the waiting queue will receive the guarantees provided in Article 206 of the Statutes of CADE, Article 200, Paragraph 3 of the same regulation).

d. The Office of the Superintendent General at CADE has previous knowledge of the reported violation

If there are administrative proceedings that were open with reasonable evidence of anticompetitive practices, but there is insufficient evidence to ensure the conviction of the company and or/the individual at the time the application for leniency agreement is submitted, the marker may also be granted for a partial leniency agreement.

22. Marker

a. Changes in the marker

It is possible to make changes in the marker. The information in the marker must be as complete as possible. However, if the applicants find new information and/or documents through an investigation, it is possible to extend the scope of the negotiation to include the new information, given the circumstances of the case. For example, the date or the geographical area affected by the practice can be extended, among other information on the reported conduct. The marker may eventually be changed to include conducts that were not considered at first, provided that there is no negotiation of leniency agreement signed and/or under analysis comprising such conducts, which are part of the same anticompetitive dynamic.

Broadening the scope of the marker may happen only if the requests are in accordance with the Articles 86 of law 12529/2011 and 198 of the Statutes of CADE, and if the applicant neither acted in bad faith, nor tried to hide or tamper subsequently reported information.

If the newly found information characterises a different and new anticompetitive conduct, the applicants for the leniency agreement must request a new marker, which will be examined separately.

b. Access to the marker

Access to the marker, as well as the information and documents presented in the negotiation of the leniency agreement – all confidential information – is restricted to the General Superintendent, the Assistant Superintendent, and the Chief and staff of the Antitrust Analysis Unit 10, responsible for the negotiation of the leniency agreement. No other civil servant at CADE has access to documents and information received during the negotiation with the Office of the Superintendent General at CADE.

c. Timeframe of the marker request

In the first marker, the Office of the Superintendent General is to appoint a time limit for the applicant to submit a “leniency agreement proposal”. The time extension of the proposal is defined on a case-by-case basis, according to the intermediary time limits defined by the SG (Article 199, Paragraph 3, and Article 204 of the Statutes of CADE).

d. Confidentiality procedures in the marker request phase

The confidentiality of the proposal and whole negotiation process of the leniency agreement is not only a guarantee provided by the Office of the Superintendent General (Article 86, Paragraph 9 of Law 12529/2011 in conjunction with Article 201, Paragraphs 1 and 2 of the Statutes of CADE), but also a duty of the applicants, under pain of harming the proper conduct of the investigations.

The Office of the Superintendent General follows a series of procedures that aim at ensuring confidentiality during the marker request phase, such as:

- I. the access to information on the marker request is restricted to the General Superintendent, the Assistant Superintendent, and the Chief and staff of the Antitrust Analysis Unit 10, responsible for the negotiation of the leniency agreement;
- II. the internal control data of the Antitrust Analysis Unit 10 for the analysis of the marker request are accessed only by civil servants of this unit;
- III. the submitted documents on the marker request are hold in a safe room accessed only by the staff of the Antitrust Analysis Unit 10;
- IV. the submission and custody of documents and/or evidence to analysis can be agreed upon between the applicants and the OSG on a case-by-case basis;
- V. the communication with the applicants of the leniency agreement is made, for the most part, orally.

23. Withdrawal of the Leniency Agreement proposal

In case an applicant withdraws the proposal – as well as if the Office of the Superintendent General at CADE decides to dismiss the agreement proposal –, every document submitted to the authority will be returned to the applicants and all the information presented will be confidential, so, under no circumstances, CADE is allowed to use the information, including for investigation purposes (Article 86, Paragraph 9 of Law 12529/2011), except in case it is submitted voluntarily in a cease and desist agreement.

The withdrawal or rejection of the agreement proposed is not considered for recognising the unlawfulness of the conduct under analysis or confessing to the matters of fact (Article 86, Paragraph 10 of Law 12529/2011).

In addition, the agency must not open an investigation based on information provided by the applicant if the negotiation of a leniency agreement fails. In this case, the SG may issue a declaration (Certificate of Withdrawal), if it is in the interest of the applicants. Nevertheless, the Office of the Superintendent General may open an investigation to examine the facts related to the leniency agreement when the investigation results from individual evidence, circumstantial or not (Article 206, Paragraph 4, of the Statutes of CADE).

In case there are other applicants in the “waiting queue”, the SG is to contact the next applicant in line, so that a new investigation is opened.

24. Withdrawal of the Leniency Agreement signature

Applicants may withdraw their leniency agreement proposals at any moment, before it is signed (Article 206 of the Statutes of CADE).

25. Acquiring a marker is no guarantee of the Leniency Agreement signature

Receiving a marker is no guarantee of the leniency agreement signature, since all the legal requirements must be fulfilled and all the negotiation phases of the leniency agreement at CADE must be completed.

PART 2.3. SECOND PHASE: SUBMISSION OF INFORMATION AND DOCUMENTS PROVING THE VIOLATION REPORTED

26. Information and documents proving the violation reported

The submission of information and documents proving the violation reported or under investigation represents the first proposal of leniency agreement, which is to be made either orally or in written form (Article 200 of the Statutes of CADE). The presentation of the information and documents occurs after the marker request and acquisition of marker, the applicant must (Articles 202, 203, and 204 of the Statutes of CADE):

- I. duly identify themselves;
- II. thoroughly explain the violation reported or under investigation;
- III. identify all other known parties involved in the violation reported or under investigation;
- IV. appoint the product or service offered;
- V. indicate the affected geographical area;
- VI. identify the estimated duration of the violation reported or under investigation;
- VII. describe the documents and information that will be submitted when the leniency agreement is signed;
- VIII. provide information related to proposals of leniency agreements on the same violation which have been presented before other jurisdictions, as long as they have not been prohibited from doing so by the foreign authority;
- IX. be informed about their rights, guarantees, and legal duties;
- X. declare to be instructed to seek legal advice;

- xI. declare to be aware that non-compliance with the directions of the Office of the Superintendent General in the time and manner agreed to implicate they have withdrawn their proposal.

Thus, after obtaining the marker and submitting the initial proposal for the leniency agreement, the negotiation phase begins. During the negotiation phase, the applicants must provide detailed documents and information concerning the reported violation, according to the item indicated below.

27. Characteristics of the information that must be provided by the applicant

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

- I. violation that was reported or is under investigation;
- II. the applicants of the leniency agreement - companies and/or individuals, as well as further details on the participation of each of them;
- III. the applicants related to the violation reported or under investigation - companies and/or individuals, as well as further details on the participation of each of them. If possible, indicate the hierarchy of the positions among these individuals, and the changes in representation over the years;
- IV. possible competitors and customers in the affected market;
- V. duration of the violation reported or under investigation;
- VI. detailed description of the violation reported or under investigation, explanation of the anticompetitive conduct objectives (e.g., price-fixing, customer and market allocation, and exchange of competitively sensitive information); the dynamic of the conduct (e.g., explanation of the anticompetitive conduct by affected customer, by procurement, by product, depending on how the arrangements between competitors were made); the strategies used to implement the practice; the dates and location of the meetings; the frequency and the means of communication; the structure of the cartel (e.g., documents that based

- and or facilitated the arrangements made by the competitors);
mechanisms implemented by the cartel to supervise and/or punish, etc.;
- VII. description of the effects in the Brazilian territory and, if the practice is international, explain the direct and indirect effects in the country;
- VIII. description of the affected market along with a clarification of the product and service subject to the reported violation;
- IX. indication of the existing documents that prove the reported violation.

Depending on the case at hand, the Office of the Superintendent General can modify the structure and the amount of information and documentation required, in order to describe the reported violation accurately.

In the initial negotiation phase, the applicants of the leniency agreement must submit the information to CADE as thoroughly as possible, even if they do not have all the information necessary to conclude the leniency agreement proposal. To accept the proposal, the SG must consider the information submitted by the applicant to be enough. The applicants are obliged to present all information regarding the reported violation, act with good faith, and not hide, dissimulate, or present false/deluding information.

Applicants must report other criminal or administrative violations only if the Office of the Superintendent General finds it to be essential to investigate the reported violation. Please note that the benefits of the leniency agreement cover only the practices properly reported to the SG and that are subject to the agreement.

a. Types of documents

The applicant of the leniency agreement must submit all the documents available and able to prove the violation. The types of documents the Office of the Superintendent General at CADE receives more often to prove the collective anticompetitive conduct reported or under investigation are the following:

- I. e-mail exchange among competitors;
- II. e-mail exchange among people from the same company, reporting the collusions with competitors;
- III. communication among competitors;
- IV. communication among people from the same company, reporting the collusions with competitors;
- V. text or audio messages exchange (SMS, WhatsApp, videoconferences, etc.);
- VI. agendas, handwritten notes, notebooks;
- VII. recordings;
- VIII. Excel tables and spreadsheets;
- IX. proof of meetings (minutes, Outlook calendar invites, meeting room bookings, hotel bookings, credit card statements, travel confirmations, etc.);
- X. call statements;
- XI. business cards from competitors;
- XII. public notices and bid evaluation minutes, etc.

CADE published the "[Parameters for submitting evidence in leniency applications](#)", which provides examples of how CADE has evaluated the documents submitted by the applicants in leniency agreements.

In addition, according to the timeliness and suitability criteria, the SG may request interviews with the individuals who apply for the leniency agreement, to obtain more information and details on the documents presented and the facts reported to CADE.

The non-submission of documents required to prove the alleged violation reported can incur in the SG's denial of the leniency agreement proposal.

The possible dismissal of the case in relation to the other companies involved in the violation for lack of evidence does not necessarily relieve the signatory from cooperating with CADE.

b. Parameters for submitting digital and physical evidence

The leniency agreement applicants must take technical precautions when collecting evidence. Usually, the applicant is to register the chain of custody of the digital and physical documents submitted to CADE, that is, the chronological history of the evidence, providing specific information on the individuals responsible for collecting data.

Furthermore, in the case of electronic documents, as a rule, the applicants must be able to describe the method used to obtain the evidence, that is: a) identify the devices (e.g., CPU, email server, laptop, or flash drive) from which the evidence was obtained, and who were the owners/custodians/users of the equipment and/or files extracted; b) identify the procedures adopted and equipment/software used to obtain the evidence. If there is a forensic image of the hard drive, describe the type of image (e.g., AD1, E01, or DD); if a write blocker was used and which model was chosen; the hash of the image (e.g., MD5 or SHA2); and when and where the data was obtained; c) identify the types of extracted files and the software compatible to open them (e.g., e-mail files, Lotus Notes, Outlook, or database file); d) inform other relevant data to the case. Additionally, in general, the applicants must be able to describe the method of analysis and expert examination of the electronic evidence, specifying which software(s) was (were) used and who conducted the examination.

Regarding emails, in addition to the information described above, the metadata information of the header of each email must also be submitted, such as From, To, Cc, Bcc, Subject, Date, Delivery Date, Received, Return-Path, Envelop-to, Message-id, Mime-version, Content-type, etc.

It is worth noting that the applicants of the leniency agreement must preserve, whenever possible, the hard drives or original devices (from which the evidence was obtained) and/or its forensic image authenticated without any modifications, as well as extracting the hash numbers of the original documents, since the Office of the Superintendent General at CADE may request them during the investigation. In

addition, the applicants are allowed to submit hard drives or original devices to CADE, whenever feasible.

As a general rule, when the documents submitted are not original, the applicants must provide proof of the original's existence or justification for its non-existence.

The SG will examine, on a case-by-case basis, the precautions taken to guarantee the authenticity of the documents. Thus, the submitted documents are not invalidated if any of these procedures are eventually discontinued.

c. Parameters for the applicant's submission of evidence

In general, the communication between the Office of the Superintendent General and the applicants and/or their legal representatives is made mainly in person. Hence, to preserve confidentiality, if email exchanges are necessary, the name of the company and/or the individuals and the market subject to negotiation of the leniency agreement are not mentioned.

Furthermore, the submission of information and documents that prove the violation reported or under investigation can be made with a flash drive, hard copies, or any other way, even encrypted, agreed between the applicants and the SG. The submitted documents are kept in a safe room accessed only by the staff of the Antitrust Analysis Unit 10; however, the submission and custody of the documents and/or evidence for analysis by the SG can be agreed upon on a case-by-case basis.

d. Parameters for confidentiality in the submission of evidence phase

The confidentiality of the proposal and whole negotiation process of the leniency agreement is not only a guarantee provided by the Office of the Superintendent General (Article 86, Paragraph 9 of Law 12529/2011 in conjunction with Article 201, Paragraphs 1 and 2 of the Statutes of CADE), but also a duty of the applicants, under pain of harming the proper conduct of the procedures.

e. Interview of individuals by the Office of the Superintendent General at CADE

According to the timeliness and suitability criteria, the SG can request interviews with the individuals who apply for the leniency agreement to obtain more information and details on the documents submitted and the facts reported to CADE.

May the SG see it as timely and suitable, the interviews for the leniency agreement are scheduled with the Antitrust Analysis Unit 10, under the provisions of Articles 86 and 87 of Law 12529/2011.

After scheduling the interview, the applicant(s) must appoint the attorneys to accompany them. The legal representatives must be appointed by proof of attorney with expressed bestowal of power.

Finally, the interviewee must cooperate fully with the Office of the Superintendent General, as per the provisions of Article 86, Paragraph 1, Item 4 of Law 12529/2011. Hence, the applicant must cooperate on all the anticompetitive practices in which the interviewee had part and manifested interest in cooperating with the Office of the Superintendent General, whether to the Antitrust Analysis Unit 10 or any other Antitrust Analysis Unit of CADE. If the interviewee refuses to cooperate in cases in which he has the marker, the Office of the Superintendent General may consider it as a violation of the applicants' duty to cooperate fully and permanently (see Article 86, Paragraph 1, Item 4 and Article 85, Paragraph 1, Item 1 of Law 12529/2011), and terminate the negotiations with him. Cooperation is voluntary; hence, it is not required in cases in which the interviewee did not manifest interest in cooperating.

28. History of Conduct

The History of Conduct is a document elaborated by the Office of the Superintendent General at CADE that provides a detailed description of the anticompetitive conduct, according to the SG's interpretation, based on the information and documents

submitted by the applicants of the leniency agreement. This document is produced and signed by the SG, that is, neither by the applicants nor by their legal representatives. The structure of the History of Conduct, as well as the attached documents, is adapted to the specificities of the reported conducts and characteristics of the case at hand.

29. Time limit to negotiate the Leniency Agreement

As the applicant provides documents and information, the negotiation may be extended (Article 202, Items 3 and 4 of the Statutes of CADE). Therefore, the negotiation of a leniency agreement proposal is to be concluded when the intermediary time limits granted by the SG expire, according to Article 199, Paragraph 3 of the Statutes of CADE (Article 205, Head Provision of the Statutes of CADE). As a rule, CADE will contact other applicants on the waiting list only after the negotiation is concluded, as per the provisions of Paragraphs 2, 3, and 4 of Article 200 of the Statutes of CADE.

If an applicant in the “waiting queue” is interested in presenting information and documents to anticipate the negotiation of a potential Leniency Agreement (if they are called later due to withdrawn or rejection of the first in line), the SG will initiate the analysis granting the same precautions described in item 27.d.

CADE will share the marker and a negotiation schedule containing the results and time limits expected with the applicant, including the deadline of the negotiation, and the criteria for extension, which will be established with the applicant.

The purpose of the SG will be to (1) continue the investigation as objectively as possible, focusing on companies and individuals who had a prominent participation in the violation; and (2) launch an administrative proceeding or enquiry as soon as possible, after the signature of the leniency agreement.

30. Rejection of the Leniency Agreement proposal

CADE may reject a Leniency Agreement proposal for different reasons, among which are:

- I. non-submission of the leniency agreement proposal within the time limit indicated in the marker received by the applicants;
- II. lack of cooperation throughout the negotiation, non-submission of information and documents required by the Office of the Superintendent General, or obstruction of the investigations in any way;
- III. lack of information and/or documents to prove the practice reported or under investigation;
- IV. non-description of the effects of the violation practised in foreign territories.

At the discretion of the SG, the applicants may be notified previously regarding the rejection of the marker request, providing the last opportunity to submit the information and documents required in the case.

a. Guarantees for Leniency applicants in case of rejection

Under articles 86, Paragraph 10, of Law 12529/2011 and 206 of the Statutes of CADE, if rejected — or withdrawn by the applicants — the documents and information submitted during the negotiation will be returned, and the proposal will not be disclosed, so the authorities that accessed these files cannot use them. However, the Office of the Superintendent General may still launch investigative procedures when evidence or circumstantial evidence coming from an independent source is brought to its attention by any other means, as per the provisions of Article 206, Paragraph 4 of the Statutes of CADE.

If the SG rejects the proposal, the applicants will receive a formal notification called “*Termo de Rejeição*” (Rejection Notice) declaring that the information and documents submitted by the applicants were not enough to prove the violation reported or under investigation, or that the requirements of Article 86, Paragraph 1 of Law 12529/2011 were not fulfilled. Access the template of the Rejection Notice [here](#).

b. Rejection of the proposal of Leniency Agreement and “waiting queue”

In addition, in case the proposal is rejected by the SG — or withdrawn by the applicants — if there are applicants in the "waiting queue", the Chief of the Antitrust Analysis Unit 10 will contact the next in line, in order of request, to negotiate a new leniency agreement.

31. End of the negotiation phase of the Leniency Agreement

The negotiation can be extended (Article 202, Items 3 and 4 of the Statutes of CADE).

Once the information and documents required are submitted, the Chief of the Antitrust Analysis Unit 10 will forward the Leniency Agreement proposal to the Assistant Superintendent's approval. The Assistant Superintendent will be able to request new adjustments and/or clarifications from the applicants or submit the proposal to the Superintendent General for final analysis. If the proposal is accepted, the Office of the Superintendent General will consider it completed, and the execution phase of the Leniency Agreement begins.

PART 2.4. THIRD PHASE: EXECUTION OF THE LENIENCY AGREEMENT

32. Execution phase of the Leniency Agreement

Upon the submission phase of documents and information on the violation reported or under investigation, the execution phase of the Leniency Agreement begins, both from the applicants and the SG.

The applicants must provide, for example, authenticated documents, the sworn translation and the consular certification of foreign documents, as well as take the necessary precautions when handling electronic data. All the applicants must attend

the signature of the Leniency Agreement in person, including the company and/or individuals, or their respective legal representatives with the power to confess, propose, negotiate, and sign the Leniency Agreement. Access a power of attorney template [here](#).

In this phase, the SG also contacts the Prosecution Services to submit the Leniency Agreement.

33. Prosecution Services' participation in the Leniency Agreement

Although Articles 86 and 87 of Law 12529/2011 do not expressly demand the participation of the Prosecution Services in the signing of antitrust leniency agreements, CADE's consolidated case law aims at its participation, since the Leniency Agreement may result in criminal repercussions and the Prosecution Services has the power to file criminal proceedings. Thus, the State or Federal Prosecution Services can take part in the signing of the agreement as a consenting intervening party to secure greater legal certainty for signatories and facilitate the criminal investigation of other participants of the cartel. The SG will inform the applicant or signatory, in advance, on how to contact the competent Prosecution Services.

a. Contacting the Prosecution Services

In order to guarantee confidentiality (Article 86, Paragraph 9 of Law 12529/2011) and simplify the negotiation process, the SG notifies the Prosecution Services of the case only after the phase for submission of documents and information on the violation reported or under investigation is closed.

Should the occasion arise, the SG, the applicant, and the Prosecution Services can decide to start negotiating in the early phases of the Leniency Agreement.

Primarily, the negotiation with the Prosecution Services has three phases:

- I. definition of which Prosecution Services will take part in the case;
- II. submission of official letter to the Prosecution Services to schedule a meeting — the SG notifies an antitrust violation (Article 36, Paragraph 3, Item 1 of Law 12529/2011), which may eventually characterise the crimes provided in Article 4 of Law 8137/1990, and that the applicant manifested interest in participating in the Leniency Programme. The Office of the Superintendent General cannot send the information and documents subject to the Leniency Agreement to the Prosecution Services due to their confidential nature. Upon receiving the official letter, the competent State or Federal Prosecution Services distributes the case internally to schedule a meeting with the Prosecutor and/or the Federal Prosecutor;
- III. meeting with the Prosecution Services to submit the case and create a strategy for cooperation between the two public bodies.

The Prosecution Services may request, as a consenting party, information, amendments, and supplements to the Leniency Agreement. However, the SG intermediates the requirements made by the Prosecution Services, given that CADE has legal authority over the Leniency Agreement (Article 86 of Law 12529/2011).

After the meeting with the Prosecution Services and the amendments eventually proposed by the Prosecutor and/or Federal Prosecutor, the parties will validate the agreement terms and schedule a date for the signature.

b. Definition of which Prosecution Services will take part in the case

The Prosecution Services that take part in the case depend on its attributions established by law and the jurisdiction of specific crimes related to anticompetitive practices. Usually, the competent body is the Federal Prosecution Services, since

the violations tend to cause harm to the market as a whole, which is even more evident when federal resources are involved. However, for cases involving local interests, the State Prosecution Services may also participate as a consenting intervening party. Despite the circumstances, the definition of the Prosecution Services as a consenting intervening party demands the participation of the applicant and the interest of the respective ministerial body.

34. Signature of the Leniency Agreement

The leniency agreement is signed either in the headquarters of CADE, in Brasília, Brazil, in the city where the State and/or Federal Prosecution Services who will take part in the agreement as a consenting intervening party, or in another location agreed upon between the parties.

The applicant, accompanied or represented by a lawyer holding a power of attorney, must attend on the date and location previously determined for the signature of the leniency agreement, occasion in which CADE's representative and the member of the Prosecution Services consenting party will also be present.

a. Structure of the Leniency Agreement

The antitrust leniency agreement can be executed in a bilingual document (Portuguese and English), even if not related to international cartel violations. When in doubt, the Portuguese version will prevail over the English one. Access a leniency agreement template [here](#).

b. Submission of the physical and final version of the evidence

The final submission of the documents proving the violation reported to the SG and the Prosecution Services must be upon the signature of the leniency agreement. In this phase, the agency also requests digital copies of the documents.

For the documents initially registered as digital, the preservation of the supporting media is required or, if not possible, the submission of certified digital copies.

In case the Leniency Agreement proposal is rejected or withdrawn, CADE guarantees the confidentiality of the data submitted.

c. Clauses of the Leniency Agreement

Upon fulfilling the legal requirements for signature, the Leniency Agreement must include the clauses listed in Article 207, Items 1 to 8 of the Statutes of CADE, namely:

- I. the full identification of the signatories and their legal representatives, including name or corporate name, identity card number, individual taxpayer identification number (Cadastro de Pessoa Física) or corporate taxpayer identification number (Cadastro Nacional de Pessoa Jurídica), full address, telephone, and email;
- II. the full identification of the legal representatives with powers to receive notices during the course of the administrative proceeding;
- III. email address for summonses during the administrative proceeding;
- IV. an explanation of the facts connected to the reported violation, identifying the parties involved, the affected products or services, the affected geographical area, and the estimated duration of the violation reported or under investigation on the terms of the documents presented - information detailed in the document elaborated by the Office of the Superintendent General at CADE called History of Conduct;
- V. the signed confession of involvement in the violation by the signatories of the leniency agreement;
- VI. statement from the signatory of the leniency agreement declaring he is no longer involved in the violation;
- VII. obligations of the signatory of the leniency agreement:

- provide any information to the Office of the Superintendent General and other potential signatory authorities of the leniency agreement, documents, or materials which the signatories have in their possession, custody, or control, and that corroborate that the violation that was reported or is under investigation was actually committed;
 - provide any relevant information, documents, or materials which the signatories come to be aware of during the investigation to the SG;
 - provide the Office of the Superintendent General and other potential signatory authorities of the leniency agreement any relevant information, documents, or materials which the signatories come to be aware of during the investigation;
 - cooperate fully and permanently with the investigations and administrative proceedings related to the reported violation that are carried out by the Office of the Superintendent General and by other potential signatory authorities of the leniency agreement;
 - attend, at their expenses and whenever requested, all proceedings, until CADE announces its final decision on the reported violation;
 - communicate to the Office of the Superintendent General and other potential signatory authorities of the leniency agreement any and all changes in the data included in the leniency agreement, including any aggravations;
 - behave with honesty, loyalty, and in good faith while fulfilling these obligations.
- VIII. a clause providing that should any signatories fail to comply with the obligations established in the leniency agreement, they lose their immunity from fines and other penalties;
- IX. a statement by the Office of the Superintendent General informing that the signatory of the leniency agreement was the first to apply for the agreement related to the violation that was reported or is under investigation;

- x. a statement by the Office of the Superintendent General informing that it did not have enough evidence to secure the conviction of the signatory of the leniency agreement for the reported violation at the time the signatory applied for a leniency agreement;
- xi. a statement by the Office of the Superintendent General informing whether it had any prior knowledge of the violation reported at the time the leniency agreement was proposed;
- xii. other obligations that, given the circumstances of the case, may be deemed necessary.

d. Documents required for the signature of the Leniency Agreement

In order to sign a leniency agreement, the companies and/or individuals must submit the following legal representation documents:

- i. certified copy of the corporate documents that prove compliance with legal and contractual obligations by the company (e.g., articles of organisation or incorporation) and certified copy of the Identity Card (the Carteira de Identidade - RG) and individual taxpayer identification number (the Cadastro de Pessoa Física - CPF) of the company's legal representatives;
- ii. certified copy of the individuals' identity cards;
- iii. power of attorney notarised, granting powers to confess, propose, negotiate, and sign a leniency agreement with CADE and the State and/or Federal Prosecution Services. Access a power of attorney template [here](#).

e. Attorney or appointed representative

The company and/or individuals are instructed to be accompanied by an agent or a lawyer with notarised power of attorney and specific powers to negotiate and sign the leniency agreement with CADE and the State and/or Federal Prosecution Services (Article 204, Item 2 of the Statutes of CADE).

35. Individuals

a. Leniency Agreement and individuals

In case the applicant is a company, the effects of the leniency agreement are extended to the companies of the same group, de facto or de jure, and to their managers, officers, employees, and former employees involved in the violation, provided they sign the respective document together with the applying firm (Article 86, Paragraph 6 of Law 12529/2011 in conjunction with Article 198, Paragraph 1 of the Statutes of CADE).

The individuals and companies of the same economic group can sign the agreement with the applying company or after in a separate document, when allowed by CADE and at its opportunity and convenience criteria (Article 198, Paragraph 2 of the Statutes of CADE). The companies and its managers, officers, and employees can have the same legal representatives or be represented by different attorneys.

However, if the former or current managers, officers, and employees decide not to sign the leniency agreement, that does not harm the execution of the leniency agreement with the company. In that case, the effects of the agreement are not extended to the individuals who were not signatories. Thus, it is highly recommended that the company explains to their former or current employees that they can only obtain the benefits of the antitrust leniency agreement if they sign the agreement along with the company and cooperate with the investigations.

b. Non-speakers of Portuguese

The individual who is a non-speaker of Portuguese is instructed to be represented by an attorney or a representative and, at their own expenses, contract the services of a translator during the whole leniency agreement process. However, if the individual is not represented by a Brazilian attorney, the Office of the Superintendent General may assess the situation to find a solution for the case at hand.

c. Non-residents of Brazil

The attendance of foreign individuals for the signature of the leniency agreement depends on the case at hand. As a rule, individuals outside Brazil can be represented by a Brazilian attorney or representative. At the discretion of the Office of the Superintendent General at CADE, the document can be signed either via digital certificate or another digital mechanism with legal force.

36. Amendments to the Leniency Agreement

This instrument includes individuals in the agreement via amendments after the company's signature. If the applicant of the leniency agreement is a company, the effects of the leniency agreement are extended to the companies of the same group, de facto or de jure, and their former or current managers, officers, employees involved in the violation, provided they sign the respective document together with the applying firm (Article 86, Paragraph 6 of Law 12529/2011 in conjunction with Article 198, Paragraph 1 of the Statutes of CADE).

The accession of individuals and companies belonging to the same economic group may be carried out in a separate document and at a time subsequent to the signing, when permitted by the authority, according to criteria of convenience and opportunity (Article 198, Paragraph 2 of the Statutes of CADE). However, if the Office of the Superintendent General at CADE formally gives the individual the opportunity to sign the leniency agreement together with the company and the individual decides not to do so, it will not be possible to join the leniency agreement at a later date.

Furthermore, if an individual does not sign the agreement due to an effort to maintain the confidentiality of the investigation and obtain evidence, the SG can approve a post-signature amendment to the agreement.

It is worth noting that the inclusion of an individual in the leniency agreement is only possible when the requirements for its signature are fulfilled, such as

participation in the conduct, confession of the participation in the illegal conduct, and cooperation with the investigations; in addition, CADE needs to have insufficient proof to secure a conviction. Access an Amendment (*Termo de Adesão*) template [here](#) -"Annexes 1 and 2 of the Leniency Agreement".

If the signatory is an individual, the benefits are not extended to the company (Article 198, Paragraph 3 of the Statutes of CADE), which will not be able to sign a leniency agreement executed with an individual.

Individuals are eligible to enter the leniency agreement signed between CADE and another individual, an employee of the same company to which the signatory is or was linked to, as long as they cooperate with the investigations and sign the document together (Article 86, Paragraph 6, Law no. 12529/2011 in conjunction with Article 198, Paragraph 1 of the Statutes of CADE).

In relation to the amendments to the agreement, except in specific cases and for the purpose of the investigation, the SG will execute them in accordance with the terms of the first leniency agreement, on the following conditions: (1) preferably before the launch of the administrative enquiry or proceeding, or the signature of a Cease and Desist Agreement with other respondents; and (2) after the launch of the administrative enquiry or proceeding, if the signatory is able to prove the violation with unknown information and/or documents.

37. Confidentiality procedures during the signature of the Leniency Agreement

The confidentiality of the proposal and whole negotiation process is not only guaranteed by the Office of the Superintendent General (Article 86, Paragraph 9 of Law 12529/2011 in conjunction with Article 201, Paragraphs 1 and 2 of the Statutes of CADE), but also a duty of the applicants, under pain of harming the proper conduct of the procedures.

The SG follows a series of procedures that aim at ensuring confidentiality during the information and document submission phase, such as:

- I. submission of official letter to the Prosecution Services to schedule a meeting. The SG notifies an antitrust violation (Article 36, Paragraph 3, Item 1 of Law 12529/2011), which may eventually characterise the crimes provided in Article 4 of Law 8137/90, and inform that the applicant manifested interest in participating in the Leniency Programme. The Office of the Superintendent General cannot send the information and documents subject to the Leniency Agreement to the Prosecution Services due to their confidential nature. Upon receiving the official letter, the competent State or Federal Prosecution Services distributes the case internally to schedule a meeting with the Prosecutor and/or the Federal Prosecutor;
- II. the SG submits traceable document versions during its communication with external government bodies;
- III. when a search and seizure warrant request is necessary, there is no mention of the name of the company signatory in the initial pleading of the Office of the Attorney General at CADE (ProCADE). The company identified as a participant in the illegal conduct, other companies, and individuals are identified through abbreviations; the signatory company and/or individuals of the leniency agreement are identified in a separate document from the History of Conduct, which is elaborated by the SG;

PART 3. AFTER THE SIGNATURE OF THE LENIENCY AGREEMENT

38. Phase upon the signature of the Leniency Agreement

After the signature of the leniency agreement, CADE will launch either the administrative enquiry or proceeding to investigate the violation notified, as well as conduct other measures such as search and seizure warrants, information request, and procedures, for example, to obtain data on the violation.

In any case, the signatory companies or individuals must cooperate fully and permanently with the investigations and evidentiary stage; also attend, at their expenses and whenever requested, all proceedings, until CADE announces its final decision on the reported violation (Articles 86 in conjunction with 198 of Law 12529/2011 and Article 207, Items 1 to 8 of the Statutes of CADE).

39. Confidentiality procedures following the signature of the Leniency Agreement

As a general rule, after the signature of the leniency agreement, the content of the agreement and any document related to it will continue to be under restricted access and will not be disclosed to the public, even after the opening of an administrative inquiry or proceeding, except for injunctions or explicit authorisation from the signatories.

The SG follows a series of procedures that aim at ensuring confidentiality during the information and document submission phase, such as:

- I. possibility of non-disclosure of the fact that the proceeding originates from a leniency agreement;
- II. maintain the restricted access to confidential data and documents in CADE's electronic system (SEI);
- III. redact restricted access information on the leniency agreement in the Technical Opinions; and

- IV. present traceable versions of the documents in the interactions with external government bodies.

Also, if CADE conducts a search and seizure operation, other confidentiality procedures are adopted, such as: (1) request maximum level of confidentiality from the Brazilian judicial system; (2) issue an order signed by the Office of the Attorney General at CADE (ProCADE) along the presiding judge and designated judge on the confidentiality of the leniency agreement; (3) omit the name of the signatory company and individuals of the leniency agreement; (4) identify the signatory company and individuals of the leniency agreement in a separate document from the History of Conduct and to be elaborated by the SG; and (5) proactive action of the ProCADE in the Brazilian judicial system in case of appeals after the launch of a search and seizure operation.

40. Non-compliance with the conditions and clauses of the Leniency Agreement

The Office of the Superintendent General, after referring the administrative proceeding to the Tribunal of CADE, issues an opinion on whether the signatory is complying with the obligation of the agreement. The Tribunal issues a final decision after the hearing, which examines if the signatory is meeting the conditions and clauses of the agreement. However, if the signatory is non-compliant, they will lose the benefits related to the fines and other penalties (Article 207, Paragraph 1, Item 9 of the Statutes of CADE). Should the signatory either fail to cooperate with CADE or provide false information, they will also lose these benefits. The fact that CADE does not find all the companies or individuals identified as participants in the violation guilty of cartel shall not be deemed non-compliance.

In case of non-cooperation of one of the signatories, either a company or an individual, does not influence the validity of the agreement in relation to the other beneficiaries.

To this day, no leniency agreement signed was withdrawn for non-compliance. The verification of an alleged non-compliance is responsibility of the rapporteur appointed for the case, during the hearing that executed the agreement, subject to the approval of the other commissioners.

41. Level of disclosure of the data on the Leniency Agreement

a. Post-launch of the administrative enquiry or proceeding

As a rule, after the signature of the leniency agreement, the content of the agreement and all documents related to it will continue to be under restricted access and will not be disclosed to the public even after the opening of an administrative inquiry or proceeding, except for injunctions or explicit authorisation from the signatories. The identity of the signatories will also be under restricted access until the hearing of the administrative proceeding.

The defendants in the administrative proceeding initiated as a result of the leniency agreement should not make any information and/or documents available to third parties, other government bodies, or foreign authorities, under pain of administrative, civil, or criminal penalties.

The respondents, that is, companies and/or individuals investigated for the reported violation will have access to the identity of the signatories and to other information and documents of the leniency agreement. The access to information must be strictly to exercise their right to full answer and defence, besides ensuring a fair hearing in administrative enquiries (Article 208, Paragraph 2, Item 1 of the Statutes of CADE).

If required to disclose or share restricted access information, due to a court order or any other unavailable legal obligation, the signatories must inform the SG in advance – or be informed by CADE – of the need to publicise the content, and access will be granted exclusively to the recipient of the court order and/or the holder of the unavailable legal prerogative, ensuring restricted access to the general public.

In particular situations, the signatory company and/or individuals may renounce the confidentiality of their identity and/or the content of the leniency agreement and/or its documents and other attached data, in whole or in part, if so agreed between the signatories, CADE and the State and/or Federal Prosecution Services, in the interest of the signatories or the investigation. Nonetheless, in case the signatories intend to keep their guarantee of confidentiality, CADE will not request them to renounce it.

b. In case of search warrants and other measures with the Judiciary

At the request of the Office of the Superintendent General at CADE and/or the competent criminal authorities, the leniency agreement and information in the documents may subsidise applications to the Judiciary for search warrants, as well as other measures, according to Law 12529/2011. When a request is submitted to the Judiciary, the SG and/or the competent criminal authorities, in turn, will request a guarantee of restricted access to information and documents submitted by the signatories, and will take steps to safeguard confidentiality within the scope of the legal action.

c. After the hearing of the administrative proceeding

CADE follows the requirements for confidentiality in the leniency agreement even after the Tribunal's final decision. The administrative proceeding publicises the identity of the company and/or individuals in the Leniency Agreement. It is also an opportunity to disclose other essential information to understand the matter, by releasing the vote of the rapporteur commissioner assigned to the case. Normally, the vote is detailed and may include information and images of documents to prove antitrust practices by the defendants, whether being signatories of a leniency agreement or not. Even after the Tribunal's final decision, CADE will sustain the confidentiality of documents and information in trade secret, voluntarily submitted by the signatory of the leniency agreement. The Leniency Agreement History of Conduct must remain confidential even after the administrative proceeding. No excerpts from this document should be published in the public version of the votes

of the commissioners, as per the provisions of [Resolution no. 21/2018](#) and [CADE's Directive no. 869/2019](#).

Therefore, in relation to interested third parties (for example, customers and consumers harmed by the reported violation), CADE does not usually grant access to information and documents voluntarily submitted under the leniency agreement beyond those already included in the vote of the rapporteur commissioner.

The agency may grant access to these documents on exceptional basis, in the event of:

- 1 - explicit legal determination of the Brazilian authority;
- 2 - specific legal order of the Brazilian Judiciary;
- 3 - authorisation from the signatory of the leniency or the cease and desist agreements, with express consent of CADE, as long as it does not undermine the investigation;
- 4 - international legal cooperation, provided in Articles 26 and 27 of the Code of Civil Procedure and authorisation from the signatory of the leniency or the cease and desist agreements, as long as it does not undermine the investigation;

In case of a legal order, the information and documents available thereafter must be restricted to the grantee parties, in the context of that specific action, and will not be available to third parties (including overseas). The Office of the Attorney-General at CADE (PFECADÉ) may intervene in the administrative proceeding to protect the authority's Antitrust Leniency Programme.

42. When the signatory cannot provide information and documents negotiated in the Leniency Agreement to third parties, other government bodies, or international authorities

The confidentiality of the leniency agreement is also the signatory's responsibility, being required to cooperate and not to jeopardise the investigations (Article 207,

Paragraph 1, Item 8, Subitem “d”, and Article 208, Paragraph 2, Item 2 of the Statutes of CADE in conjunction with Article 86, Paragraph 9, of Law 12529/2011), unless otherwise expressly agreed with the Office of the Superintendent General at CADE.

The defendants in the administrative proceeding initiated as a result of the leniency agreement shall not disclose information and/or documents to third parties, other government bodies, or foreign authorities. The respondents, that is, companies and/or individuals investigated for the reported violation will have access to the identity of the signatories and to other information and documents of the leniency agreement. The access to information must be strictly to exercise their right to full answer and defence, and ensure a fair hearing in administrative enquiries (Article 208, Paragraph 2, Item 1 of the Statutes of CADE).

43. Discovering new information and documents after the signature of the Leniency Agreement

Even after signing the leniency agreement, the signatory must report any new information and documents on the reported violation to the Office of the Superintendent General at CADE (Article 207, Paragraph 1, Item 8, Subitem “d” of the Statutes of CADE).

Complementing the information and submitting new documents is part of the ongoing obligation to cooperate with the investigations, so it will not be claimed as non-compliance with the leniency agreement signatory's obligations, unless the applicant has tried to hide or conceal the information subsequently reported, meaning information or documents that were unknown or not available at the beginning of the negotiations. Nonetheless, in case the signatory conceals documents available before the agreement or submits incoherent information, the result could be non-compliance of the obligation to cooperate.

If information recently added to the case gives rise to a new and distinct anticompetitive conduct, the applicant of the leniency agreement must submit a new marker request to the SG, which will be analysed separately.

44. Competition damages actions (ARDCs)

Those harmed by the anticompetitive conduct may go to court to defend their individual or homogeneous interests, to obtain the termination of practices that constitute an antitrust violation, as well as to receive compensation for losses and damages, regardless of the ongoing administrative enquiry or proceeding, which will not be suspended because of the submission of a lawsuit for civil damages (Article 47 of Law 12529/2011).

According to Law 12529/2011, the signatory has no obligation to compensate possible harmed consumers as a condition to sign the leniency agreement. However, the law also does not exempt the leniency beneficiary from answering for competitive harm caused in any public civil action and/or private action for damages brought against the signatory and other co-conspirators.

As aforementioned, Law 14470/2022, which altered the Paragraphs 2 and 3 of Article 47 of Law 12529/2011, the signatory of the leniency agreement: (1) will only be liable for the damages actually caused to those harmed, and will not be liable in double for the damages caused in relation to the offences confessed to CADE; and (2) will not be jointly and severally liable for the damages caused by the other co-conspirators of the antitrust violation.

In case the material voluntarily submitted by the leniency agreement signatory is requested by court order to support a claim for compensation in the context of an action to repair competitive damages, PFECADÉ will make its best efforts to ensure that the information and documents remain confidential during the ongoing investigation. After the Tribunal's final decision, the PFECADÉ will also intervene regarding the damages actions to guarantee that the access to documents in the leniency agreement is

reasonable, proportional, and legitimate in terms of essential information available to understand the case, normally presented in the rapporteur's vote.

45. CADE's statement of compliance of the Leniency Agreement

The leniency agreement is considered fulfilled after CADE certifies the compliance with all the obligations, therefore, ceasing the obligation to cooperate and granting the benefits in the agreement (Article and Article 209 209 of the Statutes of CADE). However, in case the original administrative proceeding is severed, the signatories must remain cooperating with the investigation.

The signatory's obligation to cooperate is not extended to judicial proceedings originated by the administrative proceeding launched by CADE, unless otherwise agreed between the parties and the antitrust authority in the particular case at issue. After the final decision, the signatory must inform CADE of all judicial proceedings, as well as all judicial and extrajudicial agreements, in Brazil or abroad, regarding any aspect of the anticompetitive conduct that is the object of the leniency agreement.

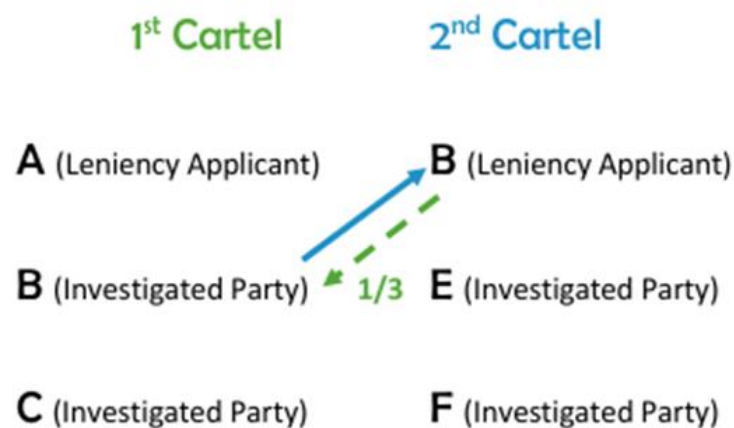
PART 4. LENIENCY PLUS

46. Leniency Plus

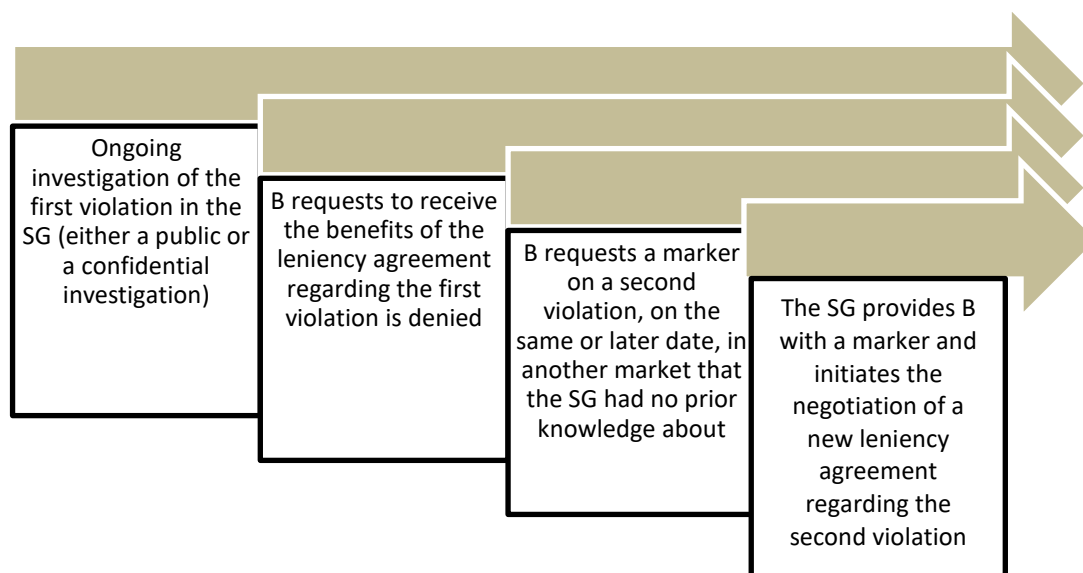
The leniency plus is an agreement that reduces from one to two-thirds of the applicable penalties to applicants who provide information on anticompetitive practices which the Office of the Superintendent General has no prior knowledge — the new leniency agreement — (Article 86, Paragraphs 7 and 8 of Law 12529/2011 in conjunction with Article 210 of the Statutes of CADE), when the same company and/or individual does not qualify for another leniency agreement — the original leniency agreement.

That is the case of signatories who do not fulfil the requirements to negotiate a leniency agreement, and that are already under investigation for a violation in a

first market (first conduct), for instance. If the applicants are interested in cooperating with the investigation of the first market, they may apply for a cease and desist agreement. In addition, the applicants can report another cartel in a different market (second violation), which CADE is unaware of. In this situation, the wrongdoers receive the benefits of the leniency agreement in the second violation and a reduction of one-third of the applicable penalties to the first conduct. See the image below:



The leniency plus applicants must observe the following timeline:



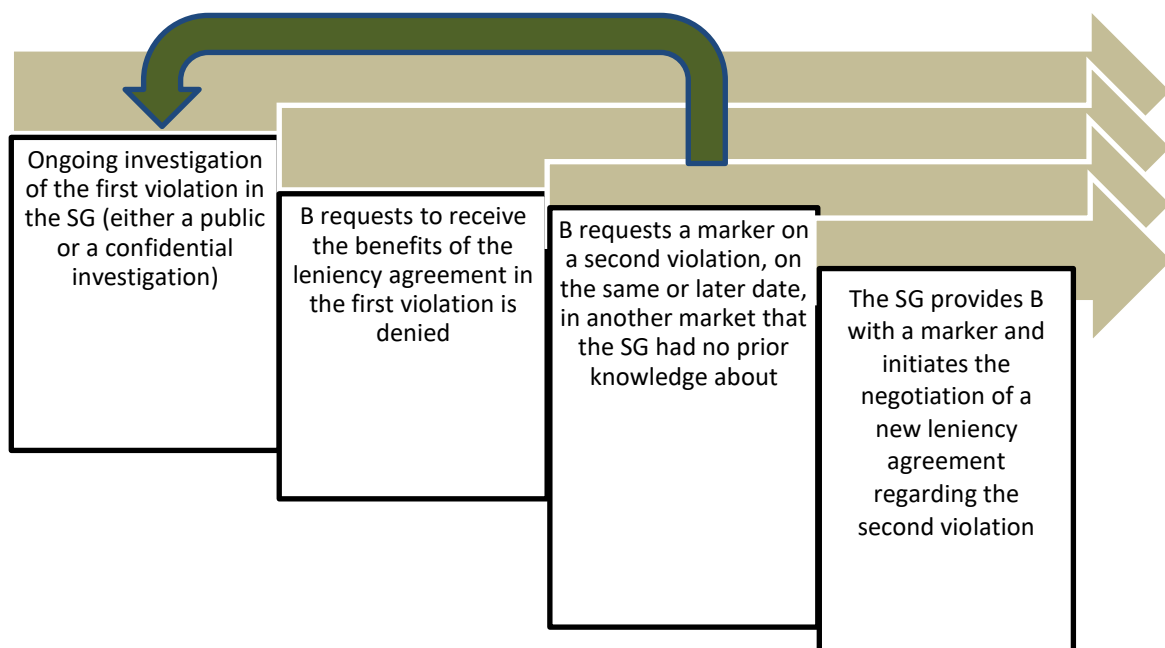
The leniency plus programme contributes to CADE's greatest function: its repressive role in the prosecution of antitrust violations, since the cooperation of the signatories allows to gather information and documents of other unknown anticompetitive conducts.

Therefore, regarding the newly reported violation (the second violation), once the legal requirements are fulfilled, the applicants will receive the benefits of the leniency agreement (Article 86, Paragraph 1 and Article 86, Paragraph 4, Items 1 and 2 of Law 12529/2011. In regard to the violation already under investigation (the first violation), the applicants may receive a reduction of one-third of the applicable penalties ("plus").

47. Marker request for a Leniency Plus

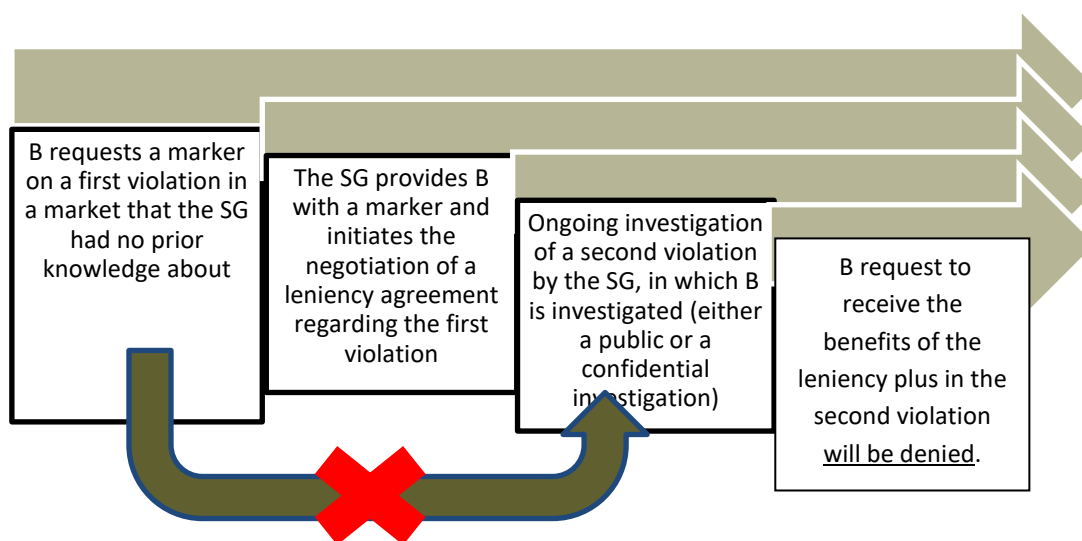
The marker request has the same requirements as a request for any other leniency agreement marker. If available, the applicant will obtain the marker.

Once again, the leniency plus applicants, both companies and/or individuals, must observe the following timeline:



This means that, if companies and/or individuals have previously signed a leniency agreement on a specific market and, afterwards, are investigated in another administrative proceeding regarding another market, the previous agreement will not receive the leniency plus benefits retroactively, since there is no new information submitted by the applicants. In this scenario, a cease and desist agreement may be signed.

Also, see below the applicable timeline in case the SG denies the signature of a leniency plus:



Therefore, when the company and/or individual requests a marker that gives grounds for the leniency plus, the applicants must make efforts to inform the authority of all anticompetitive conducts in which they engaged, changing their competitive behaviour, under the pain of being punished as per Article 39 in conjunction with Article 45, Item 2 of Law 12529/2011.

It is worth noting that, under the terms of Article 86, Paragraph 7 of Law 12529/2011, to obtain the benefits of the leniency plus, the marker request for the second violation must be filed before the SG submits the first administrative proceeding for hearing by the Tribunal of CADE.

48. Limitations to obtain the Leniency Plus

The leniency plus is an agreement that grants benefits to applicants, during the ongoing investigation or administrative proceeding, who are not qualified to sign a leniency agreement, but provides information regarding a different violation that CADE had no prior knowledge (Article 210 of the Statutes of CADE and Article 86, Paragraph 7 of Law 12529/2011).

Thus, if the applicants have already signed a leniency agreement on a specific market and then are represented in another administrative proceeding regarding their participation in another market, the benefit of the leniency plus will not be granted retroactively, so signing a cease and desist agreement is the only remaining option.

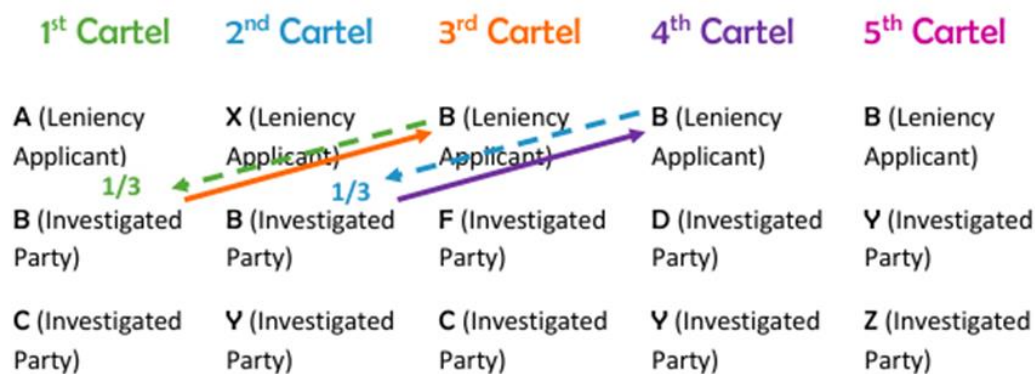
49. Infeasibility of two Leniency Plus discounts in the same administrative proceeding

The leniency plus benefit is applicable only once in each ongoing investigation. This is a one-to-one relationship; to each new leniency agreement signed, a leniency plus can be granted to one of the investigations.

For example, if applicants who are under investigation for a first violation cannot negotiate a leniency agreement, and reports another anticompetitive practice in a different market (second conduct) to the SG, they obtain the benefits of the leniency agreement regarding the second conduct, and can have a reduction of one third of the applicable penalties to the first violation.

In another example, if the company and/or individual is under investigation for cartel in two different markets (first and second conducts) and is not qualified to negotiate a leniency agreement on both, they can report to CADE of two or more cartels that the SG had no prior knowledge. Thus, the wrongdoers can have a reduction of one third of the applicable penalties after the statement of compliance of the new leniency agreements, regarding the third and fourth

conducts. If there is a fifth violation reported to the SG, the applicant will not receive the discounts of the leniency plus, but will hold all the benefits of a new leniency agreement regarding the fifth market. See the image below:



If the companies and/or individuals are negotiating more than one leniency agreement with CADE, as a rule, the agreement used for the leniency plus is the one regarding the first marker requested, chronologically, by the applicants.

50. Possible uses of the Leniency Plus benefit

a. Combination of the Leniency Plus and Cease and Desist Agreement discounts

As per the provisions of Article 210, Paragraph 3 of the Statutes of CADE, the applicants that sign a cease and desist agreement regarding a particular anticompetitive conduct under investigation (first violation) can be benefited with both the leniency plus and the cease and desist agreement if they become qualified to sign a leniency agreement, before the case is submitted to trial, regarding a different violation that CADE has no prior knowledge (second violation).

Additionally, CADE grants both benefits one after the other, that is, first the leniency plus and then the cease and desist agreement. The granting is not cumulative, meaning that it is not just a simple sum of both discounts. The cumulative implementation could grant excessive benefits to the signatories who practised

violations in several markets, with a possible reduction of the dissuasive effects and disincentive to swift submissions of new leniency agreement proposals. The interpretation that allows for the subsequent implementation of benefits arises from the legislation, which requires consistency between the maximum value for the leniency plus and the cease and desist agreement's discounts in comparison with the partial leniency.

Thus, if the applicants investigated for participating in the first violation in the first market are interested in signing a cease and desist agreement through the Administrative Proceeding that originated the first investigation, and report a new anticompetitive violation in which they took part in the second violation in another market of which CADE has no prior knowledge, they may benefit of the leniency plus (reduction of one third of applicable penalties) in the first violation and then, not cumulatively, receive the discount.

Considering that the negotiation of the cease and desist agreement foresees discounts ([Guia de TCC](#)), the subsequent implementation of the leniency plus benefit in the agreement may result in the following total discounts on the estimated fine:

- reduction of 53.33% to 66.67% on the fine for the first applicant to apply for a cease and desist agreement, with leniency plus;
- reduction of 50% to 60% to the second applicant of the cease and desist agreement, with leniency plus;
- reduction of up to 50% to the other applicants of the cease and desist agreement, with leniency plus.

In addition, the applications must not provide a percentage reduction higher than that established by the cease and desist agreements with leniency plus already approved within the scope of the same administrative proceeding (Article 210, Paragraph 4 of the Statutes of CADE).

b. When a Leniency Agreement is in the negotiation phase of a new Cease and Desist Agreement: the Conditional Leniency Plus

As long as the Office of the Superintendent General at CADE verifies the possibility of success of the new leniency agreement, a conditional leniency plus, which provides suspensive conditions, can be granted. In case the applicants do not comply with the terms of the new leniency agreement or it is not even signed, the hearing of the first violation can include provisions to ensure that the discount granted in advance is paid as a financial contribution to the Fund for De Facto Joint Rights (FDD), (Article 210, Paragraphs 2 and 3 of the Statutes of CADE). In addition, if the applicants do not comply with the agreement terms, they will also lose the benefits of the new leniency agreement (Article 207, Paragraph 1, Item 9 of the Statutes of CADE). This situation is expressly provided for in the [Guidelines for Cease and Desist agreement for Cartel Cases](#), Section 5, Item 5.7 Template Annex 2 - "Details on the Committing Parties' Contributions" (conditional leniency plus).

c. When the applicant is negotiating more than one new Leniency Agreement and is investigated in more than one case

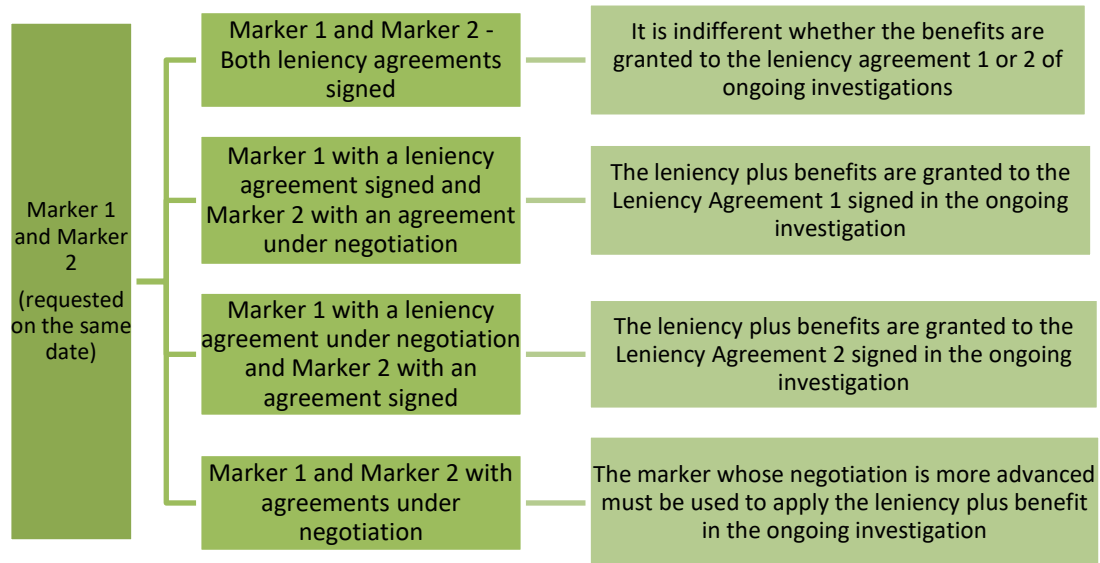
In that case, the SG will apply the following criteria, considered efficiency and speed, depending on the case at hand, to analyse in which previous investigation the leniency plus benefits will be granted:

- the chronological order of the marker requests, if applicable;
- the new leniency agreement signed, if applicable;
- if there is no new leniency agreement signed, but there is more than one leniency agreement under negotiation, there will be two possibilities, depending on whether the markers were requested (a) on the same date or (b) in different dates.

- A.** When the markers are requested on the same date ("marker requests on the same date"), at the discretion of the applicant, the one at the most advanced negotiation stage will prevail. When the chronological

order of marker requests is not applicable, the assessment for granting leniency plus benefits observes the following criteria: (1) signature of a new leniency agreement; (2) in case a new leniency agreement is not signed, in which stage the negotiation phase of the agreements is. Therefore, four possible scenarios are shown in Table 1:

Table 1. Scenarios for marker requests made on the same date

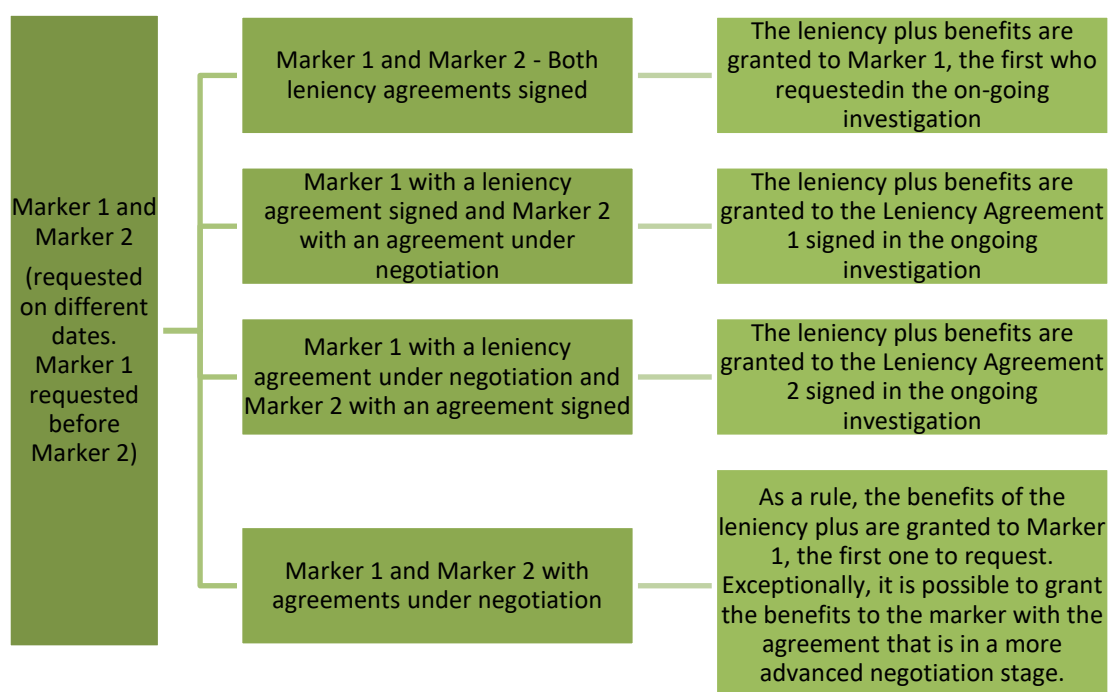


The four scenarios above can be summarised as follows:

- i. If the new leniency agreements are already signed, either of them can be chosen to receive the discount of the leniency plus given that the marker requests were made on the same date;
- ii. If only one new leniency agreement is already signed, the applicant must use it to apply for the leniency plus;
- iii. If there is no new leniency agreement signed, the applicant must use the marker of the negotiation which is more advanced to apply for the leniency plus discount. The assessment of which negotiation is more advanced is the SGs responsibility.

- B.** When the marker requests are made on different dates ("marker requests on different dates"), as a rule, the leniency agreement with the first marker request is used for the leniency plus. CADE distinguishes three criteria to grant leniency plus benefits: (1) the chronological order of marker request; (2) the signature of a new leniency agreement; (3) in case a new leniency agreement is not signed, which is the agreements' negotiation phase. Therefore, four possible scenarios are shown in Table 2:

Table 2. Scenarios for marker requests made on different dates



For markers requested on different dates ("marker requests on different dates"), the four scenarios above can be summarised as:

- (i) If the new leniency agreements are signed, the leniency plus will be linked to the first marker request. In this case, the chronological criterion for the marker request prevails;

- (ii) If only one leniency agreement is already signed and another is under negotiation, the applicant must use it to apply for the leniency plus;
- (iii) If there is no new leniency agreement signed, the leniency plus will be linked to the first marker request. Despite the chronological criterion, the SG may evaluate whether it is suitable to link the benefit to the marker request whose negotiation is more advanced. In this case, the criteria of efficiency and speed will be observed. The assessment of which negotiation is more advanced is the SGs responsibility.

51. The Leniency Plus discount is not linked to the Cease and Desist Agreement

The reduction of one-third discount, by the leniency plus, is applicable according to the estimated fines in the administrative proceeding investigating of the first violation (Article 210, Paragraph 1 of the Statutes of CADE). Thus, the signatory does not need to sign a cease and desist agreement regarding the violation under investigation to apply for a leniency plus, since it is not conditioned to the signature of a cease and desist agreement. However, if the signatory of the new leniency agreement also applies for the cease and desist agreement, it is possible to receive both benefits.

52. Partial Leniency cannot be used to request the Leniency Plus discount

The SG grants partial leniency when, upon the leniency application, it has prior knowledge of the violation reported, but not enough evidence to secure the conviction of the wrongdoers. As provided for in Article 86, Paragraph 7 of Law 12529/2011 in conjunction with Article 210, Head Provision of the Statutes of CADE, the new leniency agreement must refer to a new violation that the SG had no prior knowledge about. Therefore, a partial leniency does not allow for the signature of a leniency plus since the SG has prior knowledge of the anticompetitive conduct (Article 86, Paragraph 1,

Item 3, and Paragraph 4, Item 2 of Law 12529/2011, in conjunction with Article 198, Item 3, and Article 209, Item 2 of the Statutes of CADE).

53. Concession of the Leniency Plus benefit

As per the provisions of Article 210, Paragraph 1 of the Statutes of CADE, the reduction of one-third of the penalty applicable to the first violation will be granted during the hearing of the administrative proceeding regarding the second violation, subject of the leniency agreement. At this time, CADE will consider the compliance of all of the signatories' obligations in the new leniency agreement (second violation) and, in case of fulfilment, the benefit of a leniency plus agreement for the first violation will be granted.

Nonetheless, if the hearing of the first administrative proceeding on the first violation is heard before the hearing of the first administrative proceeding on the second violation, subject to the new leniency agreement submitted by the company and/or individual, the Article 210, Paragraph 2 of the Statutes of CADE provides an alternative for that. In case the applicants do not comply with the terms of the new leniency agreement, the hearing of the first violation can contain provisions to ensure that the discount granted in advance is paid as a financial contribution to the Fund for De Facto Joint Rights (Article 210, Paragraph 2 of the Statutes of CADE).

In addition, there is also the possibility that the signatories of the new leniency agreement apply for a cease and desist agreement and receive the benefits of the leniency plus on this application.

PART 5. LENIENCY AGREEMENT FOR INTERNATIONAL VIOLATIONS

This section addresses the procedures of the leniency agreement for international violations and its three negotiation phases, namely, marker request, submission of information and documents that prove the violation reported or under investigation, and the execution phase of the agreement.

54. Marker request in case of international violation

In the marker request phase, the applicants can formalise the procedure by making a request to the SG, orally or in written form, regarding an antitrust violation to be investigated or under investigation, according to Article 199 of the Statutes of CADE.

55. Possible oral proposals by the applicants and the SG

During the negotiation phase, the applicants can submit information and documents that prove the violation reported or under investigation, orally or in written form.

The applicants can testify orally for the SG, providing detailed information and documents on the reported practice, which will contribute to the creation of a document called *Histórico da Conduta* (History of Conduct).

Requesting the marker through a written document provides the legal representatives with the opportunity to submit the facts of the violation reported according to the documents and information provided by the applicants in person. The deadline to complete phase 2 is agreed to in advance between the legal representatives and the SG on a case-by-case basis, since it is necessary to reserve a computer and a room at CADE to hold a meeting for the procedure.

To secure the confidentiality of the negotiation, most of the questions and/or opinions that the SG may have during the elaboration of the History of Conduct will be communicated orally to the applicants and/or their legal representatives. However, the SG can also forward its opinions in a separate document that does not identify the applicants or the market affected by the reported practice.

Depending on the case, there is no exchange of the draft of the History of Conduct, a document elaborated internally by the Antitrust Analysis Unit 10 and kept under its care, between the applicants and the SG, following the procedures of confidentiality of the leniency agreement proposal and the whole negotiation process.

The History of Conduct will be signed **only** by the Office of the Superintendent General at CADE.

56. Exchange of information with antitrust authorities worldwide

CADE does not share information of leniency agreements with foreign antitrust authorities except when the applicants or signatories expressly allow the sharing of information with authorities from other jurisdictions through a waiver. This exchange of information can be either on the formal aspects of the investigation as a procedural waiver or on the material aspects as a full waiver.

In the context of international cartels, regarding proposals for leniency agreements made in multiple jurisdictions, the waiver aims at avoiding the duplication of information produced and meeting the interests of the antitrust authorities, allowing for faster investigations and better coordination with international authorities.

However, the applicants for leniency agreements and the Office of the Superintendent General must agree in advance about the sharing of information. In addition, the SG does not disclose information and documents regarding leniency agreements, requested by judges or foreign authorities who do not have jurisdiction in Brazil.

57. CADE's coordination of the disclosure of its investigation with international authorities

To assure the confidentiality of investigations in other jurisdictions and/or avoid harming the negotiation of agreements with the applicants in other countries, it is desirable, timely, and usual for CADE to cooperate with international antitrust authorities on the negotiation for the disclosure of the agreement, or even the moment for opening administrative proceedings, which makes the investigation

public. Thus, the notifications, documents, objects or information, and procedures can be kept confidential at the discretion of the Office of the Superintendent General, as long as it is in the interest of the investigations (Article 51 in conjunction with Article 139, Paragraph 1 of the Statutes of CADE).

In addition, the opening of an administrative proceeding by the SG will guarantee the respondents with the right to defence and the adversarial principle, providing them with full access to the documents used to form CADE's opinion (Head Paragraph of Article 50 in conjunction with Article 208, Paragraph 2 of the Statutes of CADE). The decision for opening an administrative proceeding will contain information on the respondents, the charges against each of the defendants with the indication of the facts to be verified, that is, the market affected by the illegal practice, duration of the practice, and structure of the violation (Article 147 of the Statutes of CADE).

As a rule, after the signature of the leniency agreement, the content of the agreement and all documents related to it will continue to be under restricted access and will not be disclosed to the public, even after the opening of an administrative inquiry or proceeding, except for injunctions or explicit authorisation from the signatories. The identity of the signatories will also be under restricted access until the hearing of the administrative proceeding by the Tribunal of CADE (Article 208 of the Statutes of CADE).

58. When respondents cannot provide international authorities with information and/or documents negotiated in the Leniency Agreement

The respondent in the administrative proceeding opened due to the leniency agreement cannot disclose or share, totally or partially, information and/or documents with a third party without CADE's consent, even if they are foreign government bodies or authorities (Article 208, Paragraph 2, Item 2 of the Statutes of CADE). The respondents, that is, companies and/or individuals investigated for the reported violation, will have access to the identity of the

signatories and to other information and documents of the leniency agreement. However, the access to such information must be strictly reserved to the exercise of the right to defence and adversarial principle during CADE's administrative procedure (Article 208, Paragraph 2, Item 1 of the Statutes of CADE).

Administrative Council for Economic Defense

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