



**International
Competition
Network**

**ANTI-CARTEL
ENFORCEMENT
TEMPLATE**

**CARTELS WORKING GROUP
Subgroup 2: Enforcement Techniques**

Brazil

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ICN ANTI-CARTEL ENFORCEMENT TEMPLATE

IMPORTANT NOTES:

This template is intended to provide information for the ICN member competition agencies about each other's legislation concerning hardcore cartels. At the same time the template supplies information for businesses participating in cartel activities about the rules applicable to them; moreover, it enables businesses which suffer from cartel activity to get information about the possibilities of lodging a complaint in one or more jurisdictions.

Reading the template is not a substitute for consulting the referenced statutes and regulations. This template should be a starting point only.

1. Information on the law relating to cartels

<p>A. Law(s) covering cartels:</p>	<p>Law No. 8,884/94, "Brazilian Competition Law" (available at www.cade.gov.br, both in Portuguese and English)</p> <p>Law No. 8,137/90, "Brazilian Economic Crimes Law" (which provides for the criminalization of cartel conduct) (available at www.cade.gov.br in Portuguese)</p> <p>Law No. 10.446/02, which provides that the Federal Police may investigate cartels with interstate or international effects (available at www.cade.gov.br in Portuguese).</p> <p>Presidential Decree of October 7th, 2008, which creates the <i>Anti-Cartel Enforcement Day</i> in Brazil. The establishment of this official day – October 8th, day in which the first leniency agreement was executed, back in 2001 – is a recognition of the importance of the fight against cartels for the Executive Power</p>
<p>B. Implementing regulation(s) (if any):</p>	<p>Not applicable</p>
<p>C. Interpretative guideline(s) (if any):</p>	<p>Ordinance SDE no. 4/2006 (SDE's regulation concerning administrative proceedings for the investigation of antitrust infringements (available at www.mj.gov.br/sde, in</p>

	<p>Portuguese).</p> <p>Brazil's Leniency Policy Interpretation Guidelines (issued by SDE in 2008, available at www.mj.gov.br/sde in Portuguese and English)</p> <p>Interpretative guidance may be found in the SDE's Presentations on the Leniency Program located at www.mj.gov.br/sde</p>
<p>D. Other relevant materials (if any):</p>	<p>Model Annotated Leniency Agreement (issued by SDE in 2008, available at www.mj.gov.br/sde in Portuguese and English)</p> <p>Cooperation agreement between the SDE and the Federal Police (available at www.mj.gov.br/sde in Portuguese and English)</p> <p>Cooperation agreement between the SDE and State Public Prosecutors (available at www.mj.gov.br/sde in Portuguese)</p> <p>Brochure on the Leniency Program (issued by SDE in 2008, available at www.mj.gov.br/sde in Portuguese)</p> <p>Brochure on how to fight bid-rigging (issued by SDE in 2008, available at www.mj.gov.br/sde in Portuguese)</p> <p>Brochure on information exchange within trade associations (issued by SDE in 2009, available at www.mj.gov.br/sde in Portuguese)</p>

2. Scope and nature of prohibition on cartels

<p>A. Does your law or case law define the term “cartel”?</p> <p>If not, please indicate the term you use instead.</p>	<p>"Cartel activities" are agreements which infringe Articles 20 and 21 of Law No. 8,884/94 and involve price-fixing (including resale price maintenance) bid-rigging (collusive tendering), the establishment of output restrictions or quotas and/or market sharing or market dividing.</p>
<p>B. Does your legislation or case law distinguish between very serious cartel behaviour (“hardcore cartels” – e.g.: price fixing, market sharing, bid rigging or production or sales quotas¹) and other types of “cartels”?</p>	<p>Law No. 8,884/94 and Law No. 8,137/90 do not distinguish between different types of cartel.</p>

¹ In some jurisdictions these types of cartels – and possibly some others – are regarded as particularly serious violations. These types of cartels are generally referred to as “hardcore cartels”. Hereinafter this terminology is used.

C. Scope of the prohibition of hardcore cartels: [including any exceptions, exclusions and defences e.g. for particular industries or sectors.]	Any agreement between undertakings, decisions by associations of undertakings or concerted practices which may affect trade within Brazil and have as their object or effect the restriction or distortion of competition are prohibited. There are no exceptions, exclusions and / or defences for particular industries or sectors.
D. Is participation in a hardcore cartel illegal <i>per se</i>?	Pursuant to the Brazilian Competition Law, there is no <i>per se</i> infringement
E. Is participation in a hardcore cartel a civil or administrative or criminal offence, or a combination of these?	A combination of these. Pursuant to Law No. 8,884/94, a cartel is an administrative offence and pursuant to Law No. 8,137/90, cartel is a crime (jail sentences of two to five years). Besides, under Brazilian Law, any anticompetitive conduct may also be considered a civil violation, thus allowing recovery for damages.

3. Investigating institution(s)

A. Name of the agency, which investigates cartels:	Administrative level: Secretariat of Economic Law Ministry of Justice
B. Contact details of the agency:	Esplanada dos Ministérios, Bloco T - 5º andar CEP 70064-900 Brasília-DF Tel: (5561) 3429.3112 and 3429.3396 e-mail: dpde@mj.gov.br website: www.mj.gov.br/sde) (English Section available)
C. Information point for potential complainants:	Mariana Tavares de Araujo Secretary of Economic Law mariana.araujo@mj.gov.br Ana Paula Martinez Head of the Antitrust Division, SDE ana.martinez@mj.gov.br
D. Contact point where complaints can be lodged:	Report written complaints to: Esplanada dos Ministérios, Bloco T - 5º andar CEP 70064-900 Brasília-DF Brazil Report electronic complaints to: dpde@mj.gov.br

<p>E. Are there other authorities which may assist the investigating agency? If yes, please name the authorities and the type of assistance they provide.</p>	<p>Yes. Starting in 2003, the SDE has been closely working with the Police (Federal or local police) and Federal and State Prosecutors in joint cartel investigations (parallel criminal and administrative investigations). Also, the SDE may request the assistance of the Federal Police in conducting search warrants.</p>
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4. Decision-making institution(s)² [to be filled in only if this is different from the investigating agency]

<p>A. Name of the agency making decisions in cartel cases:</p>	<p>At the administrative level: Administrative Council for Economic Defence – CADE</p>
<p>B. Contact details of the agency:</p>	<p>Setor Comercial Norte – SCN, Quadra 2, Projeção C CEP 70712-902 Brasília – DF, Brazil Tel: (5561) 3426-8599 – Fax (5561) 3328-5523 e-mail: cade@cade.gov.br website: www.cade.gov.br</p>
<p>C. Contact point for questions and consultations:</p>	<p>internacional@cade.gov.br</p>
<p>D. Describe the role of the investigating agency in the process leading to the sanctioning of the cartel conduct.</p>	<p>The Brazilian Competition Authorities are: (i) the Secretariat for Economic Monitoring; (ii) the Secretariat for Economic Law; and (iii) the Administrative Council for Economic Defense – CADE. The first two governmental bodies are investigative agencies (SDE is focused on conducts, while SEAE is focused on merger review), whilst CADE is the adjudicating body.</p> <p>Cartel proceedings are opened and carried out by SDE, and the defendants have broad rights of defense. At the end of the proceedings, SDE renders an opinion on whether there was an infringement or not (Seae may also render an opinion in some cases; the decision by Seae whether or not to present an opinion is discretionary according to the Brazilian Competition Law).</p> <p>After the rendering of opinions by SDE, the case is forwarded to CADE, for final judgment.</p>
<p>E. What is the role of the investigating agency if cartel cases belong under criminal proceedings?</p>	<p>Administrative and criminal proceedings are independent in Brazil. This means that SDE has full investigative powers with respect to the investigation at the administrative level. The same is true with respect to the criminal authorities: the police and Public Prosecutors have full investigative powers with respect to the investigation at the judicial level. In recent years, administrative and criminal authorities have been working</p>

² Meaning: institution taking a decision on the merits of the case (e.g. prohibition decision, imposition of fine, etc.)

	closely in order to benefit from information exchange and investigative techniques.
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5. Handling complaints and initiation of proceedings

<p>A. Basis for initiating investigations in cartel cases: [complaint, ex officio, leniency application, notification, etc.]</p>	<p>An investigation on a given cartel may be initiated through complaints, informants, ex officio or based on leniency applications.</p>
<p>B. Are complaints required to be made in a specific form (e.g. by phone, in writing, on a form, etc.)?</p>	<p>No. The SDE accepts all complaints regardless of whether they are written, emailed or phoned-in.</p> <p>In order to increase the number of complaints, the SDE is encouraging the use of electronic complaints and launched in March 2008 the e-tool "Report an Anticompetitive Conduct", available at www.mj.gov.br/sde (Portuguese, "<i>Clique Denúncia</i>"). Any party may fulfill an electronic form reporting a suspect conduct and no identification is required. From March to December 2008, more than 300 complaints were received by the SDE through this channel, most of them related to alleged cartels.</p>
<p>C. Legal requirements for lodging a complaint against a cartel: [e.g. is legitimate interest required, or is standing to make a complaint limited to certain categories of complainant?]</p>	<p>None. The SDE accepts and evaluates all complaints.</p>
<p>D. Is the investigating agency obliged to take action on each complaint that it receives or does it have discretion in this respect?</p>	<p>The Brazilian investigating authorities are obliged by law to formally respond each complaint received. All the acts performed by investigative authorities (even the dismissal of frivolous complaints or complaints without legal cause) must be duly justified.</p>
<p>E. If the agency intends not to pursue a complaint, is it required to adopt a decision addressed to the complainant explaining its reasons?</p>	<p>Yes (please see above).</p>
<p>F. Is there a time limit counted from the date of receipt of a complaint by the competition agency for taking the decision on</p>	<p>According to the Law, there is a time limit of eight days counted from the date of receipt of a complaint for taking the decision on whether to investigate it or not. However, the courts have been interpreting this time limit as only a reference to the authorities and not as a mandatory time limit.</p>

whether to investigate or reject it?	In any case, the SDE attempts to track and review each complaint and ensure that all matters are acted upon in a timely manner.
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6. Leniency policy³

A. What is the official name of your leniency policy (if any)? [Please indicate its public availability.]	“Leniency Agreement” (Acordo de Leniência)
B. Does your jurisdiction offer full leniency as well as partial leniency (i.e. reduction in the sanction / fine), depending on the case?	Yes.
C. Who is eligible for full leniency?	The first one to come forward and meet the requirements set forth by the leniency policy.
D. Is eligibility for leniency dependent on the enforcing agency having either no knowledge of the cartel or insufficient knowledge of the cartel to initiate an investigation? In this context, is the date (the moment) at which participants in the cartel come forward with information (before or after the opening of an investigation) of any relevance for the outcome of leniency applications?	<p>Yes. One of the requirements of the Corporate Leniency Policy is that the agency had no information about the illegal activity or insufficient evidence likely to result in a sustainable conviction at the time the applicant comes forward to report the illegal activity.</p> <p>Full or partial administrative immunity with respect to administrative sanctions is available depending on whether the SDE was previously aware of the illegal conduct at issue at the time of the leniency application. If the SDE was unaware of the cartel, the party may be entitled to a waiver from any applicable penalties. If the SDE was previously aware of the cartel, the applicable penalty can be reduced by one to two-thirds, depending on the effectiveness of the cooperation and the “good faith” of the party in complying with the leniency agreement. In all cases, a leniency agreement protects individuals from criminal prosecution.</p>
E. Who can be a beneficiary of the leniency program (individual / businesses)?	<p>A company or an individual.</p> <p>Under the Corporate Leniency Policy, a corporation and all directors, officers, and employees of the corporation who admit their involvement in the illegal antitrust activity as part of the corporate confession, cooperate and sign the Leniency Agreement along with the corporation are eligible for leniency.</p>

³ For the purposes of this template the notion of ‘leniency’ covers both full leniency and a reduction in the sanction or fines. Moreover, for the purposes of this template terms like ‘leniency’ ‘amnesty’ and ‘immunity’ are considered as synonyms.

<p>F. What are the conditions of availability of full leniency:</p>	<p>Pursuant to Brazilian Competition Law, in order to benefit from the Leniency Agreement, the following requirements have to be fulfilled:</p> <ul style="list-style-type: none"> i. The applicant (a company or an individual) is the first to come forward and confesses its participation in the unlawful practice; ii. The applicant ceases its involvement in the anticompetitive practice; iii. The applicant was not the ring-leader of the activity being reported; iv. The applicant agrees to fully cooperate with the investigation; v. The cooperation results in the identification of other members of the conspiracy, and in the obtaining of documents that evidence the anticompetitive practice; vi. At the time the applicant comes forward, the SDE had no knowledge of the cartel.
<p>G. What are the conditions of availability of partial leniency (such as reduction of sanction / fine / imprisonment):</p>	<p>In order to benefit from partial leniency, requirements “i” to “v” above have to be fulfilled, and, at the time the applicant comes forward, the SDE has not received sufficient information about the illegal activity to ensure the condemnation of the applicant.</p> <p>In case of partial leniency, the applicable administrative fine can be reduced by one to two-thirds, depending on the effectiveness of the cooperation and the “good faith” of the party in complying with the leniency agreement. With respect to criminal liability, a partial leniency also fully protects individuals from criminal prosecution.</p>
<p>H. Obligations for the beneficiary after the leniency application has been accepted:</p>	<p>Beneficiaries of leniency must be truthful and cooperate with the SDE and criminal authorities throughout the investigation.</p>
<p>I. Are there formal requirements to make a leniency application?</p>	<p>The Leniency Agreement proposal can be submitted to the SDE in writing or orally.</p> <p>If submitted <i>orally</i>, the procedure is the following:</p> <ul style="list-style-type: none"> i. The interested party has to contact the Chief of Staff of the SDE to arrange a meeting with the Secretary of Economic Law, head of the SDE; ii. In the meeting, the interested party has to present a description of the anticompetitive practice (“what”, “when” & “where”), including its participation and the identification of others involved in such practice (“who”), and a description of the evidence that can be provided to the SDE; no such evidence has to be brought to the SDE at this first meeting; iii. The Secretary of Economic Law or the Secretary’s Chief of Staff will prepare a short minute of the meeting to be kept by the applicant;

	<p>iv. At each meeting before the agreement is finally executed, a new minute should be prepared and given to the applicant.</p> <p>If submitted in <i>writing</i>, the procedure is the following:</p> <p>i. The proposal has to be submitted to the Secretary of Economic Law, in a sealed envelope, indicating that it contains a proposal for a Leniency Agreement (in Portuguese, “<i>Proposta de Acordo de Leniência</i>”);</p> <p>ii. The proposal will receive confidential treatment and only the Secretary of Economic Law and the Secretary’s Chief of Staff will have access to the document;</p> <p>iii. The proposal has to necessarily contain a description of the anticompetitive practice (“what”, “when” & “where”), including its participation and the identification of others involved in such practice (“who”), and a description of the evidence that can be provided to the SDE.</p> <p>As a rule, the negotiation phase should be concluded in six months, and it may be extended for an additional six-month period at the discretion of the SDE, provided there is no other applicant for leniency regarding the same cartel case. To ensure the highest degree of confidentiality, only the Secretary of Economic Law and the Secretary’s Chief of Staff participate in the negotiation phase and in case no agreement is reached, all related documents should be returned to the party.</p>
<p>J. Are there distinct procedural steps within the leniency program?</p>	<p>If the applicant satisfies the requirements for leniency, a Leniency Agreement will be signed with the SDE. While adjudicating a case, the CADE must verify whether the beneficiary complied with the terms and conditions provided in the leniency agreement and, if this is the case, acknowledge the full or partial immunity granted by the SDE.</p>
<p>K. At which time during the application process is the applicant given certainty with respect to its eligibility for leniency, and how is this done?</p>	<p>The Leniency Agreement gives an applicant certainty that it will receive leniency upon the completion of its obligations. CADE, at the end of the administrative proceedings, will acknowledge whether the applicant had fulfilled all its obligations and grant the benefits. For this purpose, the SDE issue a report at the end of the proceedings stating whether the applicant had acted in good faith and fully cooperated or not.</p>
<p>L. What is the legal basis for the power to agree to grant leniency? Is leniency granted on the basis of an agreement or is it laid down in a (formal) decision? Who within the agency decides about leniency applications?</p>	<p>Leniency is a written agreement between the SDE and the applicant. Public Prosecutors may also execute the agreement along with the SDE. The Secretary of Economic Law has authority to grant leniency pursuant to Brazil’s Competition Law.</p>
<p>M. Does your legislation have a marker system? If</p>	<p>Yes. A company / individual can get a “marker” to secure its place in line for leniency. The party then has a given amount of</p>

yes, please describe it.	<p>time (maximum 30 days) to complete its internal investigation and perfect its leniency application.</p> <p>To be eligible to secure a marker, the applicant must provide the SDE with information concerning its name and address, the parties to the alleged cartel (“who”), the affected product(s) and territory(-ies) (“what” & “where”), and the estimated duration of the alleged cartel (“when”). The applicant should also inform the SDE on leniency applications to other authorities in relation to the alleged cartel.</p>
N. Does the system provide for any extra credit⁴ for disclosing additional violations?	<p>Yes. The Leniency plus program allows a company that does not qualify for amnesty for an initial matter under investigation to disclose a second cartel and receive amnesty for the second offense and a 1/3 additional reduction (the "plus") in the calculation of the fine for its participation in the first offense.</p>
O. Is the agency required to keep the identity of the beneficiary confidential? If yes, please elaborate.	<p>Yes. SDE’s confidentiality policy for leniency applicants provides that the SDE will not identify a leniency applicant prior to CADE’s final judgment of the case or share information provided by the applicant with third-parties, except that if the applicant identifies itself first the SDE is free to confirm, or if authorized by court order, or if the applicant consents to waiver. Please note that with respect to the defendants, they have right to access the proceedings’ files and know the identity of the applicant.</p>
P. Is there a possibility of appealing an agency’s decision rejecting a leniency application?	<p>No.</p>
Q. Contact point where a leniency application can be lodged:	<p>Diego Faleck Chief of Staff Secretariat of Economic Law Esplanada dos Ministérios, Bloco T, 5o. andar CEP 70064-900 Brasília-DF, Brazil Tel: +55 61 3429 3786 Email: Diego.faleck@mj.gov.br</p>
R. Does the policy address the possibility of leniency being revoked? If yes, describe the circumstances where revocation would occur. Can an appeal be made against a decision to revoke leniency?	<p>No, revocation is not specifically addressed in the leniency policy.</p>

⁴ Also known as: “leniency plus”, “amnesty plus” or “immunity plus”. This category covers situations where a leniency applicant, in order to get as lenient treatment as possible in a particular case, offers to reveal information about participation in another cartel distinct from the one which is the subject of its first leniency application.

<p>S. Does your policy allow for “affirmative leniency”, that is the possibility of the agency approaching potential leniency applicants?</p>	<p>Yes.</p>
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7. Investigative powers of the enforcing institution(s)⁵

<p>A. Briefly describe the investigative measures available to the enforcing agency such as requests for information, searches/raids⁶, electronic or computer searches, expert opinion, etc. and indicate whether such measures requires a court warrant.</p>	<p>Search warrants must be authorizing by a court. Computers can be searched and seized if necessary pursuant to a search warrant. The SDE may also conduct inspections at business premises without a court order, but with a 24 hours prior notice to the defendant. Requests for information are commonly used as an investigative measure and it do not require court authorization.</p>
<p>B. Can private locations, such as residences, automobiles, briefcases and persons be searched, raided or inspected? Does this require authorisation by a court?</p>	<p>Yes, private locations, automobiles, briefcases and persons may be searched pursuant to a search warrant if authorized by a court.</p>
<p>C. May evidence not falling under the scope of the authorisation allowing the inspection be seized / used as evidence in another case? If yes, under which circumstances (e.g. is a post-search court warrant needed)?</p>	<p>In general, evidence outside the scope of the warrant is not seized without additional court authorization. However, the Judiciary is yet to give further directions as to whether evidence found in a search not related to its object can be used in another case.</p>
<p>D. Have there been significant legal challenges to your use of investigative measures authorized by the courts? If yes, please briefly describe them.</p>	<p>No.</p>

⁵ “Enforcing institutions” may mean either the investigating or the decision-making institution or both.

⁶ “Searches/raids” means all types of search, raid or inspection measures.

8. Procedural rights of businesses / individuals

<p>A. Key rights of defence in cartel cases:</p>	<p>The right of access to documents in the possession of the enforcing authority, the right to a written statement of the case against the defendant, the right to respond to the case in writing, the right to respond orally, the right to confront companies or individuals that make allegations against the defendant, the right to legal counsel, the right against self-incrimination, as well as the right to be officially communicated of every decision adopted in the process, the right to have reasonable deadlines to respond to accusations and questionings of the authority and third parties, the right to produce all types of proofs (oral, documental, technical).</p>
<p>B. Protection awarded to business secrets (competitively sensitive information): is there a difference depending on whether the information is provided under a compulsory legal order or provided under informal co-operation?</p>	<p>The same rules apply to all confidential information, irrespective of where it was obtained. Commercial and personal information, which the SDE considers (after submissions from the undertaking) might significantly harm legitimate its interests, can be redacted.</p> <p>Sensitive information will only be used by the competition agencies for a legitimate law enforcement purpose and the authorities will not disclose such information unless it is required by law or necessary to further a legitimate law enforcement purpose. The relevant rule is Ordinance SDE no. 04/2006.</p>

9. Limitation periods and deadlines

<p>A. What is the limitation period (if any) from the date of the termination of the infringement by which the investigation / proceedings must begin or a decision in the merits of the case must be made?</p>	<p>A cartel case must be brought within 12 years of the end of the illegal activity. However, if the administrative proceedings are on hold for more than 3 consecutive years, such proceedings shall be closed without a decision in the merits of the case.</p>
<p>B. What is the deadline, statutory or otherwise (if any) for the completion of an investigation or to make a decision in the merits?</p>	<p>There is none.</p>

<p>C. What are the deadlines, statutory or otherwise (if any) to challenge the commencement or completion of an investigation or a decision regarding sanctions?</p>	<p>An undertaking has five years from the issue of a CADE's final decision to appeal to the Judiciary.</p>
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10. Types of decisions

<p>A. Please list which types of decisions on the merits of the case can be made in cartel cases under the laws listed under Section 1.</p>	<p>At the conclusion of a case, defendants are found by CADE to be guilty or not guilty.</p> <p>Cartels, as an administrative offence, can be sanctioned with fines imposed on companies by the CADE that may range from 1 to 30 per cent of a company's pre-tax revenues in the year preceding the initiation of the proceedings. Individual managers responsible for unlawful corporate conduct may be fined an amount ranging from 10 to 50 per cent of the corporate fine. Associations and other entities that do not engage in commercial activities may be fined from approximately R\$ 6 thousand to R\$ 6 million. Fines for repeated violations are doubled. Apart from fines, the Brazilian Competition Law provides for other sanctions as well, such as publication of the decision in a major newspaper at the wrongdoer's expense; the prohibition of the wrongdoer from participating in public procurement procedures and obtaining funding from public banks for up to five years; and recommendation to the tax authorities not to allow the company involved in the wrongful conduct to pay taxes in installments or obtain tax benefits.</p> <p>At the criminal level, the Judiciary may find the individuals being prosecuted to be guilty or not of a cartel offense. The penalties may be the payment of a criminal fine or imprisonment from two to five years.</p>
<p>B. Please list which types of decisions on the merits of the case can be made in hardcore cartel cases under the laws listed under Section 1 (if different from those listed under 10/A).</p>	<p>Please see response above.</p>
<p>C. Can interim measures⁷ be ordered during the proceedings in cartel cases? (if different</p>	<p>SDE or CADE's Reporting Commissioner may adopt interim measures in any stage of the administrative proceedings whenever there are sound reasons to believe that the</p>

⁷ In some jurisdictions, in cases of urgency due to the risk of serious and irreparable damage to competition, either the investigator or the decision-making agency may order interim measures prior to taking a decision on the merits of the case [e.g.: by ordering the immediate termination of the infringement].

<p>measures for hardcore cartels please describe both⁸.) Which institution (the investigatory / the decision-making one) is authorised to take such decisions? What are the conditions for taking such a decision?</p>	<p>defendant directly or indirectly caused or may cause irreparable or substantial damages to the market, or that it may render the final outcome of the proceedings ineffective (Article 52 of Law No. 8,884/94).</p>
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11. Sanctions for procedural breaches (non-compliance with procedural obligations)⁹

<p>A. Grounds for the imposition of procedural sanctions / fines:</p>	<p>There are sanctions provided in Brazil's legal system for persons / corporations who fail to comply with requirements to provide information, destroy documents or provide false or misleading information.</p>
<p>B. Type and nature of the sanction (civil, administrative, criminal, combined):</p>	<p>Depending on the conduct, sanctions may be criminal, administrative or both.</p>
<p>C. On whom can procedural sanctions be imposed?</p>	<p>Sanctions can be imposed against both the individual and the company.</p>
<p>D. Criteria for determining the sanction / fine:</p>	<p>Sanctions may be imposed by the competition agencies or a court and may vary according to the seriousness of the infringement and the financial ability of the individual / corporation.</p>
<p>E. Are there maximum and / or minimum sanctions / fines?</p>	<p>Yes.</p> <p>(i) In case of any data or documents requested by Cade, SDE, and Seae unreasonably denied, concealed, tampered with or delayed – the maximum fine is a daily fine of 5.000 Ufirs (roughly R\$ 5,000), which can be increased up to twentyfold according to the financial status of the party. The amount may not exceed 90 days of daily fine.</p> <p>(ii) Any hindrance to inspections authorized by Seae or SDE is also subject to procedural sanctions – maximum fine equals to R\$425,700.</p>

⁸ Only for agencies which answered “yes” to question 2.C. above

⁹ In some jurisdictions non-compliance with procedural obligations (e.g. late provision of requested information, false or incomplete provision of information, lack of notice, lack of disclosure, obstruction of justice, destruction of evidence, challenging the validity of documents authorizing investigative measures, etc.) can be sanctioned.

	(iii) Any disobedience to interim measures or cease and desist orders adopted by Seae or SDE is also subject to procedural sanctions – the maximum fine is a daily fine of 5.000 Ufirs (roughly R\$ 5,000) which can be increased up to twentyfold according to the financial status of the party.
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12. Sanctions on the merits of the case

<p>A. Type and nature of sanctions in cartel cases (civil, administrative, criminal, combined):</p> <p>On whom can sanctions be imposed?</p>	<p>Defendants found liable for cartel conduct may face administrative, civil and criminal liability.</p> <p>Civil and administrative sanctions may be imposed on both individuals, companies and business associations. Criminal sanctions may only be imposed on individuals.</p>
<p>B. Criteria for determining the sanction / fine:</p>	<p>Several criteria are taken into consideration as (i) the seriousness of the infringement; (ii) the duration of the infringement; (iii) other factors including deterrence, any economic or financial benefits resulting from the infringement and the size and financial position of the undertaking in question; (iv) aggravating factors including the undertaking having acted as the instigator of the cartel, senior management having been involved and repeated infringements by the same undertaking.</p>
<p>C. Are there maximum and / or minimum sanctions / fines?</p>	<p>Cartels, as an administrative offence, can be sanctioned with fines imposed on companies by the CADE that may range from 1 to 30 per cent of a company's pre-tax revenues in the year preceding the initiation of the proceedings. Individual managers responsible for unlawful corporate conduct may be fined an amount ranging from 10 to 50 per cent of the corporate fine. Other individuals, associations and other entities that do not engage in commercial activities may be fined from approximately R\$ 6 thousand to R\$ 6 million. Fines for repeated violations are doubled. Apart from fines, the Brazilian Competition Law provides for other sanctions as well, such as publication of the decision in a major newspaper at the wrongdoer's expense; the prohibition of the wrongdoer from participating in public procurement procedures and obtaining</p>

	<p>funding from public banks for up to five years; and recommendation to the tax authorities not to allow the company involved in the wrongful conduct to pay taxes in installments or obtain tax benefits.</p> <p>At the criminal level, the penalties include the payment of a criminal fine or imprisonment from two to five years.</p>
<p>D. Guideline(s) on calculation of fines: [name and reference number, availability (homepage address) and indication of the languages in which these materials are available]</p>	<p>None.</p>
<p>E. Does a challenge to a decision imposing a sanction / fine have an automatic suspensory effect on that sanction / fine? If it is necessary to apply for suspension, what are the criteria?</p>	<p>There is no automatic suspensory effect, but courts may grant so if requested by the party. If the fine is upheld by the courts, interest on the fine runs from the date when it was originally due. Also, more recently, the courts are requiring a court deposit of the fine amount being challenged.</p>

13. Possibilities of appeal

<p>A. Does your law provide for an appeal from a decision that there has been a violation of a prohibition of cartels? If yes, what are the grounds of appeal, such as questions of law or fact or breaches of procedural requirements?</p>	<p>Yes. A defendant may appeal on errors of law, fact or procedural breach to the Judiciary.</p>
<p>B. Before which court or agency should such a challenge be made? [if the answer to question 13/A is affirmative]</p>	<p>Appeals are filed with the appropriate Federal court.</p>