Harmonising enforcement: fine reductions and procedural challenges in multi-agency leniency agreements for bid-rigging cartels in Brazil

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The institutional architecture of corporate enforcement in Brazil has undergone a profound and still ongoing transformation, particularly in matters involving bid-rigging cartels in public procurement. What once operated as a largely fragmented system, in which different authorities exercised overlapping powers with limited procedural coordination, is progressively evolving into a more structured and dialogical model of interaction. This transformation has not occurred in a vacuum.

A relevant development in this trajectory was the issuance of Interministerial Normative Ordinance CGU AGU No 1/2025. The Ordinance establishes clearer parameters for cooperation between the General Comptroller's Office (CGU) and the Attorney General's Office (AGU) in the negotiation and establishment of leniency agreements under the Brazilian Anticorruption Act.[1] Although it does not eliminate overlapping powers or merge institutional mandates, it introduces mechanisms designed to align incentives and reduce duplicative burdens inherent in dual enforcement. Its practical impact extends directly to the sphere of leniency agreements with the Administrative Council for Economic Defence (CADE), given the frequent intersection between antitrust violations and acts harmful to the public administration in public procurement cases.

Both the CGU and CADE allow parties involved in violations of their respective governing statutes[2] to apply for leniency in order to eliminate and/or reduce the applicable sanctions provided for under such statutes. In return, in general, a leniency applicant must provide each authority with information identifying the individuals and entities involved, as well as documents and other evidence relating to the conduct under investigation. Given the different scopes of the respective statutes, as discussed below, a leniency applicant must submit separate applications and negotiate the terms of each leniency agreement independently with the authority competent to execute it. This often results in high transaction costs and legal uncertainty for applicants, particularly where the reported conduct falls within the jurisdiction of more than one statute and governmental authority in Brazil.

Based on publicly available data from the Administrative Council for Economic Defence, 115 leniency agreements were executed between 2003 and 2025.[3] Brazil's figures are comparable to those reported by the Organisation for Economic Co-operation and Development (OECD) in its Competition Trends Report 2025. According to the Report, the number of leniency agreements worldwide had been declining for some time until it began to increase again in 2020. The Report includes data covering the period from 2015 to 2023. Official data from CADE indicates a similar trend in Brazil. The number of leniency agreements decreased until 2020, when only two agreements were executed, and then increased to five agreements in 2021, followed by one agreement in 2022 and two agreements in 2023. For the period between 2015 and 2023, the average number of leniency

1 Brazilian Anticorruption Act (Law No 12,846/2013).

2 Law No 12,846/2013, in the case of the CGU – the Brazilian Anti-Corruption Act; and Law No 12,529/2011, in the case of CADE – the Brazilian Competition Act).

3 Administrative Council for Economic Defence, 'Statistic's do Programa de Leniência do Cade' (27 November 2020) www.gov.br/cade/pt-br/assuntos/programa-de-leniencia/estatisticas accessed 24 April 2026.

agreements among non-OECD members remained below four agreements per year. In Brazil, the number of agreements fell below four per year only in 2020, 2022 and 2023 during that same period.[4]

For the period between 2017 to 2026, the CGU entered into 36 leniency agreements, ended 49 proposals without a settlement and received 102 requests for leniency, totalling more than BRL20bn of fines paid under leniency agreements.[5]

Parallel enforcement by CADE and the CGU in bid rigging

Under Law No 12,529/2011 (the Brazilian Competition Act), CADE is responsible for preventing and repressing violations against the economic order. Cartel conduct, involving agreements between competitors to establish relevant commercial parameters in the market, is treated as one of the most serious violations of the Brazilian Competition Act, according to CADE's Guidelines of May 2016.[6] When competitors coordinate their behaviour in a public tender, they may distort competition, eliminate rivalry and reduce the efficiency gains that competitive procurement is designed to generate. Such practices undermine not only market functioning but also public trust in the allocation of public resources. Based on the relevance of this topic to the market, to the public administration and to CADE, the authority published Guidelines on Fighting Bid Rigging. It noted that, according to data from member states of the OECD, public procurement represents roughly 15 per cent of GDP. In Brazil, in 2018, the Federal Government alone conducted tenders involving approximately BRL48bn, which illustrates how bid rigging may significantly impact the public treasury.[7]

At the same time, the same factual scenario may fall directly within the scope of Law No 12,846/2013, the Anticorruption Act, which empowers the CGU to hold legal entities strictly liable for acts harmful to the public administration. Decree No 11,129/2022 further regulates the calculation of fines and the assessment of integrity programmes under this regime. Among the acts expressly covered by the Anticorruption Act is the frustration of the competitive nature of public procurement procedures. A bid-rigging cartel in a government tender therefore

4 'OECD Competition Trends 2025' (OECD) www.oecd.org/content/dam/oecd/en/publications/reports/2025/02/oecd-competition-trends-2025_435ed241/8c4bd00b-en.pdf accessed 24 April 2026.

5 See https://app.powerbi.com/view?r=eyJrIjoiZTU2MWI0MjYtY2EzOS00NzYyLTg3MWQtYWE3MmFiMmY0ODM4IiwidCI6IjY2NzhkOWZlLTA5MjEtNDE3ZC04NDExLTVmMWMxOGRlZmJiYiJ9 accessed 24 April 2026.

6 CADE's Guidelines (May 2016) https://cdn.cade.gov.br/Portal/acesso-a-informacao/perguntas-frequentes/cartilha-do-cade.pdf accessed 24 April 2026.

7 See https://cdn.cade.gov.br/Portal/centrais-de-conteudo/publicacoes/guias-do-cade/guia-de-combate-a-carteis-em-licitacao-versao-final-1.pdf accessed 24 April 2026.

represents a paradigmatic case of overlapping jurisdiction. It constitutes an infraction against the economic order under the Competition Act and an act harmful to the public administration under anticorruption law.

The coexistence of these enforcement regimes reflects distinct normative foundations. The Competition Act is based in the prevention and repression of violations against the economic order, guided by the constitutional principles of free enterprise, free competition, the social function of property, consumer protection and the repression of abuse of economic power, as established in Article 1 of the Competition Act. Anticorruption law, by contrast, is primarily concerned with safeguarding the integrity of public administration, following its Article 1. These objectives are complementary, yet their institutional realisation occurs through separate procedural tracks and institutions. When a single set of facts triggers both regimes, companies may find themselves navigating parallel investigations, distinct evidentiary standards, separate negotiations and potentially cumulative financial sanctions.

For many years, the absence of structured coordination mechanisms between CADE and the CGU generated substantial legal uncertainty. Companies that sought to cooperate through leniency agreements faced the challenge of aligning independent processes without clear guidance on how benefits granted by one authority would be treated by another. A firm that secured full administrative immunity before CADE as the first applicant in the marker queue could still be exposed to a significant fine under the Anticorruption Act, with no automatic guarantee that its prior collaboration would be reflected in the calculation of sanctions. Conversely, a company that initiated discussions with the CGU but delayed its approach to CADE risked losing its position in the marker queue and therefore forfeiting the possibility of antitrust immunity.[8]

This structural fragmentation could increase transaction costs and complicate strategic decision making. Internal investigations, therefore, must be designed not only to uncover relevant facts but also to anticipate procedural interactions across institutions. The risk of inconsistent factual narratives between authorities further amplified exposure. In addition, the potential accumulation of fines and reparation obligations raised concerns regarding proportionality and predictability. While the principle of *non bis in idem* limits the imposition of multiple sanctions for the same legal offence, its application in contexts involving distinct legal regimes is nuanced and often dependent on the specific configuration of facts, subjects and protected interests.

8 Thiago Jabor Pinheiro, Luiza Cattley, Larissa Galdi, João Marcelo da Cost and Silva Lima, 'Cartéis em fraudes a licitações: a promissora aproximação entre CGU e Cade' (JOTA, 24 January 2024) www.jota.info/opiniao-e-analise/artigos/carteis-em-fraudes-a-licitacoes-a-promissora-aproximacao-entre-cgu-e-cade accessed 24 April 2026.

The need for institutional cooperation is therefore not new to the authorities. CADE has played a particularly relevant role in fostering cooperation with authorities in Brazil and abroad. This was acknowledged by the OECD in its 2019 OECD Peer Reviews of Competition Law and Policy: Brazil, 2019,[9] which noted that CADE had entered into more than 40 cooperation agreements with authorities, including the CGU and the Public Prosecutor's Office at that time. According to its 2025 yearbook, CADE executed new cooperation agreements with the National Telecommunications Agency (ANATEL), the Labour Public Prosecutor's Office, the Court of Accounts in the State of Paraíba and again with the Public Prosecutor's Office, while maintaining 65 other agreements in force. In terms of international cooperation, CADE reported 170 bilateral regional, and multilateral initiatives in 2025.[10]

The formalisation of Technical Cooperation Agreement No 52/2023 on 10 November 2023 between CADE and the CGU also marked an important step toward addressing challenges related to multiple jurisdictions being responsible for the review of the same facts. By establishing structured channels for information sharing, exchange of technical expertise and joint training initiatives, CADE and the CGU signalled their recognition that effective enforcement in complex cases requires coordinated action. The agreement, with a duration of 48 months and no transfer of financial resources between the institutions, preserved institutional autonomy while creating a platform for dialogue. It did not alter statutory competences or create binding cross recognition of decisions. However, it represented a practical commitment to reducing procedural fragmentation and fostering greater predictability in cases of shared jurisdiction.

Key procedural and substantive aspects of Interministerial Normative Ordinance CGU/AGU No 1/2025 on leniency agreements

The subsequent issuance of Interministerial Normative Ordinance CGU AGU No 1/2025 appears to be a natural development of that partnership. The Ordinance addresses one of the most sensitive aspects of dual enforcement: the incentive structure surrounding leniency agreements.

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9 'OECD Peer Reviews of Competition Law and Policy: Brazil' (OECS, 2019) https://cdn.cade.gov.br/portal-ingles/topics/leniency%20program/Publications%20/oecd-peer-reviews-of-competition-law-and-policy-brazil-ENG-web.pdf accessed 24 April 2026.

10 See https://indd.adobe.com/view/a2fa1c3d-6873-450f-be4e-3c12d468c4b8 accessed 24 April 2026.

Timing

On the topic of benefits resulting from leniency agreements, under the Anticorruption Act, legal entities that enter into leniency agreements may benefit from exemption from certain sanctions and a reduction of up to two thirds of the applicable fine. As a rule, CADE's leniency agreements do not result in the imposition of fines on leniency applicants. However, in the case of a partial leniency agreement (typically available when CADE's General Superintendence has some prior knowledge of the conduct, but lacks documents or supporting evidence sufficient to launch a formal investigation), a fine may be imposed on the applicant. In such cases, the applicant may be granted a reduction of one to two thirds of the applicable fine.

In this context, the Ordinance introduces a clear and objective rule for companies that have already submitted a leniency proposal to CADE and wish to apply for leniency before the CGU. If the proposal to the CGU and the AGU is presented within six months of the submission to CADE, the company may secure the maximum reduction of two thirds of the fine under the Anticorruption Act.

This six-month window is a central element of the new framework. It creates a predictable temporal bridge between the antitrust and anticorruption spheres, encouraging companies to coordinate their disclosures rather than treating them as isolated events. By doing so, it reduces the risk that cooperation in one forum will inadvertently exacerbate exposure in another. The Ordinance therefore addresses the so called multi-door liability problem, in which self-reporting before one authority could trigger parallel proceedings without corresponding mitigation. The new rule sends a clear signal that timely and coordinated cooperation will be rewarded with maximum statutory benefits.

Procedural synchronisation

Procedural synchronisation remains one of the most demanding aspects of the coordinated model. CADE's marker system is inherently competitive and time sensitive. Only the first applicant to report a specific cartel and meet the legal requirements may obtain full administrative immunity. The initial marker request must provide sufficient information about the conduct, the market and the geographic scope to allow the authority to assess its novelty. Once the marker is granted, the applicant enters a negotiation phase during which it must present a detailed narrative of the conduct and robust corroborating evidence. Strict chain of custody standards apply to ensure the integrity of documents and electronic data. The execution of the leniency agreement usually involves the participation of the Public Prosecutor's Office, which also signs the agreement, so as to ensure that the criminal exemption granted under the agreement extends to the individuals involved.

In the anticorruption sphere, the leniency process begins with the submission of a proposal to the CGU. If admissibility requirements are satisfied, a memorandum of understanding is executed to define the parameters of collaboration. Negotiations then encompass financial obligations, damage reparation, compliance commitments and the scope of cooperation in ongoing investigations. The regulatory framework establishes that negotiations should ideally be concluded within 180 days from the signing of the memorandum, although extensions are possible. The need to align this timeline with CADE's marker process and the six-month window established by the Ordinance requires meticulous planning and coordination among internal and external advisors.

Confidentiality

Confidentiality is a key concern in this setting, as effective coordination among authorities often depends on waivers allowing the exchange of information regarding the facts disclosed in the leniency negotiations and, later, the agreement. Absent such waivers, most documents generated during the negotiation process, and, in many cases, the agreement itself, will generally remain confidential at least until formal execution. Although confidentiality waivers between authorities may facilitate efficiency and consistency across parallel proceedings, they may also heighten exposure to civil or administrative claims, as well as reputational risks. Companies should therefore carefully evaluate both the scope of any waiver and the potential implications of cross-institutional information flows, notwithstanding the confidentiality protections afforded during the negotiation phase under both the Brazilian Competition Act and the Brazilian Anticorruption Act.

The Brazilian Competition Act guarantees the confidentiality of leniency proposals before CADE until the final judgment of the administrative proceeding. This means that, in general, CADE will not disclose the names of the applicants and their related infringement reports to the public. This was supported by CADE's Resolution No 21 from 2018, which set forth a comprehensive framework governing the confidentiality of leniency agreements, among other procedural aspects of administrative enforcement. The resolution was enacted in response to increasing discussions regarding transparency, and the need to preserve incentives for companies and individuals to cooperate with the authority in cartel investigations and other antitrust proceedings.

Under Resolution No 21, CADE established that the history of the conduct described in a leniency agreement, including its factual narrative and any subsequent amendments, as well as documents and information submitted in the context of the agreement that do not involve trade secrets, business activities or other legally protected information, shall remain confidential. Importantly, this confidentiality is preserved even after the issuance of a final decision by CADE's Tribunal in the respective administrative proceeding. The rule, therefore, extends beyond the investigative phase and continues to apply once the case has been finally decided, reflecting a deliberate policy choice to safeguard the integrity of the leniency framework. By ensuring that the core elements of the agreement remain protected, CADE reinforces predictability and reduces the perceived risks associated with self-reporting. This, in turn, strengthens the effectiveness of cartel detection and deterrence.

At the same time, the resolution delineates specific exceptions to the confidentiality rule. Disclosure may occur in the event of a legal requirement or a specific judicial order compelling the production of information. It may also occur upon express authorisation by the signatory, provided that CADE concurs with such disclosure. Furthermore, the resolution contemplates the possibility of international judicial cooperation, in which case access to confidential materials is subject to authorisation by both CADE and the signatory to the agreement. These exceptions seek to balance the protection of sensitive information with broader legal obligations and cooperation commitments, including cross border enforcement efforts.

By structuring confidentiality in this manner, CADE sought to harmonise competing interests: the need for transparency in public administration, the procedural rights of investigated parties and the preservation of strong incentives for leniency applicants. Resolution No 21 therefore represents a key normative in the consolidation of Brazil's leniency regime, providing clearer guidance to market participants and contributing to the institutional stability of the enforcement system.

The anticorruption framework also provides for restricted access to proposals in order to protect investigations and business interests. Pursuant to paragraph 6 of Article 16 of the Anticorruption Act, a leniency agreement proposal will only become public after the respective agreement has been formally executed, except where disclosure or confidentiality is required in the interest of the investigations or the administrative proceeding.

Compliance programmes

The evaluation of corporate integrity programmes constitutes another area in which cooperation may generate positive systemic effects. The CGU generally assesses compliance programmes in the negotiation of leniency agreements. Decree No 11,129/2022, which regulates the Anticorruption Act, establishes detailed criteria for assessing the effectiveness of compliance programmes under the Anticorruption Act, including leadership commitment, risk assessment, internal controls, reporting channels, disciplinary measures and continuous monitoring. An effective programme may justify meaningful reductions in fines. The Decree regulating the Anticorruption Act provides for a reduction of up to five per cent in the calculation of the fine for companies that can demonstrate the existence and effective implementation of a compliance programme.

CADE may also consider compliance initiatives in the context of leniency agreements that do not grant full immunity to applicants (eg, partial leniency agreements), although the assessment of such initiatives is neither a mandatory nor a common step in its proceedings. In CADE's Guidelines for Compliance Programs,[11] the authority states that its Tribunal may take into account the existence of a robust compliance programme as evidence of good faith, which may mitigate the sanction to be imposed on the company. There are no specific guidelines establishing a percentage reduction or a defined methodology for assessing the robustness of a compliance programme. Nevertheless, companies should take this factor into consideration when dealing with both CADE and the CGU. Greater convergence in the evaluation of integrity programmes would enhance predictability and incentivise genuine investment in preventive mechanisms rather than symbolic compliance structures.

The limits of cross-institutional coordination beyond leniency

Despite these advances, a significant gap remains: the relevance of settlement agreements in this context. As mentioned, leniency agreements with CADE and the CGU are available to the first companies/individuals to report a violation to the Brazilian Competition Act to CADE.

In cases in which leniency is not available (either because a leniency agreement has already been entered into with CADE or because CADE already had sufficient supporting evidence to launch a formal investigation), CADE also allows companies and individuals to enter into another type of settlement known as a *Termo de Compromisso de Cessação* (TCC). In bid-rigging cases, this type of settlement also closes the investigation with respect to the signatories. Under a TCC settlement, the signatory companies and individuals must pay a pecuniary contribution to CADE, generally at a discounted amount compared to the fine that would otherwise be imposed to settle the case against them.

11 *Guidelines for Compliance Programs* (CADE, January 2016) https://cdn.cade.gov.br/Portal/centrais-de-conteudo/publicacoes/guias-do-cade/guia-compliance-versao-oficial.pdf accessed 24 April 2026.

Based on CADE's specific guidelines for settlement agreements,[12] such agreements require that, in cartel cases, companies and individuals admit their participation in the conduct, cease the practice, pay the corresponding pecuniary contribution, subject to discounts depending on the timing of the settlement application and other mitigating circumstances set out in CADE's guidelines and comply with additional obligations. In addition, the applicant must cooperate with CADE throughout the investigation and related proceedings, whenever applicable. CADE has already entered into more than 400 settlement agreements with companies and individuals and has collected more than BRL5bn in pecuniary contributions from those settlements.[13] Settlement agreements are frequently used before CADE in cases where companies do not qualify for leniency.

The CGU has a similar agreement. This also allows companies to enter into a settlement agreement (*Termo de Compromisso*), provided that they formally admit liability for the facts under investigation, cease their involvement in the misconduct, fully repair the damages caused and pay the fine established under the Anticorruption Act. In return, the company may benefit from mitigation of the debarment sanction and the application of mitigating factors in the calculation of the fine, potentially resulting in a more proportionate overall penalty. The company also benefits from the absence of a formal administrative conviction, which could otherwise contribute to a finding of recidivism in future proceedings and negatively affect its standing before public authorities.

Interministerial Normative Ordinance No 1/2025 does not expressly address how pecuniary contributions paid under settlement agreements with CADE should be treated in subsequent anticorruption negotiations with the CGU, even though they have similar structures. There is also no correlation between the benefits granted under a settlement agreement by one authority and the leniency agreement entered into with another authority, nor is there any automatic cross recognition or spillover of advantages between them. As a result, a company involved in bid rigging may face a pecuniary contribution under a settlement agreement before CADE and also a fine and damage reparation under the Anticorruption Act. The absence of an explicit mitigating factor recognising settlement payments in the anticorruption sphere may reduce incentives for comprehensive settlements in cases where leniency is unavailable.

At the same time, CADE has normative provisions allowing for the reduction of pecuniary contributions in settlement agreements in light of damage reparation efforts undertaken by the investigated party. Based on CADE's Resolution

12 See https://cdn.cade.gov.br/Portal/centrais-de-conteudo/publicacoes/guias-do-cade/guia-tcc-atualizado-11-09-17.pdf accessed 24 April 2026.

13 See https://qap.cade.gov.br/extensions/cadenumeros/requerimentodetcc.html accessed 24 April 2026.

No 21/2018, CADE may consider, as a mitigating factor in calculating the pecuniary contribution in settlement agreements, the reimbursement of damages caused to victims before the CGU. This creates a valuable opportunity for cross mitigation. If a company reimburses the public administration for harm arising from a bid-rigging cartel under a CGU leniency agreement, it would be coherent and proportionate for CADE to consider such reparation when calculating the pecuniary contribution in a related settlement agreement. Although this interaction is not expressly regulated by the Ordinance, it is compatible with existing legal principles and could be developed through coordinated institutional practice.

Conclusion

The evolution of Brazil's dual enforcement model therefore presents both challenges and opportunities. On the one hand, companies must navigate a complex web of procedural requirements, strict deadlines and potential cumulative sanctions. On the other hand, the increasing alignment of incentives and the formalisation of cooperation mechanisms provide greater predictability than in the past. The six-month window for cross authority leniency, the recognition of the need to avoid disproportionate accumulation of penalties and the ongoing dialogue between CADE and the CGU all signal a commitment to rationalising enforcement.

For companies operating in Brazil, the implications are clear. Effective risk management requires integrated internal investigations that simultaneously assess antitrust and anticorruption exposure. Decision making must be rapid and informed, particularly in relation to marker requests and the timing of disclosures. Legal strategies must be coordinated across institutions, and compliance programmes must be robust, documented and demonstrably effective. Engagement with authorities should be proactive and transparent, with careful consideration of confidentiality waivers and financial planning.

For the authorities, the continued success of coordinated enforcement will depend on their capacity to deepen cooperation, clarify remaining uncertainties and apply principles of proportionality and *non bis in idem* in a consistent manner. The interaction between leniency agreements, settlement agreements, fines and damage reparation remains an area ripe for further refinement. Transparent guidance and consistent case practice could transform current ambiguities into opportunities for enhanced coherence.

If sustained and further developed, this trajectory may transform Brazil's dual enforcement model from a source of uncertainty into a benchmark of institutional synergy. By aligning incentives, respecting distinct legal rationales and avoiding disproportionate accumulation of sanctions, coordinated enforcement can simultaneously protect competition, safeguard public resources and promote fairness. The challenge now lies not in recognising the importance of cooperation, but in consolidating it through stable, predictable and proportionate institutional practice.

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