Settlements in Cartel Investigations: A Brazilian Success Story

30.06.2025 2 min read

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In 2007, Law 11.482/2007 introduced a significant change in Brazil's competition law framework: the possibility of entering into administrative settlements – known as TCCs (*Termos de Compromisso de Cessação*) – in cartel investigations.

Before Law 11.482/2007, TCCs did not require an admission of guilt by the investigated party or impose any monetary penalty. For this reason, their use was explicitly excluded in cartel cases: if companies could settle investigations into associations with competitors without suffering significant consequences, the legislation would no longer act as a deterrent but instead potentially encourage collusion among economic agents.

Without the option to settle, companies under investigation had little alternative but to defend themselves through lengthy proceedings, which sometimes ended up in the courts. Brazil lacked a mechanism like the U.S. plea bargain system, which is recognized for improving procedural efficiency. As a result, TCCs were rarely used, as most ongoing investigations involved cartel conduct.

The 2007 reform allowed Brazil's competition authority, CADE (*Conselho Administrativo de Defesa Econômica*), to enter into TCCs in cartel cases, provided the investigated party paid a monetary penalty. However, there was still uncertainty about whether an admission of guilt was required – an important point because of the implications of the TCC outside CADE's purview, particularly under the criminal law.

This ambiguity was resolved later that year through a change in CADE's regulations on September 4, which required an admission of guilt in TCCs stemming from leniency-based investigations. The impact was immediate: the average number of TCCs rose from one per year (1994–2007) to nearly six annually in the following four years.

The rules governing TCCs remained in force even after the reform of Brazil's competition defense system under Law 12.529/2011. In 2013, however, a new change in CADE's regulations extended the admission of guilt requirement to all cartel cases, regardless of origin.

The change led to a dramatic increase in the use of TCCs: between 2013 and 2018, CADE made an average of more than 54 TCCs per year, over 60% of which involved cartel conduct. These developments leave little doubt about the effectiveness of the 2007 reform. TCCs have become a valuable tool in Brazil's antitrust enforcement strategy, enabling CADE to resolve cases more efficiently and allocate its resources more strategically.

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