

Latin American enforcers commit to leniency principles

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The competition authorities of Brazil, Mexico, Peru, Argentina and Chile have signed a joint statement on shared principles that will guide the implementation of their leniency regimes – following recent controversy in the region about the confidentiality of submitted applications.



In their statement, the authorities [reiterated](#) their commitment to offering full immunity to first-in-line leniency applicants, as well as keeping the identity of leniency signatories confidential. They also noted the importance of transparency, with clear guidance on the conditions of leniency programmes, including the obligations and rights of those that submit applications.

The letter was signed by the five enforcers in Paris on 28 November, while attending the Organisation for Economic Co-operation and Development's Global Forum on Competition.

The statement does not focus on tackling specific industries or companies and “is not an agreement”, said a spokesperson for Brazil's Administrative Council for Economic Defence (CADE).

It instead further tightens the relationship between the five competition authorities, which formed the Latin American Strategic Alliance on Competition in March 2017. As part of the alliance, the five enforcers exchange information on a monthly basis and share updates on changes to competition law and policy, the CADE spokesperson said.

Signing of the joint statement follows recent controversy in the region about the treatment of confidential leniency applications.

In May, the Andean Community's competition authority – which investigates possible illegal conduct that occurred in one member state but effected another – fined two companies a total of US\$34 million for price fixing. The decision came after Ecuador's competition

authority referred its investigation to the regional body, together with information that it had received in a leniency application.

Antitrust agencies in [Peru](#) and [Columbia](#) warned that the decision could jeopardise leniency programmes in the region.

Tito Amaral de Andrade, managing partner at [Machado Meyer Advogados](#) in São Paulo, said he believed CADE wanted to increase regional integration in relation to leniency applications.

The ongoing Operation Car Wash investigation, which has featured anti-corruption and cartel investigations within Brazil and beyond, [demonstrated](#) that there was room for “further and better coordination among regional authorities,” he said.

Julián Peña, a partner at [Allende & Brea](#) in Buenos Aires, said the timing of the statement could also be due to the political situation in Peru. “The Peruvian Congress is currently analysing a couple of bills that would reduce the benefits to the leniency applicants,” he said. “I think that it is not a mere coincidence that the first best practice agreed by the Latam authorities is the granting of full immunity to the first leniency applicant,” Peña said.

[M & M Bomchil Abogados](#) partner Marcello den Toom in Buenos Aires said Argentina’s National Commission for the Defence of Competition is also interested in liaising and cooperating with other regional authorities. He said that the country’s signing of the joint statement follows its own attempt to invigorate competition enforcement.

“Argentina has still to launch an all-out war against cartels, as its enforcement efforts so far have been limited, partly due to the lack of a leniency programme and higher fines,” Marcello den Toom said. The country introduced its new competition law in May, establishing a leniency programme, although the enforcer is currently working to finalise the guidelines.

Miguel del Pino at [Marval, O’Farrell & Mairal](#) in Buenos Aires noted that there remained mistrust regarding how the leniency programme would work because the regulations had not been finalised.

“The joint statement aims to provide confidence and seriousness so as to encourage companies to start using this helpful tool,” he said.

By aligning their leniency programmes, the five enforcers clearly hope to make it easier for companies operating in cross-border cartels to apply for leniency in different countries, he said.

Benjamin Grebe, a partner at [Prieto](#) in Santiago, suggested that the statement could have gone further, by committing to extend an applicant’s confidentiality to the trial stage of the proceedings, rather than just during an enforcer’s investigation.

Another area that needed discussion was whether companies or individuals who were not first-in-line in applying for leniency could still be exempt from criminal prosecution, he added.

Amadeu Ribeiro, a partner in [Mattos Filho, Veiga Filho, Marrey Jr e Quiroga Advogados’](#) New York office, said the letter would not mark a substantial change in activity from the five enforcers, as more than anything it allows them to show their commitment to best practice in cartel enforcement. “That’s valuable for the antitrust community,” he added.

While the joint statement signals a continuation of the principle of partnership between the authorities in cases where there are cross-border cartel investigations, he said he did not expect it to mark an increase in the level of collaboration in future.

Ribeiro speculated that the statement was also a means for Brazil to demonstrate its commitment to best practice in enforcement because the country is attempting to become a permanent member of the OECD's competition council.

Demarest partner Daniel Oliveira Andreoli in São Paulo said that, while the five countries had more developed leniency programmes compared to others in the region, other countries would "certainly be influenced by this joint effort".