



Leniency, Leniency Plus and Penalty Plus in Brazil

ICN Cartel Workshop
Madrid, October 3rd 2016

Amanda Athayde Linhares Martins

Chief of Staff and Head of the Leniency Office of the General Superintendence

[The views expressed in this presentation does not necessarily represent CADE's opinion]

CADE condemns companies and individuals for involvement in marine hoses' cartel

EBC Agência Brasil

General

Brazil Federal Police launches new Operation Car Wash crackdown

mlex
market insight

Brazilian antitrust officials raid companies suspected of cartel in railway works

Jurisdiction : - Brazil /CADE /Latin America

CADE signs six agreements in cartel investigations

Agreements

In total, BRL 53.1 million will be collected to the Fund for the Defence of Diffused Rights

GCR
GLOBAL COMPETITION REVIEW

Brazil fines compressor cartel

Friday, 18 March 2016 (6 months ago)

GCR
GLOBAL COMPETITION REVIEW

INTERNATIONAL
Valor

Briefs

Brazil opens LPG cartel probe

Anti-trust court begins probe into cartel found in Operation Car Wash

12:00 AM (GMT -03:00) – Dec 23 2015

mlex
market insight

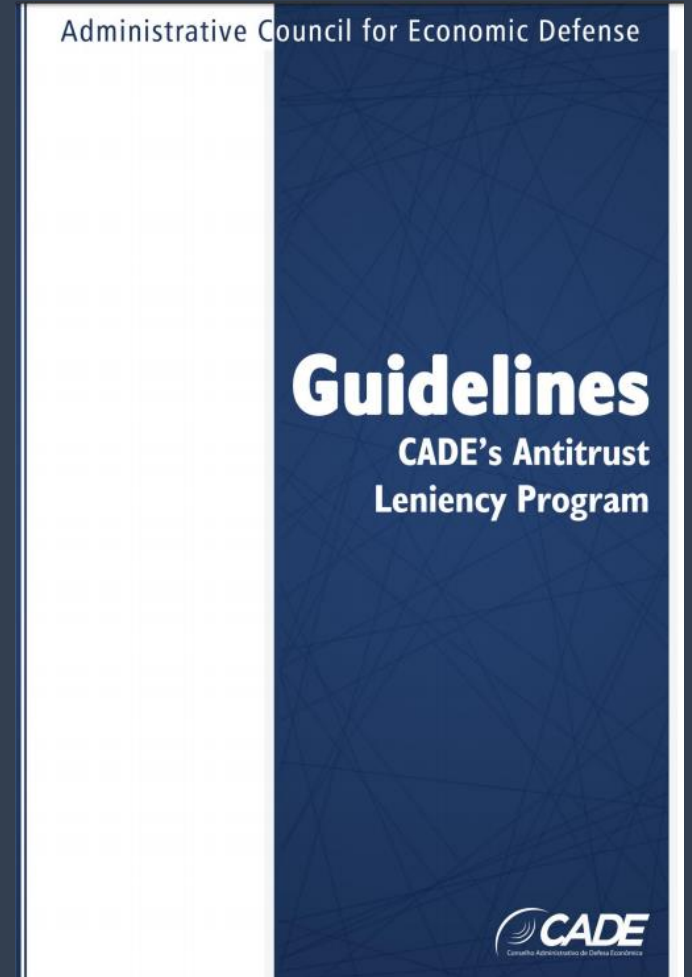
Brazilian watchdog asks Booking.com, Expedia to respond to hotel pricing complaint

Jurisdiction : - Brazil /Latin America

1. Brazilian Antitrust Leniency Program

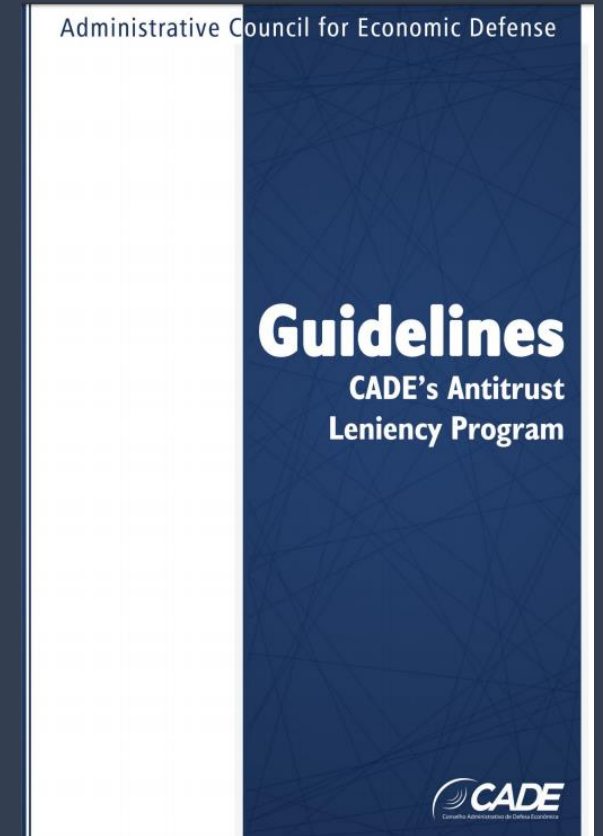
- **Eligibility**: companies and/or individuals
- **Signature**: CADE (administrative enforcement) and Public Prosecutors (criminal enforcement)
- **Benefits**: full immunity or partial reduction of the applicable fine (1/3 to 2/3) on the administrative *and* criminal violations
- **Requirements**:
 - 1st to qualify, obtain a marker and confess the violation
 - Cease its involvement in the infringement
 - At the time of the application, SG did not have enough evidence to ensure conviction the applicant
 - Full cooperation
 - Provide information and documents to identify other companies and individuals

(TCC available for the 2nd, 3rd, 4th..., upon confession and cooperation)



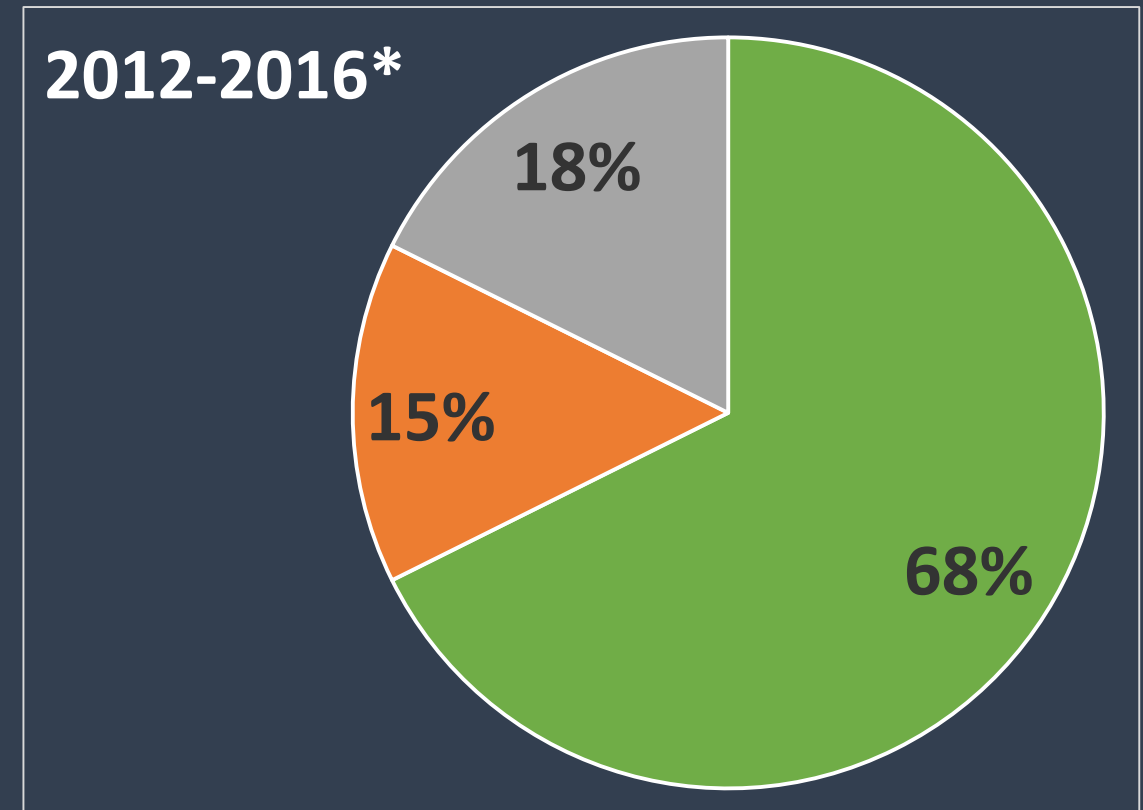
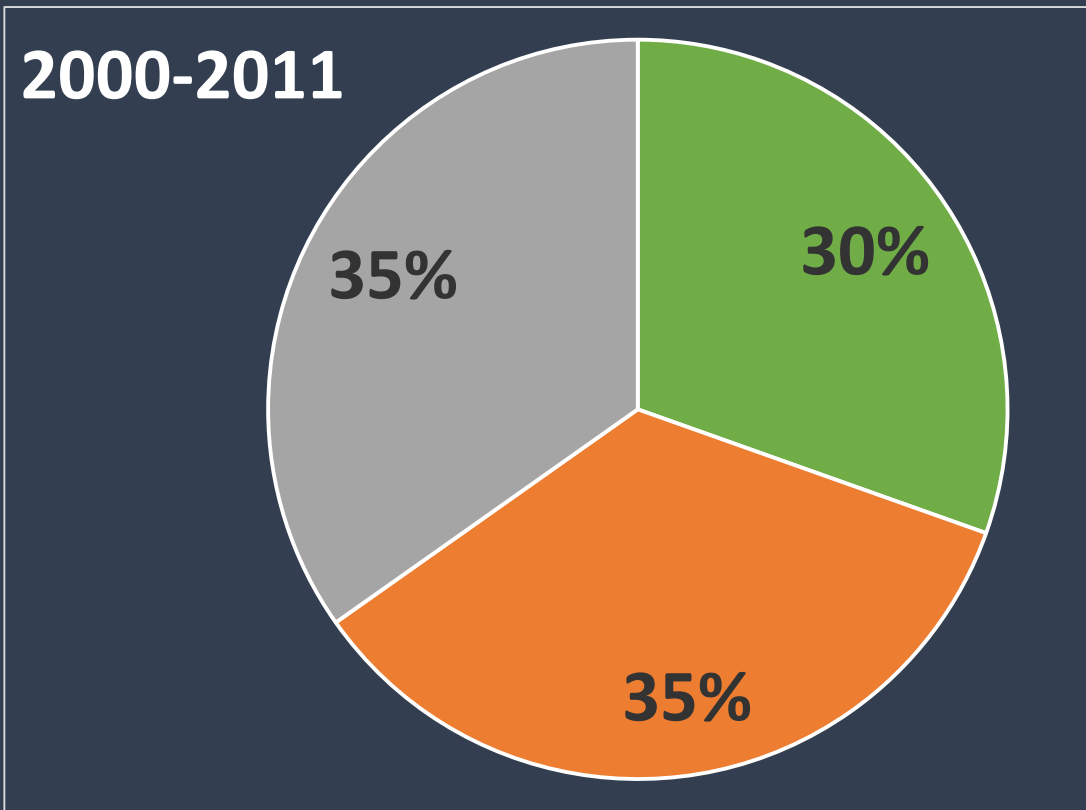
1. Brazilian Antitrust Leniency Program

- Brazil's Leniency Program in the law since 2000
- More than **70** new Leniency Agreements executed
 - Robust investigations
 - Condemnations in a broad array of markets
- Enhancement of the standard of proof required
- Prosecution of international and **national cartels as well**



1. Brazilian Antitrust Leniency Program

- Proportion of **national**, **international** and mixed cartels subject to Leniency Agreements



1. Brazilian Antitrust Leniency Program

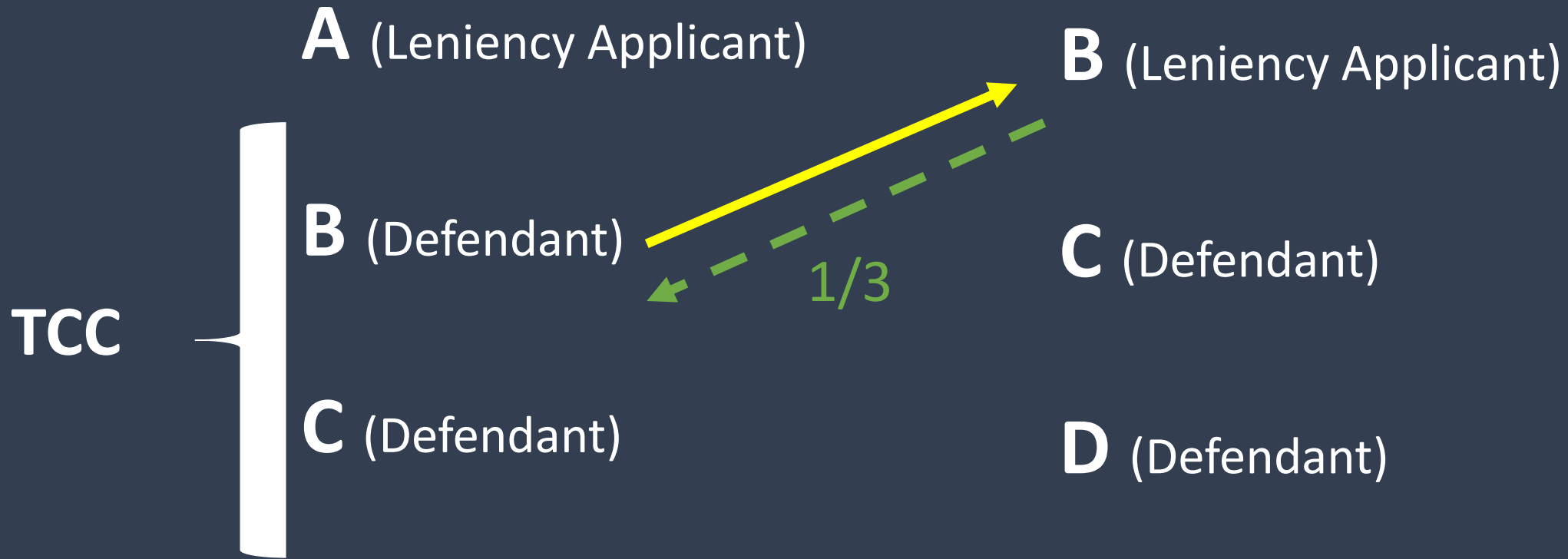
- Legislative modifications (2013) and positive spillovers
 - Leniency Agreement in the **Anticorruption Law**
 - Leniency Agreement with the **Public Prosecutors**
- **Boom** in the antitrust leniency negotiations
 - **New challenge: Leniency Plus!**



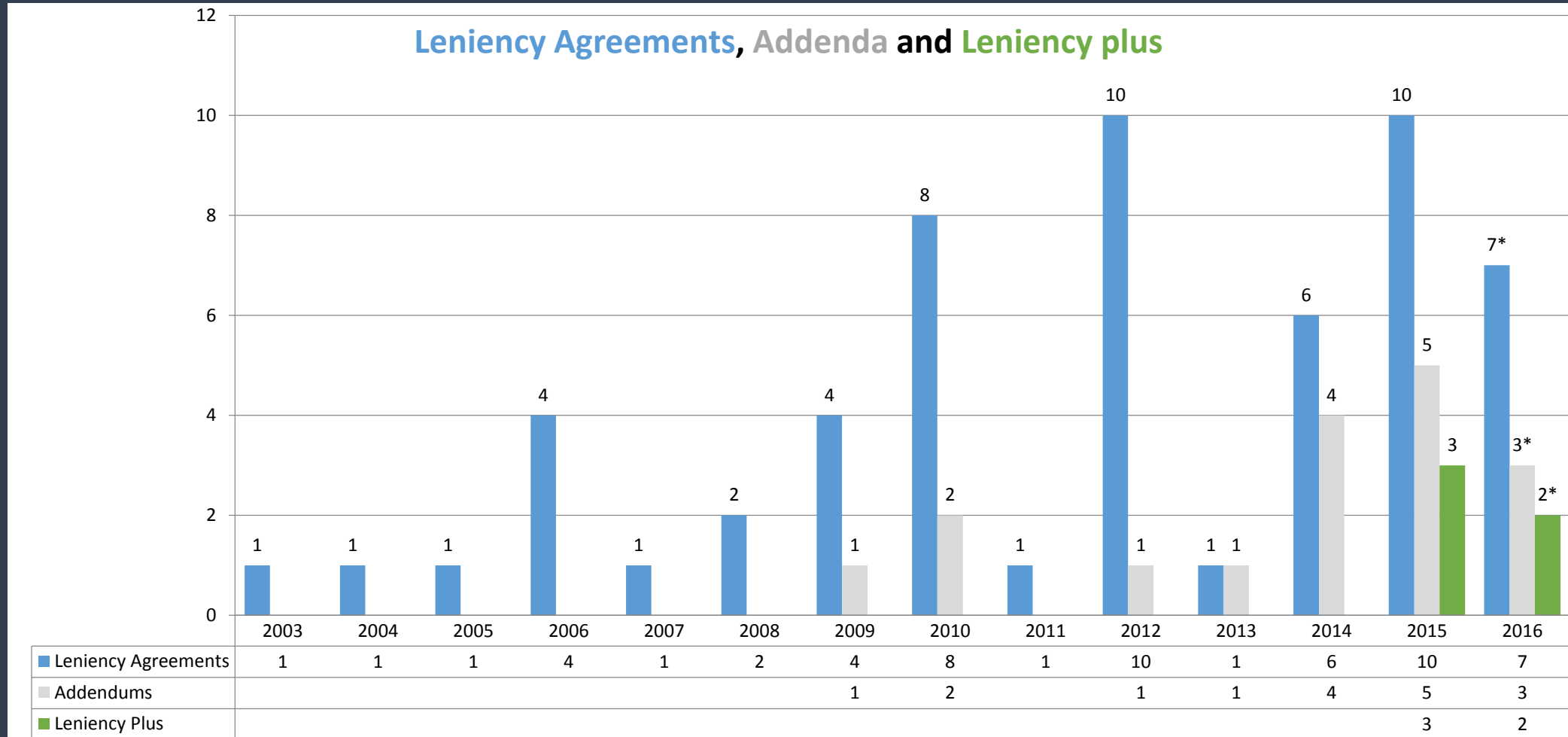
2. Leniency Plus in Brazil

1st Cartel

2nd Cartel



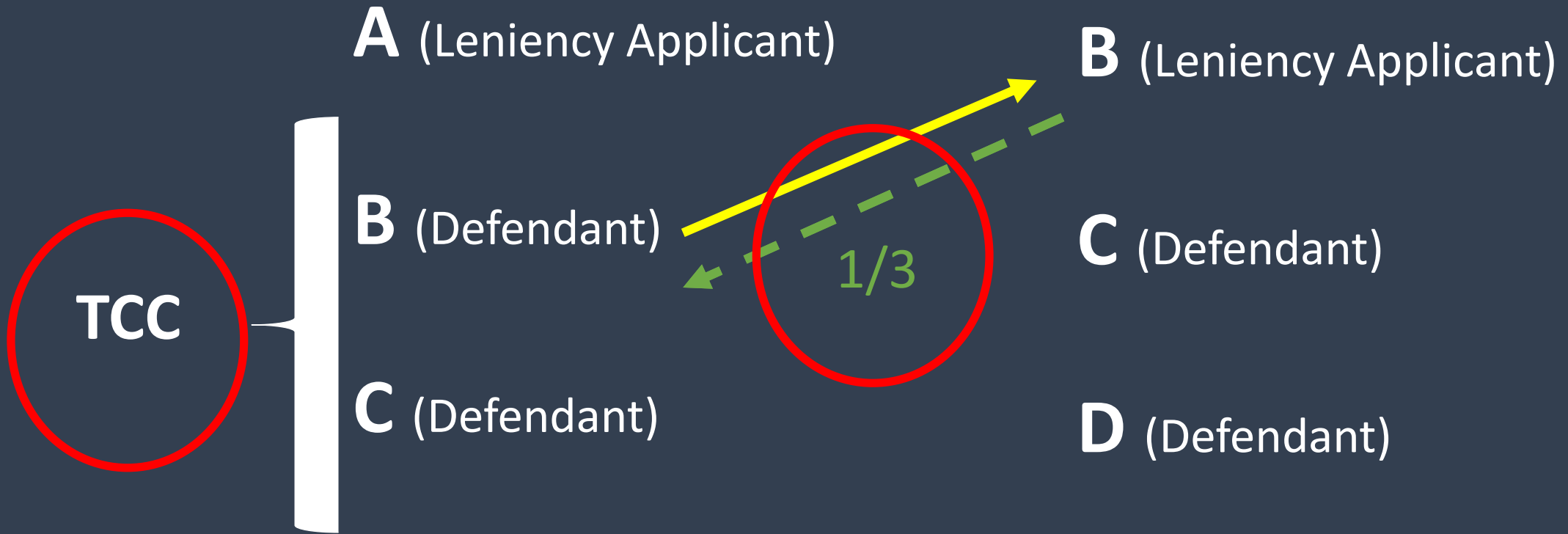
2. Leniency Plus in Brazil



More leniency plus in 2016 are expected!

1st Cartel

2nd Cartel



3. TCC + Leniency Plus?

- In regard to the first cartel, B has the following options:

TCC only

1st TCC: from 30 % to 50%;
2nd TCC: from 25% to 40%;
3rd, 4th... TCC: up to 25%.

TCC and Leniency Plus

1st TCC: from 53,33 % to 66,67%;
2nd TCC: from 50% to 60%;
3rd, 4th...TCC: up to 50%.

- In regard to the second cartel, B is leniency applicant.

4. Penalty Plus?

1st Cartel

A (Leniency Applicant)

B (Defendant)

C (Defendant)

2nd Cartel

B (Leniency Applicant)

E (Defendant)

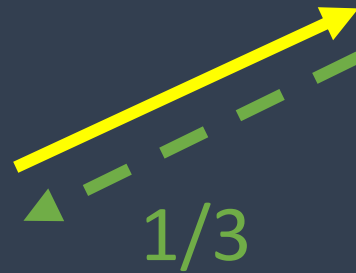
F (Defendant)

3rd Cartel

D (Leniency Applicant)

B (Defendant)

G (Defendant)



- Leniency plus: **extra carrot**

vs

- Penalty plus: **extra stick**



- In Brazil, no specific provision for penalty plus
 - Art. 45 Competition Law: “good faith”
 - Not bringing the 3rd cartel intentionally: **could it be taken as a lack of good faith?**
 - Aggravating factor?
 - No case law yet
- **Omnibus question/clause?**
 - Broader or tighter interpretation by CADE’s Tribunal?
 - Reason of the inaction: evidence of reasonable efforts vs nondisclosure election



Thank you! Obrigada!

Amanda Athayde
amanda.martins@cade.gov.br