

- [Go to content 1](#)
- [Go to navigation 2](#)
- [Go to search 3](#)
- [Go to footer 4](#)

CADE signs five agreements regarding a cartel investigation in the foreign exchange market and opens a new cartel investigation in the Brazilian exchange market

TCCs

The agreements on the foreign exchange market will result in pecuniary contributions of BRL 183,5 million and will count upon the collaboration of the parties investigated in the proceeding

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The Tribunal of the Administrative Council for Economic Defense – CADE signed, on December 7, five Cease and Desist Agreements (TCC in its acronym in Portuguese) in an investigation of cartel in the foreign exchange market (offshore), involving the Brazilian currency (Real) and foreign currencies as well as the manipulation of benchmark rates in the exchange market, such as the WM/Reuters and the European Central Bank rates (Administrative Proceeding [08700.004633/2015-04](#)

[http://sei.cade.gov.br/sei/institucional/pesquisa/processo_exibir.php?g3XpuoWYp-7HVPth0qfy4BTnTQGB-1fZe5x7Wj6r2vvtzoZRvewluxiDFH1bHEEW_AFV8VEkVobAVLk8U-J8g,,\).](http://sei.cade.gov.br/sei/institucional/pesquisa/processo_exibir.php?g3XpuoWYp-7HVPth0qfy4BTnTQGB-1fZe5x7Wj6r2vvtzoZRvewluxiDFH1bHEEW_AFV8VEkVobAVLk8U-J8g,,).)

The amount of pecuniary contributions collected totals BRL 183,5 million.

CADE signed the TCCs with Barclays PLC, Citicorp, Deutsche Bank S/A Banco Alemão, HSBC Bank PLC and JP Morgan Chase & CO. By means of the agreements negotiated by CADE's General Superintendence, the signatories acknowledged their participation in the conducts, committing to contribute with the investigations on the case and to cease the anticompetitive practices.

The Administrative Proceeding, to which the TCCs are related, has been initiated by the General Superintendence on July 2015. According to the investigations, the anticompetitive conducts reached the Foreign Exchange Market (also known as FX Market) and financial institutions operating in it.

Among the conducts that involved the Brazilian currency, it is worth emphasizing the agreements to fix prices or price levels (spread) and to prevent or hinder the action of certain operators in the exchange market. These practices affected mainly financial products called (Non-Deliverable Forwards Real/ NDF BRL), which are derivatives normally used as a hedge instrument. The contractor of one NDF ensures a future exchange rate to the base currency of the contract, reducing the risks of potential exchange rate fluctuations.

CADE also investigates the coordination between the banks in order to restrain competition in the purchase and sale of foreign currencies, as well to affect benchmark rates (or exchange rates of reference), which are calculated based on the exchange rates published in the market and the rates publicized periodically by public and private entities – such as the WM/Reuters and the European Central Bank. The benchmark rates are references used in multiple contexts, including the estimates of asset rates and security values, in the assessment of monetary reserves at a global level and as a basis of future contracts and fixed exchange operations.

The anticompetitive practices have direct and indirect potential effects in the Brazilian territory and potentially allowed the operators involved in the conduct to obtain more profits and to avoid/minimize losses. The clients of the financial institutions that execute exchange operations are, among others, agents that periodically need to perform operations of purchase and sale of currency, such as banks, investment funds, private companies and government bodies.

The Administrative Proceeding will be suspended in relation to the companies that signed the TCCs, until the obligations set by CADE's Tribunal are fulfilled. The investigation will move forward regarding the remaining parties: Standard Chartered Bank, The Bank of Tokyo-Mitsubishi UFJ, LTD, Credit Suisse AG, Merrill Lynch, Pierce, Fenner & Smith Incorporated, Banco Morgan Stanley S/A, Nomura International PLC, Royal Bank of Canada, Royal Bank of Scotland, Standard Chartered Bank (Brasil) S/A and UBS AG, and also 30 individuals.

New investigation in the Brazilian exchange Market (onshore)

Apart from the five TCCs related to the Administrative Proceeding 08700.004633/2015-04 concerning the investigation of conducts overseas (offshore) with effects in Brazil, CADE's General Superintendence has also opened, on December 7, an Administrative Proceeding to investigate an alleged cartel in the national onshore exchange rate market, involving the Brazilian currency (Administrative Proceeding 08700.008182/2016-57).

The anticompetitive conducts would have happened mainly in the FX spot and futures market (derivatives). The investigated conducts would have been practiced by financial institutions and individuals located in Brazil. They are related essentially to spot, forward and futures operations conducted and settled in Real (BRL).

The investigation reaches 10 financial institutions based in Brazil and 19 of its employees and/or former employees. There is strong evidence of anticompetitive conduct regarding at least five banks: Banco BBM S/A; Banco BNP Paribas Brasil S/A; Banco BTG Pactual S/A; Banco Citibank S/A; and HSBC Bank Brasil S/A Banco Múltiplo. In addition, there is also evidence that the following banks are involved in the practice to a lesser extent: Banco ABN AMRO Real S/A; Banco Fibra S/A; Banco Itaú BBA S/A; Banco Santander (Brasil) S/A; and Banco Société Générale Brasil S/A.

The evidence appointed that the communication between the companies was conducted in Bloomberg's chat rooms at least between 2008 and 2012. The evidence analyzed also indicates attempts to coordinate exchange operations and exchange risk positions; to define prices and/or level of prices to exchange and differential spreads (such as FRP); attempts of affect the PTAX reference index of the Brazilian Central Bank; and to share commercially sensitive information, such as risk positions, prospective activities of negotiation and/or clients information.

According to the General Superintendence, such conducts have potentially reduced competition, since in some operations conducted by financial institutions, exchange operators acted jointly as if they were one player in the market. The conducts could have harmed clients and competitors in the market, but not necessarily the Brazilian Central Bank's PTAX, which is the reference index to the exchange rate USD/BRL in Brazil.

The parties will be notified to present their defense. During the instruction of the Administrative Proceeding, both the accused and the General Superintendence can provide new evidence. At the end of the instruction, the General Superintendence issues an opinion either in favor of condemning or filing the case. The opinion will then be submitted to CADE's Administrative Tribunal, which is responsible for the final decision

CADE has been coordinating its investigations with the Brazilian Central Bank in the two cases.