



ANTI-CARTEL ENFORCEMENT AND COOPERATIVE SOLUTIONS IN LATIN AMERICA:

AN OVERVIEW OF LESSONS AND CHALLENGES AHEAD

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LATIN AMERICAN ENFORCEMENT SYSTEMS AT A GLANCE

- Antitrust systems in Latin America are steadily evolving, through the enactment of new laws, the introduction of pre-merger notification regimes, and the strengthening of penalties applied in connection with antitrust cases
- Recent developments:

Brazil	New Competition Law came into force in 2012. Since then, several regulations were issued, including guidelines for leniency and settlement agreements
Argentina	A new competition bill was submitted to the National Congress in September 2016
Chile	New Competition Law entered into force in 2016, introducing, among others, criminalization of cartels

BRAZIL

INTRODUCTION

- Antitrust authority in Brazil: Administrative Council for Economic Defense (CADE)
 - Administrative enforcement
- Current Brazilian Competition Law (Law 12,529/11) entered into force in May 2012
 - Introduction of pre-merger review regime
 - Restructured CADE as a single, independent antitrust agency
- Leniency Program created in 2000 (Law 10,149/2000)
- Settlement agreements in cartel cases introduced in 2007 (Law 11,482/2007)



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LENIENCY PROGRAM

- Benefits of entering into a leniency agreement with CADE:
 - Immunity against administrative and criminal sanctions
 - If CADE already had knowledge of the reported violation a reduction of 1/3 to 2/3 of the applicable fine
- Requirements to apply for leniency:
 - i. Be the first company or individual to report a violation that CADE has no knowledge of, or in which CADE does not have sufficient evidence to convict the investigated companies and individuals
 - ii. Agree to cease its participation in the reported violation
 - iii. Acknowledge its involvement in the conduct
 - iv. Fully and permanently cooperate with the investigation



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LENIENCY PLUS

- Reduction by 1/3 to 2/3 of the applicable fine for applicant that does not qualify for a leniency agreement, but provides information on a second cartel about which CADE had no prior knowledge of

SECURING A MARKER

- Race with co-conspirators to contact the antitrust authority to report a violation
- If the marker is not available, the proponent can be placed on the waiting line for a settlement agreement for the same conduct

COOPERATION WITH OTHER JURISDICTIONS

- Leniency applicants may allow CADE to share information with the authorities of other jurisdictions through a waiver
- CADE has cooperation agreements with CNDC, FNE, SIC, among others



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SETTLEMENT AGREEMENTS

- If the settlement agreement is filed with CADE's General Superintendence:
 - i. Cooperation with CADE throughout the investigation
 - ii. Payment of a fine of:
 - A. 30% to 50% reduction for the first proponent
 - B. 25% to 40% reduction for the second proponent
 - C. Reduction of up to 25% for the other proponents
 - iii. Acknowledgement of participation in the investigated conduct
 - iv. The applicant must cease its involvement in the investigated conduct
- If the settlement is submitted to CADE's Tribunal, a reduction of up to 15% is applied
- It does not grant immunity against criminal sanctions



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CONFIDENCIALITY

- As a rule, leniency and settlement proposals and whole negotiation receive confidential treatment

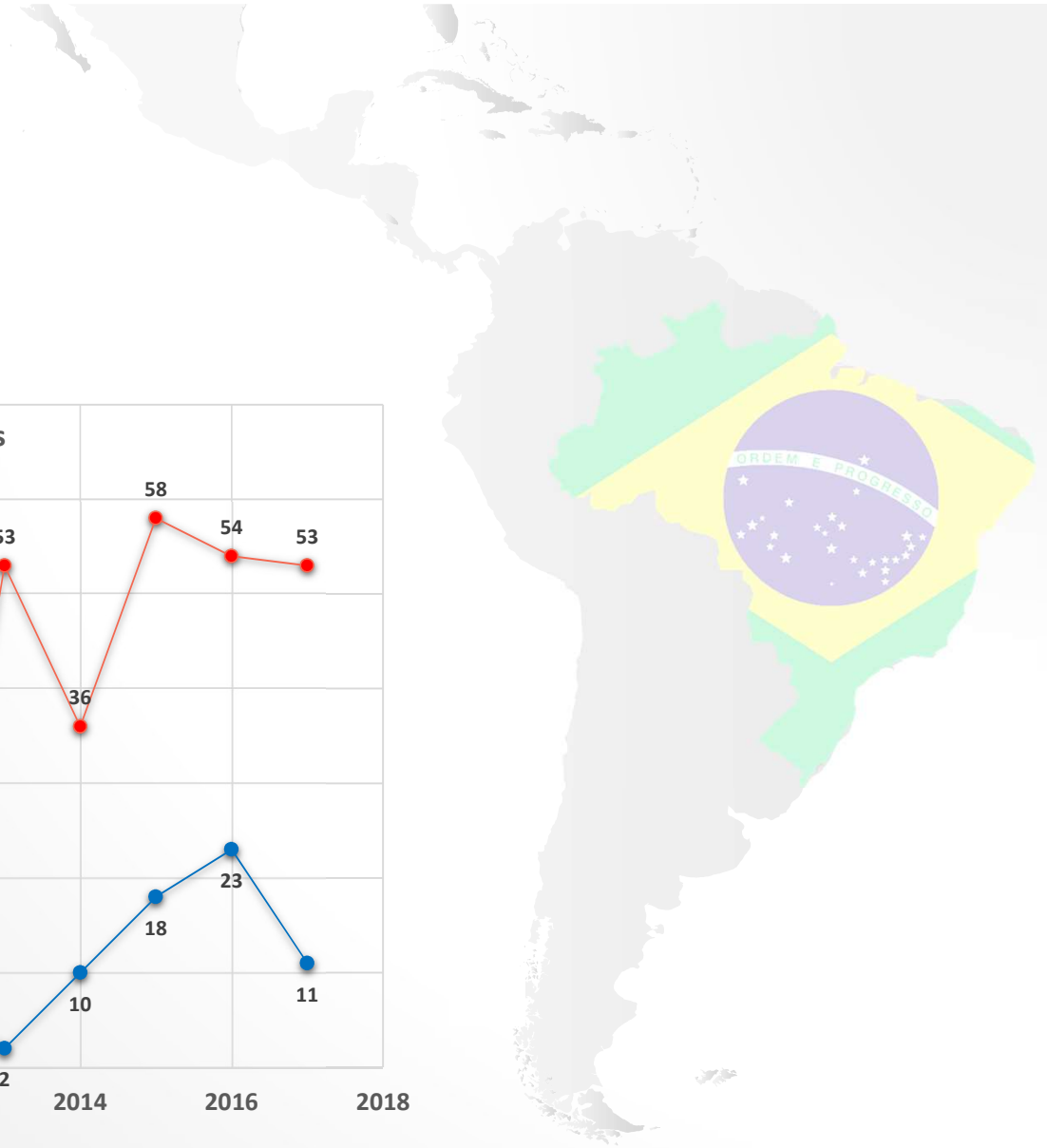
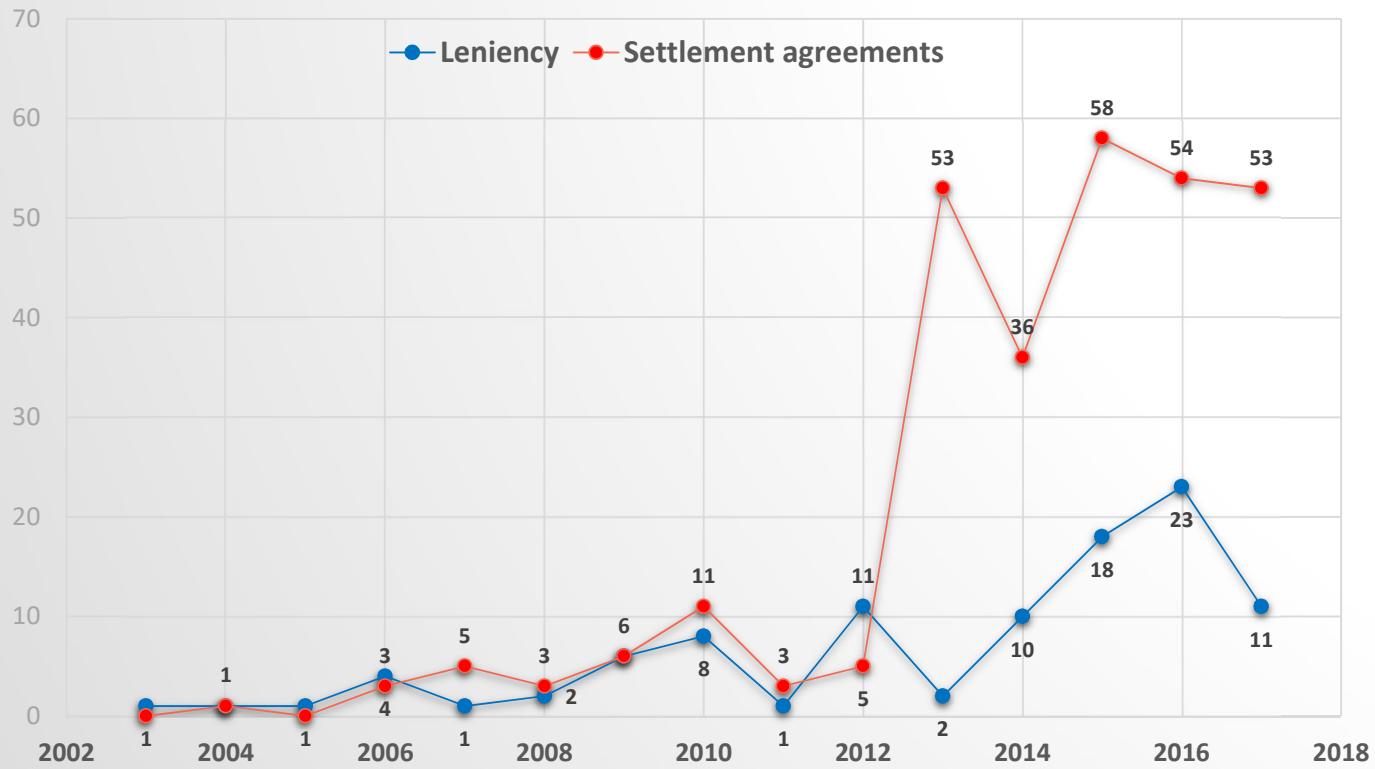
INTERPLAY BETWEEN COOPERATIVE SOLUTIONS AND PRIVATE ENFORCEMENT

- Leniency and settlement agreements do not grant immunity against damage claims
- Resolution on third-party access to documents of CADE's investigations was subject to public consultation:
 - "Black list" of documents that will never be shared with the public
 - Documents to be made available depending on the stage of the investigation



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COOPERATIVE SOLUTIONS IN NUMBERS



ARGENTINA

INTRODUCTION

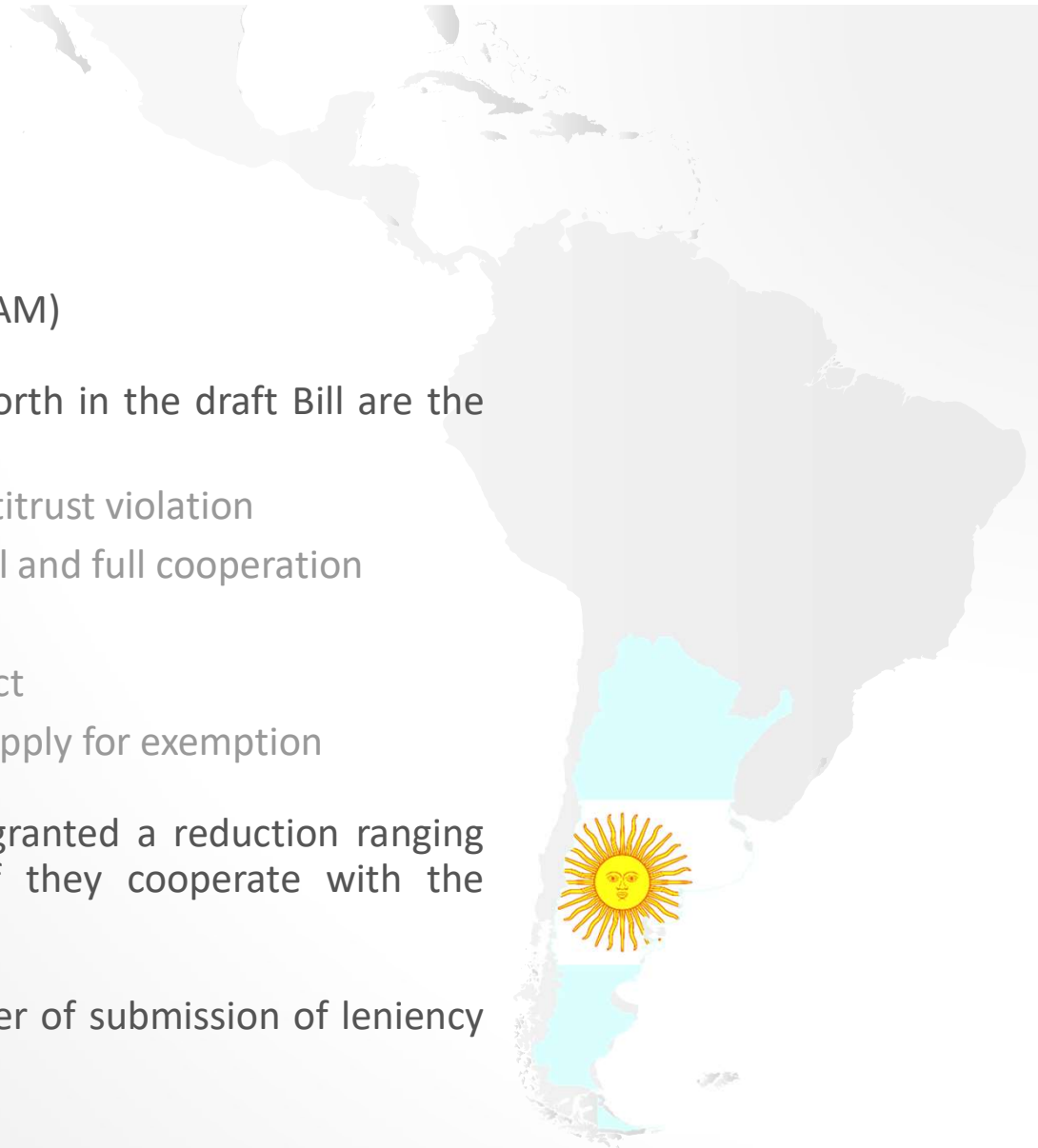
- Antitrust authority in Argentina: National Commission for Competition Defense (CNDC)
 - Administrative enforcement
- On September 2016, a draft bill proposing changes to Argentina's Competition Law (Law 25,156/1999) was submitted to Congress, including:
 - the creation of an independent competition agency
 - a pre-merger review system
 - the launching of a Leniency Program (with both Exemption and Reduction Benefit Programs)
 - new penalty guidelines
 - the creation of a special court to review appeals against the competition authority's decisions



ARGENTINA

LENIENCY PROGRAM (EXEMPTION BENEFIT PROGRAM)

- The requirements to apply for exemption set forth in the draft Bill are the following:
 - Be the first to report to the authority an antitrust violation
 - Bring evidence of the existence of the cartel and full cooperation
 - Cease the anticompetitive conduct
 - Do not destroy any evidence of such conduct
 - Keep the confidentiality of its intention to apply for exemption
- The second and following applicants may be granted a reduction ranging from 20% to 50% of the applicable fine, if they cooperate with the investigation
- Reduction will be granted according to the order of submission of leniency application



ARGENTINA

LENIENCY PLUS

- Reduction by 1/3 of the applicable penalty for proponent that does not qualify for a leniency agreement, but provides information on a second cartel about which CNDC had no prior knowledge of

COOPERATION WITH OTHER JURISDICTIONS

- CNDC has cooperation agreements with CADE, COFECE, CNMC and INDECOPI. Informal cooperation have been developed with FNE, FTC, DOJ and DGComp.

CARTEL AND CRIMINAL LIABILITY

- Individuals are no subject to imprisonment for involvement in cartel

PRIVATE ENFORCEMENT

- Still incipient. Draft bill takes the decision of the competition authority as res judicata



ARGENTINA

SETTLEMENT AGREEMENT

- Argentina's Competition Law provides that a defendant may settle a investigation:
 - Settlement proposal must be filed at any time prior to the final ruling
 - Defendant does neither need to acknowledged its involvement in an violation nor pay a fine
 - Most settlement proposals were filed in investigations were violations had no significant anticompetitive effects
 - Unclear whether a settlement proposal could be filed in the context of a cartel investigation
 - Settlement agreement does not grant immunity against damage claims



CHILE

INTRODUCTION

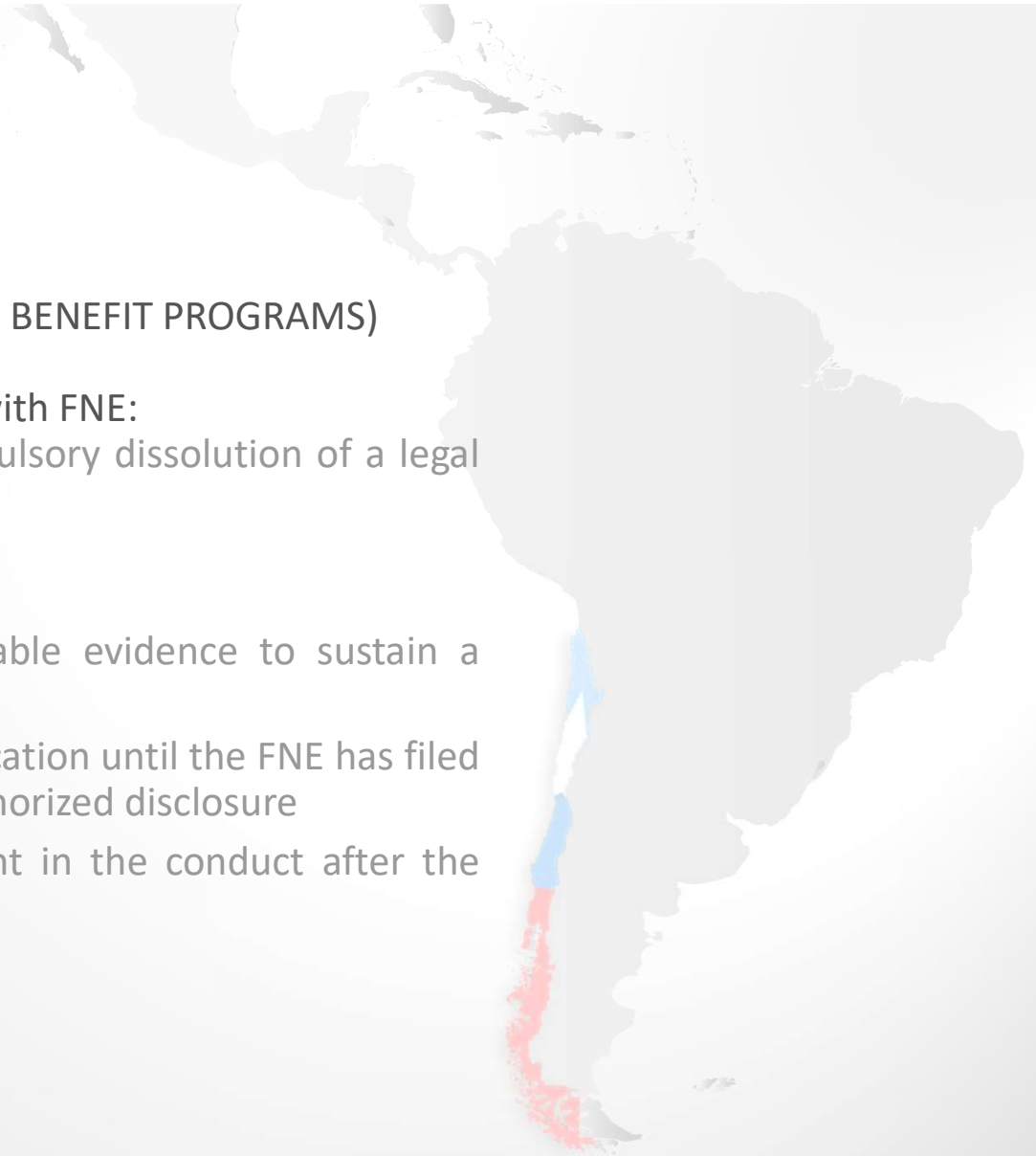
- Antitrust authorities in Chile: the National Economic Prosecutor's Office (Fiscalía Nacional Económica - FNE) and the Chilean Competition Tribunal (TDLC)
- New Competition Law was signed by the Chilean President on August 19, 2016
 - Introduction of pre-merger review system
 - Criminalization of cartels
 - FNE shall have sole authority to bring criminal lawsuit in a cartel case following a final decision by the TDLC
- Chile's Leniency Program was launched in 2009 (Law 20,361/2009)
 - Exemption 1st applicant
 - Up to 50% reduction 2nd applicant



CHILE

LENIENCY PROGRAM (EXEMPTION AND REDUCTION BENEFIT PROGRAMS)

- Benefits of entering into a leniency agreement with FNE:
 - Immunity against administrative (i.e. compulsory dissolution of a legal entity and/or fines) and criminal sanctions
- Requirements to apply for leniency:
 - i. Provide precise, truthful and demonstrable evidence to sustain a complaint
 - ii. Refrain from disclosing the leniency application until the FNE has filed a complaint, archived investigation or authorized disclosure
 - iii. Put an immediate end to its involvement in the conduct after the benefit application has been filed



CHILE

LENIENCY PLUS

- FNE will grant the maximum permitted reduction with respect to the first collusive conduct and full immunity with respect to the second conduct

SECURING A MARKER

- Any applicant may request a marker from the FNE (on-line or by phone), while that party gathers information and/or evidence for submitting a leniency proposal
- If a marker for a leniency agreement is not available, second applicant and followings will be placed in line for reduction benefit for the same conduct

COOPERATION WITH OTHER JURISDICTIONS

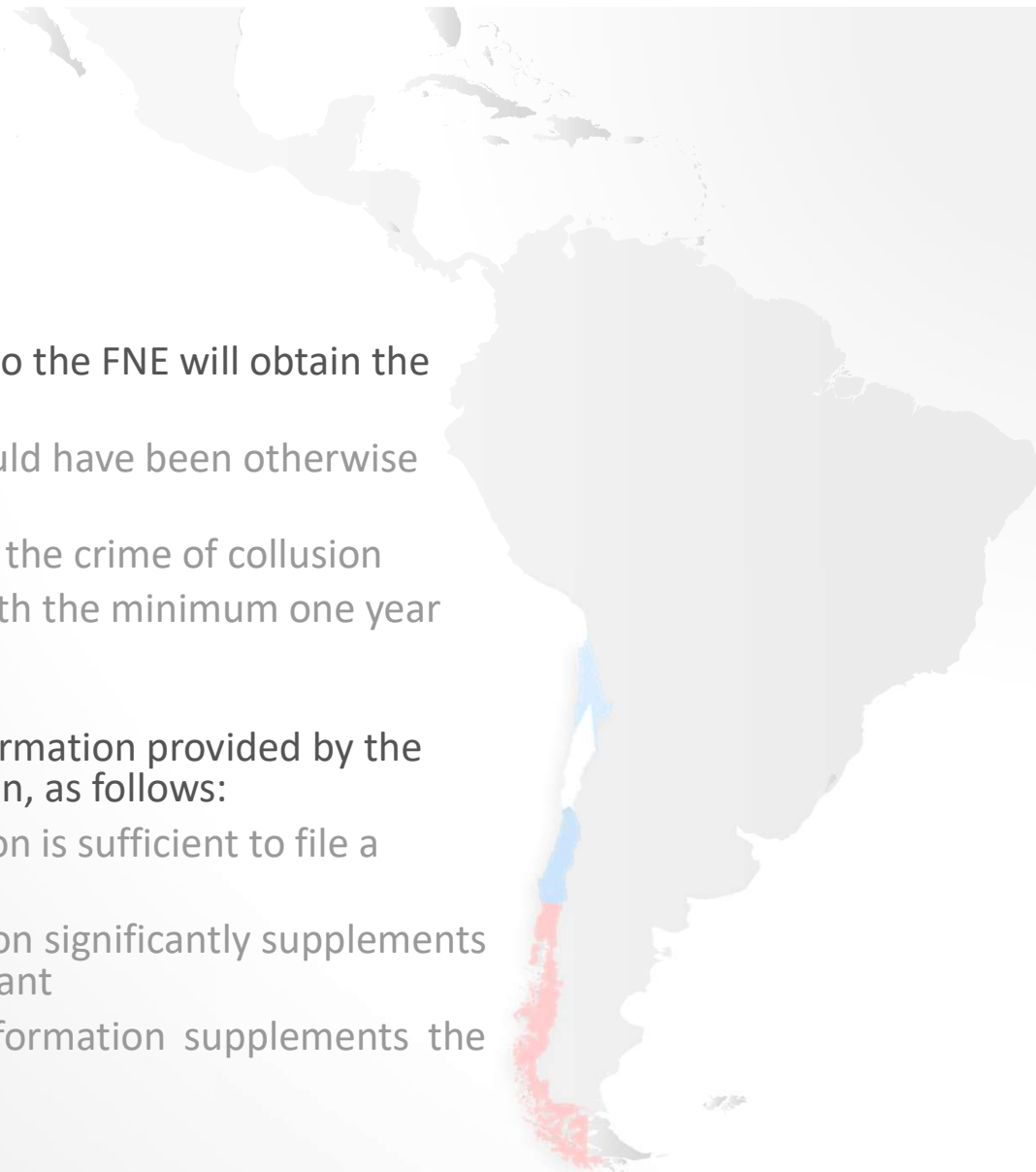
- Applicant may be requested to sign a waiver in order to exempt other international antitrust authorities from the confidentiality obligation with regards to the FNE
- FNE has cooperation agreements with CADE, SIC, among others



CHILE

REDUCTION BENEFIT PROGRAM

- The second applicant to contribute information to the FNE will obtain the following benefits:
 - i. Reduction of up to 50% of the fine that would have been otherwise imposed on the applicant
 - ii. Reduction by one degree of the penalty for the crime of collusion
 - iii. Applicant will not be required to comply with the minimum one year of effective imprisonment
- FNE will consider the value of the additional information provided by the applicant in order to determine the fine reduction, as follows:
 - i. 40 to 50% reduction if additional information is sufficient to file a complaint
 - ii. 30 to 40% reduction if additional information significantly supplements the information provided by the first applicant
 - iii. Up to 20% reduction if the additional information supplements the information provided by the first applicant



CHILE

CONFIDENCIALITY

- Leniency proposals and whole negotiation may receive confidential treatment, but final decision is to TDLC

INTERPLAY BETWEEN COOPERATIVE SOLUTIONS AND PRIVATE ENFORCEMENT

- Leniency agreements do not grant immunity against damage claims



CHILE

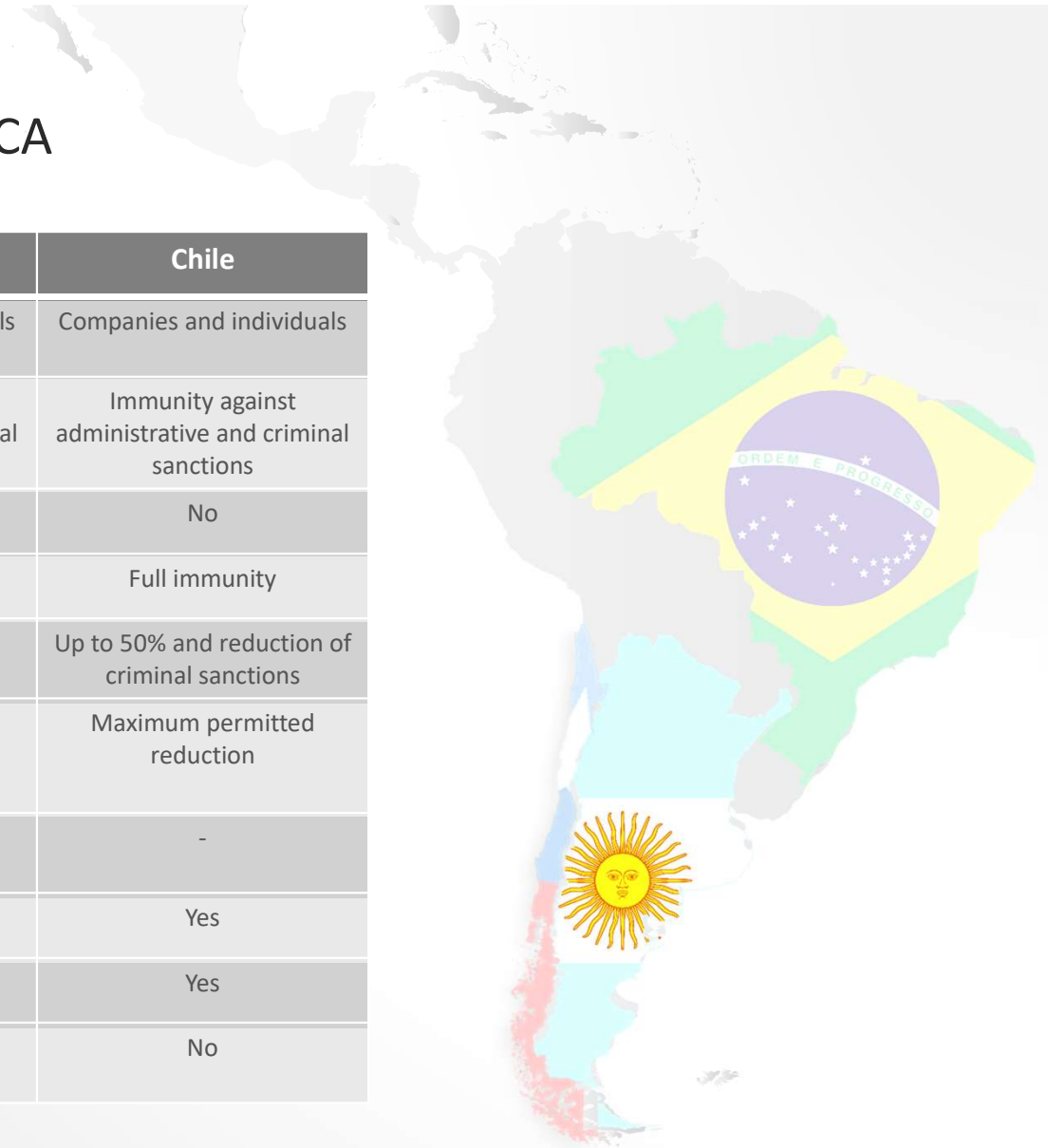
COOPERATIVE SOLUTIONS IN NUMBERS

- No public information on number of applications or requests granted
- 5 out of 13 collusion cases over last years included leniency applicant
- FNE has at least granted leniency in one case, but archived the investigation
- Number on pending investigations/applications unknown



COOPERATIVE SOLUTIONS IN LATIN AMERICA

	Brazil	Argentina	Chile
Applicant	Companies and individuals	Companies and individuals	Companies and individuals
Leniency benefits	Immunity against administrative and criminal sanctions	Immunity against administrative and criminal sanctions	Immunity against administrative and criminal sanctions
Admission of wrongdoing	Yes	No	No
First in	Full immunity	Full immunity	Full immunity
Second in	-	20% to 50%	Up to 50% and reduction of criminal sanctions
Leniency Plus	1/3 to 2/3 reduction of applicable fine	1/3 reduction of the applicable fine	Maximum permitted reduction
Settlement benefits	Up to 50% of applicable fine	Investigation closed without sanctions	-
Confidentiality	Yes	Yes	Yes
International cooperation	Yes	Yes	Yes
Immunity against damage claims	No	Yes	No



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COOPERATIVE SOLUTIONS IN NUMBERS

