



# Fighting bid rigging cartels in Brazil

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# Outline

1. Overview of Brazilian law and experience
2. Fighting bid rigging in public procurement: [Why a Priority?](#)
3. Some numbers
4. Differences between cartels in public and private bids;
5. Fighting bid rigging in public procurement: [Cooperation](#);
6. “Car Wash”: the case for cooperation

# 1. Overview of Brazilian law and experience

- Cartels are an administrative and a criminal offense in Brazil;
- Fighting *bid rigging* cartels in public procurement has been a priority of Brazilian antitrust authorities since 2007 (creation of a specific unit of investigation);
- Since 2012 *bid rigging* cartels in public procurement has been the TOP PRIORITY of CADE's Enforcement;
- *Bid rigging* in public procurement is also the main target of CADE's intelligence unit, the focus of the development of proactive methods and the main subject of training and outreach

## 2. Why a Priority?

- Three level federalism: Federal Government, 27 State Governments and more than 5 thousand autonomous municipalities, more than 500 state companies;
- Lack of administrative standards for public procurement proceedings (despite national acts).

➤ Public budget and the relevance of local spending (2010. State companies not included):

Federal	States	Local	Total
USD 48 bi	USD 43 bi	USD 53 bi	USD 144 bi

- Great economic impact: **BRL 700 billion estimate (USD 292bi) of public purchases in Brazil, including state companies.**
- Large history of corruption and overpricing in public construction;
- Large history of lack or even absence of quality and coverage of public services;

### 3. Some numbers (2012-2017)

- 47% of the total ongoing investigations in General Superintendence (61% considering auto parts cases);
- 30% of all CADE's convictions since 2012;
- 26 of the 55 Leniency agreements signed since 2012 concerns bid-rigging cases (47%). With auto parts cases considered is 44/55 (80%);
- 25 % of all settlements since 2012 (35% considering auto parts). 65% of the total amount of fines by settlements since 2012 (75% considering auto parts) ~750 million BRL;
- 50% of the dawn raids carried since 2012 were for bid rigging cases (56% considering auto parts cases);
- Outreach and Training: Since 2009, more than 1500 public officials have participated in prevention of bid rigging cartels events. Brochures and Advertisement Campaigns have been frequent since 2008.

## 4. Differences between public and private bids

- Both are crime under economic criminal law and administrative offense under the antitrust law;
- The name *Bid rigging* in antitrust administrative rules applies both for public or private procurement;
- *Bid rigging* in public procurement might be a violation not only of antitrust law but also of other administrative and criminal laws (e.g. anti corruption act, probity act);
- Three types of bid rigging: a) public bids; b) private bids of public goods and services; c) strictly private bids: when a private company opts to choose the suppliers by procurement instead of contract directly ( ex: auto parts);
  - Types a) and b) have the same treatment by CADE, as top priorities;
  - Type c) might be treated as a regular national or international cartels (most of the auto parts – theory of effects)

## 4. Differences between public and private bids

- **Burden of proof:** In the administrative enforcement, public bid rigging may rely more on indirect evidence, economic analysis and red flags.
- **Differences in detection:**
  - Public bid rigging has a balance between leniency and ex officio investigations.
    - Intelligence Unit
    - The Brain Project
  - “Private bid rigging” is basically detected by leniency and settlements;
- **Differences in repercussion:** Public bid rigging raises more awareness, media attention and are almost always related to other crimes;
- **The role of cooperation:** In public bid rigging cooperation with other authorities is almost mandatory;

## 5. Cooperation with other authorities

- **Cartels are Crime and Bid rigging in public procurement might consist of other crimes/wrongdoing or are related to these other crimes (that are not enforced by CADE);**
- **CADE's jurisdiction is national (includes federal, states and local violation), but the agency is placed in Brasilia without regional offices. Public prosecutors and procurement bodies are everywhere**



## 5. Cooperation with other authorities

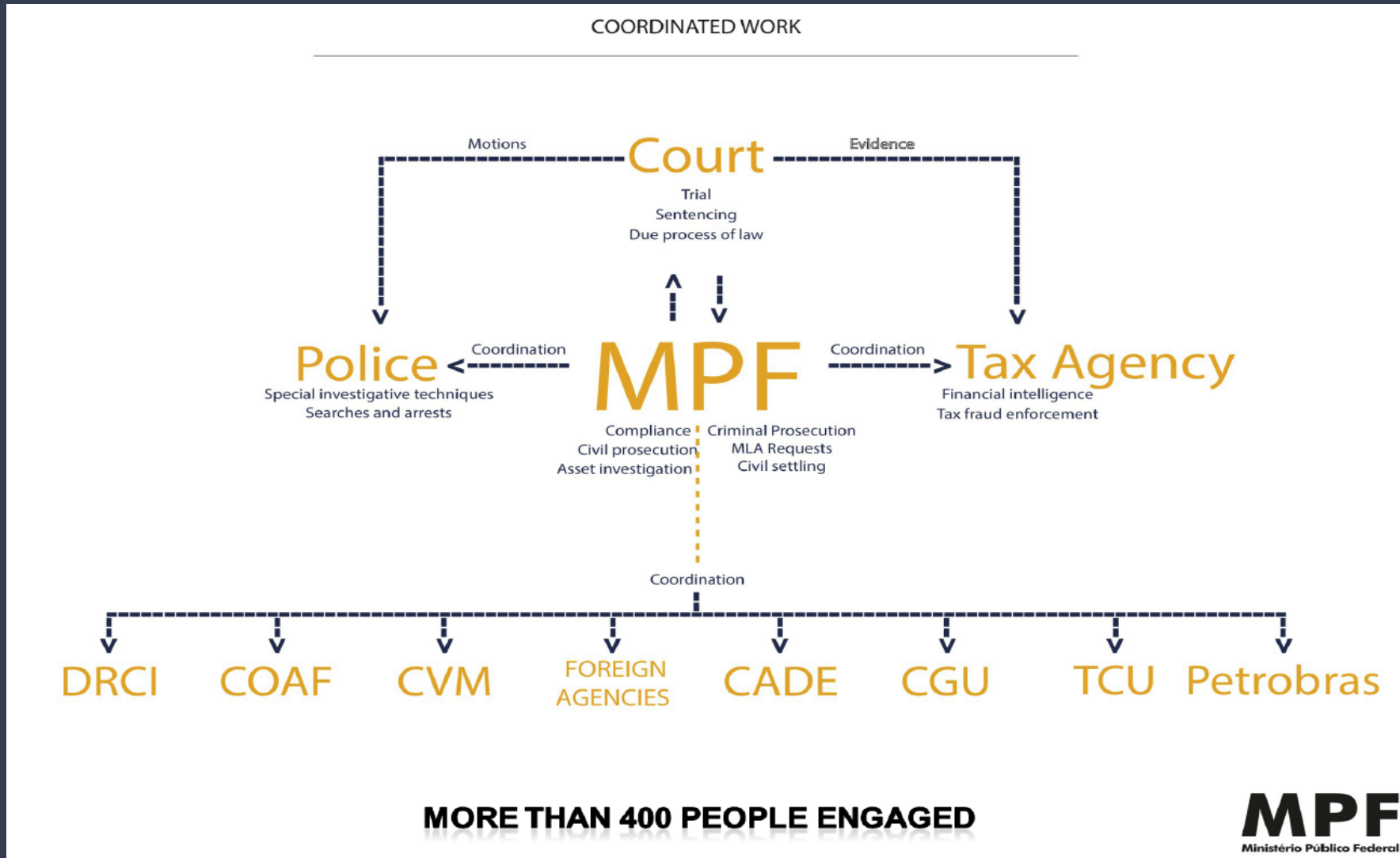
- **Four ways of cooperation:**
  - Leniency (always together with public prosecutors);
  - Joint investigations (including dawn raids, exchange of information and evidence, analysis of documents collected in dawn raids);
  - Data and Economic analysis;
  - Training in cartel detection;
- **Mainly with criminal authorities (several formal agreements with states and federal prosecutors), but applies also to cooperation with the Controller's General Office, Court of Auditors and public procurement bodies.**

## 6. “Car Wash” case: The case for cooperation

- **The Beginning:** “Small” case of corruption and money laundering in a Petrobras directorate detected by federal police and public prosecutors;
- **The Cartel:** detection of a cartel with the main infrastructure contractors of Brazil related to Petrobras public bids (leniency – dawn raid – jail)
  - Once a Cartel was discovered, Public Prosecutors contacted CADE, who became part of the many authorities investigating the case;
- **The case now (and counting):**

Same corruption/bribery/cartel/money laundering/rigged political campaign scheme was replicated in the majority of infrastructure contracts in Brazil for at least 20 years.

# 5. “Car Wash” case: The case for cooperation



## 6. “Car Wash” case: The case for cooperation

### ➤ **Challenges:**

- **“Leniency System”:** different incentives, different objectives, different culture and different timing;
- **Single vs. Multiple Conspiracies:** different approaches and views of the conduct being investigated;
- **Confidentiality:** too many actors, independent investigations and sanctions;
- **Lack of legal basis for a broad coordination (totally based upon mutual trust and judicial decisions);**
- **Coordination between independent, but similar, sanctions and ability to pay/support;**
- **Technical Committee of Enforcers (June 2017): Court of Auditors, Controller General Office, CADE, Solicitor General Office and Public Prosecutors**

## 6. “Car Wash” case: The case for cooperation

- “Car Wash” at CADE:
  - 10 cases ongoing (*plus* over 15 still on preliminary/confidential phase). All the cases opened have leniency signed together with public prosecutors (simultaneously with agreements related to other crimes and civil offenses).
  - 5 settlements in CADE in 2 Cases (Petrobras and Electronuclear) = ~ BRL 200 million in fines.
  - Several different infrastructure sectors affected (Oil & Gas, Nuclear Energy Power Plants, Hydroelectric Energy Power Plants, Railway construction, 2014 World Cup’s Arenas, Urbanization projects, Transportation and flood control infrastructure);
  - Analysis of cartel’s evidence gathered in more than 50 dawn raids carried out by the criminal authorities related to a myriad of crimes (Almost 35Tb of data).
  - Information and Evidence shared with Controller General’s Office and Federal Court of Auditors (judicial decision).

**Thank you!**

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