

A black and white photograph of a modern office interior. A person is captured in motion, blurred as they walk through a glass door. The hallway features a curved ceiling with a glowing circular light fixture and a tiled floor. The overall atmosphere is professional and contemporary.

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Brazilian Experience in the Negotiation of Merger Control Remedies

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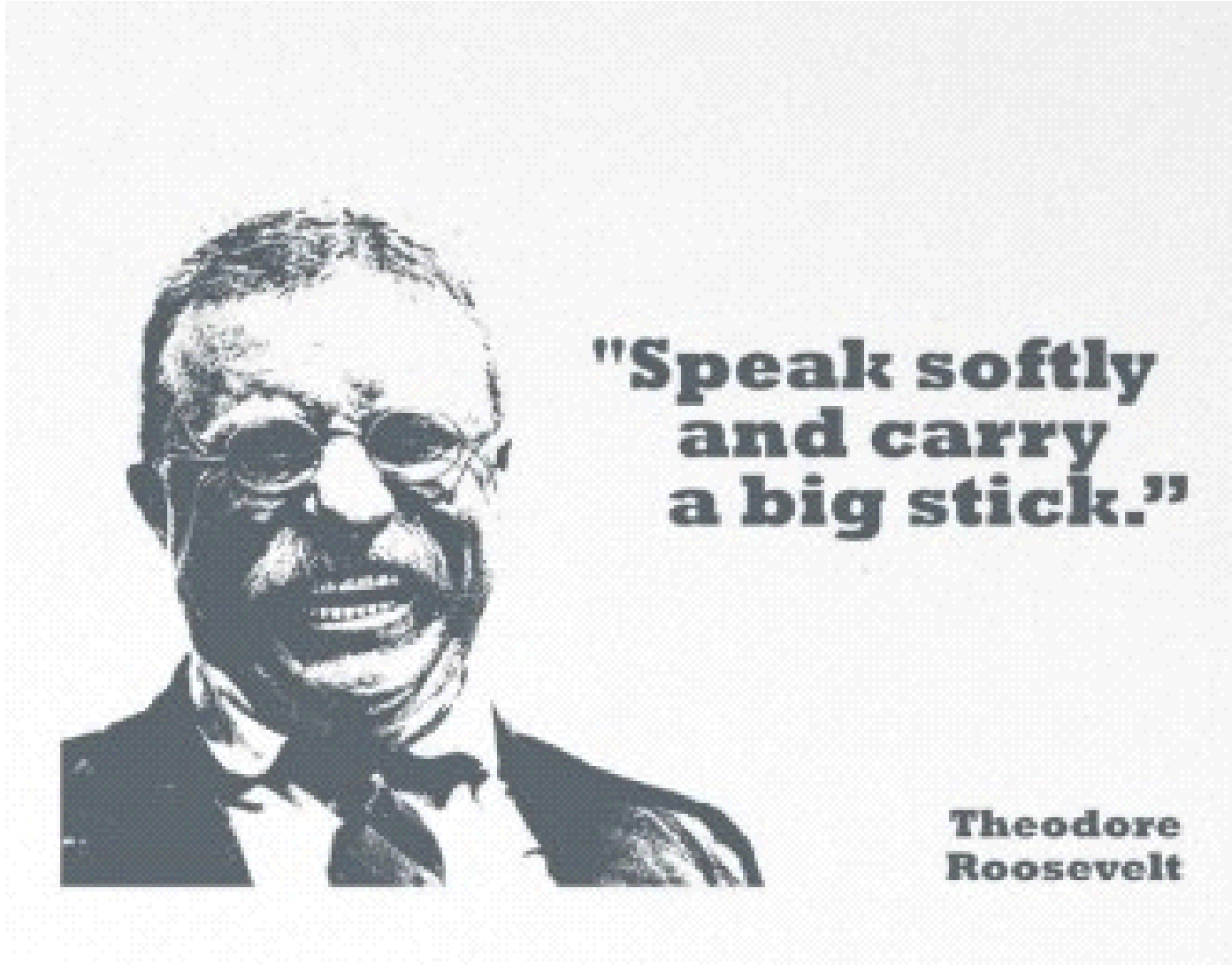
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Settling Merger Cases in Brazil



- CADE has increased the use of settlements in merger control
- CADE now approaches the parties to discuss concerns and propose settlement
- Parties have preferred settlement instead of litigating

A Peculiar Negotiation



Brazilian Post Merger Control



- Brazilian “upside down” system
 - Review after closing of transaction
 - Negotiation of remedies at the end
 - Multijurisdictional mergers already decided abroad

Types of Remedies



- Structural remedies preferred
- Behavioral remedies also admitted:
 - Restrictions to the exercise of voting rights
 - Prohibition of exclusivity arrangements
 - Obligation not to discriminate
 - Corporate governance tools
 - Extension of distribution agreements

Some Illustrations



Table 1

	2004	2005	2006	2007	2008
Decisions	618	497*	402	550	609
Blocked	1	0	0	0	1
Unconditionally Approved	574	345	352	490	550
Approved under Conditions	43	37	20	37	58
Conditions Related to Ancillary Agreements	35	10	7	23	37
Settlements	3	0	1	4	9

Source: CADE's Annual Report.

Some Illustrations



Table 2

	2004	2005	2006	2007	2008
Approved under Conditions*	8	27	13	14	21
Settlements	3	0	1	4	9
%	37,5	0	7,69	28,57	42,85

Source: CADE's Annual Report.

*Conditions related only to ancillary agreements excluded

Table 3

	2004	2005	2006	2007	2008	2009
Total Settlements	3	0	1	4	9	3
Settlements with Behavioral Remedies	2	-	0	2	6	0
Settlements with Structural Remedies	1	-	1	0	2	1
Settlements with Structural and Behavioral Remedies	0	-	0	2	1	2

Source: CADE's Annual Report (except 2009).

Table 4

	2004	2005	2006	2007	2008	2009
Total Settlements	3	0	1	4	9	3
Negotiated Before the Decision	0	0	1	1	9	3
Negotiated After the Decision	3	0	0	3	0	0

Source: CADE's Annual Report (except 2009).

Risks and Advantages



- Risks
 - Negotiation can reduce efficiency of remedies
- Advantages
 - Negotiation avoids judicial disputes
 - Negotiated remedies can be better suited for the parties
 - Negotiated remedies enable the parties to preserve their objectives in the transaction

Conclusions



- CADE is increasing the use of settlements in merger cases
- Settlements can increase effectiveness of Brazilian merger control system
- CADE has proven to be a “reasonable” negotiator



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Thank you !

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